

**Reevaluating the Government's Role in Parenting
Older Foster Care Youth:
An Analysis of the Fostering Connections to Success
and Increasing Adoptions Act of 2008 and its
Implementation in California and Michigan**

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Introduction

The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) unanimously passed both Houses of Congress and was signed into law by President George W. Bush in October 2008.¹ The law responds to a range of issues and concerns raised by public child welfare administrators, child welfare advocates, and children and youth in foster care.² Fostering Connections provides large, sweeping changes that impact foster care children from birth to age 21. The scope of this analysis is limited to the provisions of the Title II subsection of Fostering Connections affecting older youth who are aging out of the foster care system.³

I. Key Features of the Act: Title II- Improving Outcomes for Older Youth in Foster Care

A. *Extending Foster Care Beyond the Age of 18*

Fostering Connections allows states to provide care and support to youth in foster care up to the age of 21 provided the youth are attending high school, a post-secondary education or vocational program, or an employment training program; working 80 hours a month; or are medically incapable of any of these activities.⁴ Legal representation and periodic case review procedures afforded to state wards under 18 can now be extended to older youth (ages 18-21) either automatically or at the request of the youth.⁵ States have the option to return youth to foster care if youth leave care at age 18 and want to voluntarily return to supportive services.⁶ This section of the legislation is permissive requiring each state to opt in by passing its own enabling legislation, including designating the age to which care is being extended up to.⁷

¹ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 26 U.S.C.).

² Emilie Stoltzfus, *Child Welfare: The Fostering Connections to Success and Increasing Adoptions*, CRS REPORT TO CONGRESS (Oct. 2008), available at http://assets.opencrs.com/rpts/RL34704_20081009.pdf.

³ Fostering Connections §§ 201-206.

⁴ *Id.* § 201.

⁵ *Id.* §§ 201-203.

⁶ CENTER FOR THE STUDY OF SOCIAL POLICY, POLICY MATTERS: SETTING AND MEASURING BENCHMARKS FOR STATE POLICIES-PROMOTING CHILD SAFETY, PERMANENCE, AND WELL-BEING THROUGH SAFE AND STRONG FAMILIES, SUPPORTIVE COMMUNITIES, AND EFFECTIVE SYSTEMS, at 89 (2009).

⁷ Fostering Connections § 201.

B. Transition Planning

To facilitate the transition to productive independence, each young person aging out of the foster care system must now actively participate in the creation of a personal transition plan that addresses housing, health insurance, education, workforce development and other needed supports.⁸ The transition plan must be youth directed and developed at least 90 days prior to the youth's eighteenth birthday.⁹ This section of the legislation is a mandate that all states must comply with.

C. Educational Stability

Fostering Connections requires child welfare agencies to help youth achieve their educational goals by coordinating with local education agencies to ensure youth attend and remain in their same school even when the youth's placement changes. The law clarifies that federal foster care maintenance payments may be used to cover school related transportation costs, further decreasing barriers to maintaining students in their school of origin.¹⁰ When a move to a different school is necessary, the educational and child welfare agencies must facilitate the transfer of educational records and ensure prompt enrollment in the new school.¹¹ This section of the legislation is also written as a mandate requiring compliance by all states.¹²

D. Health Care Oversight and Coordination

Fostering Connections mandates that states improve access to health care as a condition of maintaining federal funding. Specifically, states must collaborate with the Medicaid agency and consult with pediatricians and other experts to develop a plan for ongoing oversight and

⁸ CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6, at 88; CLARK M. PETERS, AMY DWORSKY, MARK E. COURTNEY & HAROLD POLLACK, THE BENEFITS AND COSTS OF EXTENDING FOSTER CARE TO AGE 21, at 9 (2009); Mark E. Courtney, *The Difficult Transition to Adulthood for Foster Youth in the U.S.: Implications for State as a Corporate Parent*, 23 SOC. POL'Y REP. 3, 10 (2009).

⁹ Fostering Connections § 202.

¹⁰ *Implementation of the Fostering Connections to Success and Increasing Adoptions Act: Hearing Before the Subcomm. on Income Security and Family Support of the H. Comm. on Ways and Means*, 111th Cong. (2009) (statement of Kathleen M. McNaught, American Bar Association).

