

Assembly Bill No. 154

CHAPTER 222

An act to amend Sections 16118 and 16119 of, and to add Section 16132 to, the Welfare and Institutions Code, relating to adoption assistance.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 154, Evans. Adoption assistance: federal law.

Under existing law, the State Department of Social Services is required to provide assistance to families adopting children from the foster care system. Payments may be made for ongoing expenses or for one-time adoption expenses, as provided. Existing law requires the department to actively seek and make maximum use of federal funds that may be available for those purposes.

This bill would state the intent of the Legislature to conform state statutes with specified federal legislation and to expend savings resulting from changes in eligibility for adoption assistance on specified services.

Existing law also requires the department or the licensed adoption agency to disclose specified information to prospective adoptive families.

This bill would add to those disclosure requirements that the department or licensed adoption agency inform the prospective adoptive family of their potential eligibility for a federal and state tax credit.

This bill would incorporate additional changes in Section 16119 of the Welfare and Institutions Code, proposed by S.B. 597, to be operative only if S.B. 597 and this bill are both chaptered and become effective on or before January 1, 2010, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 16118 of the Welfare and Institutions Code is amended to read:

16118. (a) The department shall establish and administer the program to be carried out by the department or the county pursuant to this chapter. The department shall adopt any regulations necessary to carry out the provisions of this chapter.

(b) The department shall keep the records necessary to evaluate the program's effectiveness in encouraging and promoting the adoption of children eligible for the Adoption Assistance Program.

(c) The department or the county responsible for providing financial aid in the amount determined in Section 16120 shall have responsibility for

certifying that the child meets the eligibility criteria and for determining the amount of financial assistance needed by the child and the adopting family.

(d) The department shall actively seek and make maximum use of federal funds that may be available for the purposes of this chapter. In accordance with federal law, any savings in state funds realized from the change in federal funding for adoption assistance resulting from the enactment of Public Law 110-351 shall be spent for the provision of foster care and adoption services. All gifts or grants received from private sources for the purpose of this chapter shall be used to offset public costs incurred under the program established by this chapter.

(e) For purposes of this chapter, the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid in the amount determined in Sections 16120 and 16120.1 shall be the county that, at the time of the adoptive placement, would otherwise be responsible for making a payment pursuant to Section 11450 under the CalWORKs program or Section 11461 under the Aid to Families with Dependent Children-Foster Care program if the child were not adopted. When the child has been voluntarily relinquished for adoption prior to a determination of eligibility for this payment, the responsible county shall be the county in which the relinquishing parent resides. The responsible county for all other eligible children shall be the county where the child is physically residing prior to placement with the adoptive family. The responsible county shall certify eligibility on a form prescribed by the department.

SEC. 2. Section 16119 of the Welfare and Institutions Code is amended to read:

16119. (a) At the time application for adoption of a child who is potentially eligible for Adoption Assistance Program benefits is made, and at the time immediately prior to the finalization of the adoption decree, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments. The department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the Adoption Assistance Program eligible child. The department or licensed adoption agency shall also provide the prospective adoptive family with information on the availability of mental health services through the Medi-Cal program or other programs.

(b) The department or the licensed agency shall encourage families that elect not to sign an adoption assistance agreement to sign a deferred adoption assistance agreement.

(c) The department or the county, whichever is responsible for determining the child's eligibility for the Adoption Assistance Program, shall assess the needs of the child and the circumstances of the family.

(d) (1) The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the circumstances of the family. There shall be no means test used to determine an adoptive family's eligibility for the Adoption Assistance Program. In those instances where an otherwise eligible child does not require a cash benefit, Medi-Cal eligibility may be established for the child, as needed.

(2) For purposes of paragraph (1), "circumstances of the family" includes the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future plans and needs, including education, of the child.

(e) The department or the licensed adoption agency shall inform the prospective adoptive family regarding the county responsible for providing financial aid to the adoptive family in an amount determined pursuant to Sections 16120 and 16120.1.

(f) The department or the licensed adoption agency shall inform the prospective adoptive family that the adoptive parents will continue to receive benefits in the agreed upon amount unless one of the following occurs:

(1) The department determines that the adoptive parents are no longer legally responsible for the support of the child.

(2) The department determines that the child is no longer receiving support from the adoptive family.

(3) The adoption assistance payment exceeds the amount that the child would have been eligible for in a licensed foster home.

(4) The adoptive parents demonstrate a need for an increased payment.

(5) The adoptive parents voluntarily reduce or terminate payments.

(6) The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

(g) The department or licensed adoption agency shall inform the prospective adoptive family of their potential eligibility for a federal tax credit under Section 23 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 23) and a state tax credit under Section 17052.25 of the Revenue and Taxation Code.

SEC. 2.5. Section 16119 of the Welfare and Institutions Code is amended to read:

16119. (a) At the time application for adoption of a child who is potentially eligible for Adoption Assistance Program benefits is made, and at the time immediately prior to the finalization of the adoption decree, the department or the licensed adoption agency, whichever is appropriate, shall provide the prospective adoptive family with information, in writing, on the availability of Adoption Assistance Program benefits, with an explanation of the difference between these benefits and foster care payments. The department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the Adoption Assistance Program eligible child. The department or licensed adoption agency shall also provide the prospective adoptive family with

information on the availability of mental health services through the Medi-Cal program or other programs. The department or licensed adoption agency shall also provide information regarding the federal adoption tax credit for any individual who is adopting or considering adopting a child in foster care, in accordance with Section 403 of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

(b) The department or the licensed agency shall encourage families that elect not to sign an adoption assistance agreement to sign a deferred adoption assistance agreement.

(c) The department or the county, whichever is responsible for determining the child's eligibility for the Adoption Assistance Program, shall assess the needs of the child and the circumstances of the family.

(d) (1) The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the circumstances of the family. There shall be no means test used to determine an adoptive family's eligibility for the Adoption Assistance Program, or the amount of adoption assistance payments. In those instances where an otherwise eligible child does not require a cash benefit, Medi-Cal eligibility may be established for the child, as needed.

(2) For purposes of paragraph (1), "circumstances of the family" includes the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future plans and needs, including education, of the child.

(e) The department or the licensed adoption agency shall inform the prospective adoptive family regarding the county responsible for providing financial aid to the adoptive family in an amount determined pursuant to Sections 16120 and 16120.1.

(f) The department or the licensed adoption agency shall inform the prospective adoptive family that the adoptive parents will continue to receive benefits in the agreed upon amount unless one of the following occurs:

(1) The department determines that the adoptive parents are no longer legally responsible for the support of the child.

(2) The department determines that the child is no longer receiving support from the adoptive family.

(3) The adoption assistance payment exceeds the amount that the child would have been eligible for in a licensed foster home.

(4) The adoptive parents demonstrate a need for an increased payment.

(5) The adoptive parents voluntarily reduce or terminate payments.

(6) The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

(g) The department or licensed adoption agency shall inform the prospective adoptive family of their potential eligibility for a federal tax credit under Section 23 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 23) and a state tax credit under Section 17052.25 of the Revenue and Taxation Code.

SEC. 3. Section 16132 is added to the Welfare and Institutions Code, to read:

16132. It is the intent of the Legislature to conform state statutes to recently enacted federal legislation, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) and to expend savings resulting from changes in eligibility for adoption assistance on services, including, but not limited to, postadoption assistance, that may be provided under Title IV-B and IV-E of the federal Social Security Act.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 16119 of the Welfare and Institutions Code proposed by both this bill and SB 597. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2010, (2) each bill amends Section 16119 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 597, in which case Section 2 of this bill shall not become operative.