¹¹ *Id.*; PATRICIA JULIANELLE, THE MCKINNEY-VENTO ACT AND CHILDREN AND YOUTH AWAITING FOSTER CARE PLACEMENT: STRATEGIES FOR IMPROVING EDUCATIONAL OUTCOMES THROUGH SCHOOL STABILITY at 5 (2008).

¹² Fostering Connections § 204.

continuity of care for every child in foster care.¹³ This collaboration includes the establishment of a central location for each youth's health records (a medical home).¹⁴ For every youth in care, the plan must describe the health screening schedule, the process for monitoring and treating identified health needs, the methods that ensure updating and appropriate sharing of medical records through mechanisms such as electronic medical records, and the methods for overseeing prescription medications, including psychotropic drugs.¹⁵

II. Policy Analysis Framework

Patton and Sawicki's rationalist model¹⁶ provides a six step framework for analyzing Fostering Connections: problem definition, determination of evaluation criteria, identification of alternatives, evaluation of alternatives, comparison of alternatives, and an assessment of outcomes.¹⁷

Fostering Connections provides the states with leniency as to how to implement provisions. As such, the approaches taken in various states differ widely. To strengthen this analysis, our research focused on implementation of the law's provisions in two states- California and Michigan. Both states feature a high volume of aging out foster youth. The California and Michigan implementation information for areas of the law under analysis was obtained through a LexisNexis search of state statutes, a review of each state's child welfare agency policy manuals, a review of each state's Court Improvement Program and court websites, and accessing information through federal child welfare information sites.

¹³ CHILDREN'S DEFENSE FUND: FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT Summary 4. (July 2010), available at <http://www.childrensdefense.org/child-research-data-publications/data/FCSIAA-detailed-summary.pdf>.

¹⁴ NATIONAL RESOURCE CENTER FOR PERMANENCY AND FAMILY CONNECTIONS: FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT (2008) available at http://www.nrcpfc.org/fostering_connections/PL110-351.html#205.

¹⁵ Katherine Sanchez, Rebecca Gomez & King Davis, *Fostering Connections and Medical Homes: Addressing Health Disparities Among Children in Substitute Care*, 32 CHILD. & YOUTH SERV. REV. 286, 289 (2010); Stoltzfus, *supra* note 2, at 1.

¹⁶ Patton and Sawicki's Rationalist Model is based on a process through which one identifies and evaluates alternative policies or programs that are intended to lessen or resolve social, economic or physical problems. This model provides a framework to identify and verify complex problems, compare alternative ways to address a problem, frames information in a useful way for decision makers, informs the political debate, can improve the quality of decisions, and suggests how to translate ideas in to viable policies. CARL V. PATTON & DAVID S. SAWICKI, BASIC METHODS OF POLICY ANALYSIS AND PLANNING 52-65 (2nd ed. 1993).

¹⁷ *Id.*

III. Identification of the Problem

According to the Federal Adoption and Foster Care Analysis and Reporting System (AFCARS), approximately 26,286 youth, or 11% of the total population of children who were living in out of home care, were emancipated from the foster care system in 2011.¹⁸ This encapsulates a 64% increase since 1999.¹⁹ Youth who age out of foster care are more likely than their peers to experience a variety of negative outcomes across several life domains including education, physical and mental health, and employment and economic self-sufficiency, among others.²⁰

A. Education

Foster care youth face major educational challenges, including school instability and overrepresentation in special education programs. Nearly half (45%) of foster children between 6th and 8th grade classify for special education compared to 16% of students who have never been in foster care.²¹ On average, youth move to new foster care placements up to three times per year, with each move resulting in a change of school.²² Each school change results in a student losing four to six months of educational progress.²³ School changes often involve significant time gaps between removal from one school district and enrollment in another due to poor coordination between child welfare and school personnel. Difficulties transferring school records and course credits from prior schools often mean that students have to repeat courses and grade levels.²⁴ As a result, foster care youth fall behind their peers and frequently drop out of school.

¹⁸ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE AFCARS REPORT: PRELIMINARY FY 2011 ESTIMATES (2012), *available at* <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport19.pdf>.

¹⁹ MARCI MCCOY-ROTH, MADELYN FREUNDLICH & TIMOTHY ROSS, FOSTERING CONNECTIONS RESOURCE CENTER, NUMBER OF YOUTH AGING OUT OF FOSTER CARE CONTINUES TO RISE 1 (Jan. 2010), *available at* http://www.fosteringconnections.org/tools/assets/files/Connections_Agingout.pdf.

²⁰ Melinda Atkinson, *Aging out of Foster Care: Towards a Universal Safety Net for Former Foster Care Youth*, 43 HARV. C.R.-C.L. L. REV. 183 (2008); Courtney, *supra* note 8; CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6, at 7.

²¹ Jennifer Macomber, *The Impact of ASFA on the Permanency and Independence for Youth in Foster Care*, CENTER FOR THE STUDY OF SOCIAL POLICY & URBAN INSTITUTE, INTENTIONS AND RESULTS: A LOOK BACK AT THE ADOPTION AND SAFE FAMILIES ACT 83 (2009).

²² JULIANELLE, *supra* note 11.

²³ McNaught, *supra* note 10.

²⁴ *Id.*

Between 54 and 58% of former foster youth graduate from high school by age 19²⁵ compared to 87% of students in the general population.²⁶

Foster youth are also underrepresented among college going populations.²⁷ Although 70 percent of foster care youth express an interest in attending college, very few earn a degree or certificate after high school.²⁸ By age 19, only 18% of foster youth are working on a four year degree, contrasted with 62% of their peers.²⁹ By age 25, less than 3% of former foster youth had completed a bachelor's degree or higher, compared to 24% of the general population.³⁰ Lack of data creates barriers when attempting to measure the success of foster care students attending community colleges and trade schools. Researchers who attempted to track the post-secondary success of foster care students enrolled in community colleges throughout California found these higher education institutions were unable to track the progress of their students.³¹ These institutions did not have in place a system to measure, track and evaluate the success of any interventions the colleges employed with a foster, or former foster, youth population.³²

B. Physical and Mental Health Care

Foster youth utilize public health services at a higher rate than the general population. Youth in foster care account for a disproportionate share of Medicaid expenditures relative to enrollment.³³ While foster youth comprise 3% of all children enrolled, they account for a total of 28% of Medicaid expenses.³⁴ Between 87 and 95% of youth in substitute

²⁵ Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. OF JUV. L. & POL'Y 381, 390 (2005).

²⁶ Courtney, *supra* note 8, at 5.

²⁷ *Id.*

²⁸ John Emerson, *From Foster Care to College Supporting Independent Students*, 4 LEADERSHIP EXCHANGE 6, 7 (2007).

²⁹ CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6, at 87.

³⁰ *Id.*

³¹ Elisa Rassen, Darla Cooper & Pamela Mery, *Serving Special Populations: A Study of Former Foster Youth at California Community Colleges*, 17 J. APPLIED RES. IN THE COMMUNITY C. 24 (2010).

³² *Id.*

³³ Mary Elizabeth Collins, *Enhancing Services to Youths Leaving Foster Care: Analysis of Recent Legislation and its Potential Impact*, 26 CHILD. & YOUTH SERV. REV. 1051, 1060 (2004).

³⁴ Sanchez, *supra* note 15, at 287.

care have at least one physical health condition, and more than half experience multiple co-morbidities.³⁵

Despite representing a high percentage of total expenses as a population while in care, 12% of foster youth do not receive routine medical care and 34% have not received immunizations³⁶ as compared to 9% of youth in the general population with access to private health coverage and 14% of non-foster care youth with access to Medicaid.³⁷

Foster youth also experience mental health disparities. These youth suffer from mental health problems at twice the rate of youth in the general population and are more likely to describe their physical health status less favorably.³⁸ More than one third of former foster youth suffer from depression, dysthymia, post-traumatic stress disorder (PTSD), and/or social phobia.³⁹ In contrast, only 12% of youth in the general population suffer from depression and only 5% suffer from PTSD.⁴⁰

Virtually all foster youth have Medicaid, but many lose coverage when leaving foster care. Although many would continue to qualify based on income, they often cannot qualify based on age unless they are pregnant or disabled.⁴¹ Some who would continue to qualify have suffered from high caseworker turnover and have not received the necessary information to knowingly continue coverage. One third of youth who have aged out of foster care have no access to affordable medical coverage, a rate nearly double that of 18 to 44 year olds nationwide, leading them to report medical problems that have often gone untreated.⁴² This statistic has most likely increased since the Patient Protection and Affordable Care Act's provision requiring insurance companies to extend coverage for dependents until the age of 26 went into effect for plan years beginning on or after September 23, 2010.⁴³

³⁵ *Id.*; Heather Forkey, *The Medical Care of Adolescents in Foster Care*, CENTER FOR ADOPTION RESEARCH (Mar. 2007), <http://www.steps-umms.org/uploadedFiles/Medical%20Cae%20of%20Adoelscents%20in%20Foster%20Care.pdf>.

³⁶ Sanchez, *supra* note 15, at 287.

³⁷ ROBIN A. COHEN & BARBARA BLOOM, NAT'L CTR. FOR HEALTH STATISTICS, DATA BRIEF NO. 29: ACCESS TO AND UTILIZATION OF MEDICAL CARE FOR YOUNG ADULTS AGED 20-29 YEARS: UNITED STATES, 2008 (Feb. 2010), *available at* <http://www.cdc.gov/nchs/data/databriefs/db29.pdf>.

³⁸ Courtney, *supra* note 8, at 5.

³⁹ CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6, at 87.

⁴⁰ Macomber, *supra* note 21, at 84.

⁴¹ Forkey, *supra* note 35.

⁴² Courtney, *supra* note 8, at 6.

⁴³ 42 USC § 300gg-14 (2012).

An additional concern is the accuracy and availability of a foster youth's health information to those responsible for the youth, not only when a youth enters care but during the entire course of that youth's stay. Unfortunately, the collection and maintenance of health information has not traditionally been a priority in foster care placements. In one study, approximately 80 of foster parents did not have information on prior medical or mental health evaluations for youth residing in their homes.⁴⁴ This raises significant safety and well-being concerns when foster parents are unaware of allergies and the medical needs of the youth placed in their homes.

C. *Employment and Economic Self-sufficiency*

Foster youth have little access to informal financial support resources, such as family. Foster care youth between the ages of 18 and 24 have higher rates of dependence on public assistance and higher unemployment rates than their same age peers.⁴⁵ Many make low wages, with mean earnings well below the federal poverty level two to five years after leaving foster care.⁴⁶ When employment income falls short, many youth turn to illegal venues to survive: 24% supported themselves through selling drugs and 11% engaged in prostitution.⁴⁷ Approximately 25% of foster youth will engage with the legal system after exiting care.⁴⁸ A study conducted in Wisconsin reported that 18% of former foster youth experienced incarceration after leaving foster care.⁴⁹ Another study conducted in Clark County, Nevada, found that 41% of former foster youth reported spending at least one night in jail.⁵⁰

Young adults raised by their birth families have built-in, lifelong support networks of parents, siblings, extended family, and family friends-

⁴⁴ Forkey, *supra* note 35.

⁴⁵ Rosemary J. Avery, *An Examination of Theory and Promising Practice for Achieving Permanency for Teens Before They Age out of Foster Care*, 32 CHILD. & YOUTH SERV. REV. 399, 399-403 (2010); Benedetto, *supra* note 23 at 391; Mark E. Courtney, *supra* note 8; Allison Henig, *Employment Aid for Youth Aging Out of Foster Care: Extending One-Stop Career Centers to Include a Division for Foster Care Youth*, 47 FAM. CT. REV. 570 (2009).

⁴⁶ Courtney, *supra* note 8, at 6.

⁴⁷ Atkinson, *supra* note 20, at 193.

⁴⁸ Thomas Reilly, *Transitions from Care: Status and Outcomes of Youth Who Age out of Foster Care*, 82 CHILD WELFARE 727, 729 (2003).

⁴⁹ MARK COURTNEY & IRVING PILIAVIN, FOSTER YOUTH TRANSITIONS TO ADULTHOOD: OUTCOMES 12 TO 18 MONTHS AFTER LEAVING OUT-OF-HOME CARE (1998).

⁵⁰ Reilly, *supra* note 48, at 736.

networks not ensured for foster youth.⁵¹ Social networks serve a number of important functions as youth make the transition into adulthood and economic self-sufficiency by providing youth with emotional support, guidance on employment, education, and relationship issues, and assistance in times of emergency.⁵² Most young people today will not experience a transition to independent adulthood until their mid-20s or even early 30s.⁵³ The movement towards interdependent living or building positive connections between foster care youth and caring adults, such as biological family members, foster parents, and mentors, provides a fundamental shift toward the realization that these informal supports can help make the lives of foster care youth more stable and fulfilling.⁵⁴ The foster care system must address several ethical considerations including the embedded social injustice of policies and programs that expect young people lacking positive relationships with their families to mature ahead of young people who do have support.⁵⁵

IV. Key Stakeholders

Seamless implementation of the Fostering Connections Act provisions requires the cooperation of stakeholders in a multifaceted system that includes elected public officials; tribal leaders; state and county administrators of health, social services, education, workforce development; the courts; social workers; foster and adoptive families; relatives; children's advocacy organizations; and other community level professionals who provide input into program and policy development. Coordinated implementation by all necessary stakeholders is difficult.

Poor integration of efforts between the child welfare system and other public institutions limits the effectiveness of programs that target older foster care youth. The failure within the child welfare system to coordinate improvement initiatives impedes the ability to establish and measure performance outcomes, to determine appropriate corrections when outcomes are not achieved, and to enforce accountability measures. To maximize the achievement of goal envisioned by Fostering

⁵¹Sarah Oldmixon, *State Policies to Keep Youth in Transition Out of Foster Care*, NATIONAL GOVERNOR'S ASSOCIATION CENTER FOR BEST PRACTICES (Jan. 2007), <http://www.nga.org/files/live/sites/NGA/files/pdf/0701 YOUTH.PDF>.

⁵²Avery, *supra* note 45, at 401; CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6.

⁵³Avery, *supra* note 45, at 400-01.

⁵⁴Jill K. Jensen, *Fostering Interdependence: A Family-Centered Approach to Help Youth Aging out of Foster Care*, 3 WHITTIER J. OF CHILD AND FAM. ADVOC. 329, 329-57 (2004).

⁵⁵*Id.* at 330.

Connections, state and local human service agencies need to regularly interact with health agencies, education agencies, local school and higher education authorities to ensure seamless transitions between systems. In many states, the human service agency duplicates services outside its areas of expertise in lieu of interdepartmental coordination.⁵⁶

Separate laws that govern the privacy rights of clients within the child welfare system (Child Abuse Prevention and Treatment Act)⁵⁷ and students attending public education institutions (Family Education Rights and Privacy Act)⁵⁸ lead to separate conversations and separate efforts. This poses an ethical dilemma for institutions that must simultaneously maintain confidentiality while working effectively in cross-system collaborations that require data sharing for best practice decision-making and the need to contain costs.

Youth are also essential stakeholders, yet are often absent from the discussion. Under federal law, youth have a right to be prepared for emancipation while they are still under state care and supervision.⁵⁹ This preparation includes the services and training necessary to “meet the basic needs” of a child.⁶⁰ Foster youth also possess “a substantive due process right to be free from physical and emotional harm.”⁶¹ Yet, failure to adequately prepare youth for adulthood creates emotional harm. Compliance with the ethical codes of many professionals *requires effective* actions to prevent or remove these harms but barriers to cross systems coordination and information sharing may create the very result professionals strive to avoid.

V. Criteria for Evaluation

The criteria used to evaluate each of the major provisions that impact older foster youth under Title II of Fostering Connections include

⁵⁶ Erika Felix, Michael Furlong, Jill Sharkey & David Oster, *Implications for evaluating multi-component, complex prevention initiatives: Taking guidance from the Safe Schools/Healthy Students Initiative* 6(2) J. OF SCH. VIOLENCE 3–22 (2007); WILLIAM SWAN & JANET MORGAN, *COLLABORATING FOR COMPREHENSIVE SERVICES FOR YOUNG CHILDREN AND THEIR FAMILIES: THE LOCAL INTERAGENCY COORDINATING COUNCIL* (Paul H. Brookes Publ., Balt. MD)(1993).

⁵⁷ Child Abuse Prevention and Treatment Act, 42 U.S.C. §§ 5101-5119 (2012).

⁵⁸ Family Educational Rights and Privacy Act, 20 U.S.C. §§ 1232g, 1232h (2012).

⁵⁹ The Social Security Act, 42 U.S.C. § 675(1)(D); Fostering Connections §§ 201; Chafee Foster Care Independence Act, 42 U.S.C. § 677 (2009).

⁶⁰ Benedetto, *supra* note 25, at 383.

⁶¹ *Id.*

commonly used measures: political acceptability, effectiveness, legality, efficiency and administrative ease.⁶²

Child welfare reform litigation can be effectively used to protect the rights of children in foster care.⁶³ Increases in funding for child welfare agencies typically arise only if litigation is first brought against the agency.⁶⁴ Widespread media attention resulting, in part, from several class action lawsuits (twenty-one to date) has increased political will to change the current way the federal government administers child welfare programs.⁶⁵ These legal achievements are key influences in the political environment under which Fostering Connections was enacted.

A. *Extending Foster Care Beyond the Age of 18*

Fostering Connections is designed to provide flexibility to states, including the freedom to experiment with creative services for youth. States have established substantial variation and limitations in services provided. One of the significant barriers to extending care for youth past age 18 has been the limitation posed by Title IV-E funding related to age.⁶⁶ Until the passage of Fostering Connections, states could only receive Title IV-E reimbursement for placement and administrative costs for youth up until age 18, or 19 if the youth was still in high school.⁶⁷ Therefore, states that had taken on the commitment to provide comprehensive placement and support services for older youth did so through the expenditure of local and state funds. States already allowing youth to stay in care past age 18 will now be able to use federal funds to defray the cost, and thus have a significant incentive to allow youth to stay in care.⁶⁸

Currently states opting out of the extension provision fail to draw federal dollars to support such initiatives. Only slightly more than half of states presently allow youth to stay in care past the age of 18. Many states have extended age limits only to age 19 or have other restricted eligibility

⁶² PATTON, *supra* note 16.

⁶³ Jensen, *supra* note 54, at 337.

⁶⁴ *Id.*

⁶⁵ CHILDREN'S RIGHTS, <http://www.childrensrights.org/issues-resources/adoption/child-welfare-reform-and-advocacy/> (last visited Nov. 10, 2012).

⁶⁶ The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 670 (2012).

⁶⁷ AMERICAN BAR ASSOCIATION & CASEY FAMILY PROGRAMS, *Foster Care & Education Q&A: Federal Laws that Increase Educational Opportunities for Older Youth in Out-of-home Care* (2008), available at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/education/qa_older_youth_final.authcheckdam.pdf.

⁶⁸ Fostering Connections §§ 201.

requirements for remaining in care.⁶⁹ For example, foster youth in Pennsylvania can remain in care only if enrolled in state approved educational activities or, similar to Ohio, if living with a disability or special need.⁷⁰ Arizona and Washington, D.C. provide the most flexibility through no conditions or restrictions on eligibility for youth to stay in care.⁷¹ Illinois allows a young person to stay in care until age 21, on a case-by-case basis, if the court finds it is in the best interest of the youth.⁷² Two states, Massachusetts and Texas, permit some foster care youth to remain in custody through age 22, while Colorado and Connecticut provide for foster care through age 23.⁷³

The idea of extending care raises concerns for policymakers that youth will be no more self-sufficient at age 21 than at age 18.⁷⁴ It is unclear whether this new program feature will succeed in changing negative social outcomes for youth who elect not to participate. Many youth who are the least prepared for adulthood find the prospect of staying in care past the age of 18 an option they are only too happy to decline. However, the steep learning curve of adulthood can be overwhelming for a foster youth living on her own for the first time.

Another concern for policymakers is the cost involved with extending the eligible age for foster care. Increasing the age of youth who qualify for services will substantially increase foster care costs. It costs on average about \$20,800 annually to keep one foster youth over 18 in care.⁷⁵ It is too early yet to determine whether the potential long term savings from preventing costly negative outcomes will negate the initial costs to taxpayers for extending foster care. Some researchers, however, estimate that the average cost per youth of extending foster care to age 21, is offset by the costs associated with public assistance utilization when youth cannot remain in care (\$37,948 per year).⁷⁶ Extending care to age 21 is

⁶⁹ POLICYFORRESULTS.ORG, State Child Welfare Policy Guide: Part of the Policy Matters Series, Section 8.1: Foster Care Extended Past Age 18.

⁷⁰ CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6, at 88.

⁷¹ *Id.*

⁷² *Id.*

⁷³ ADRIENNE L. FERNANDEZ, CRS REPORT TO CONGRESS, YOUTH TRANSITIONING FROM FOSTER CARE: BACKGROUND, FEDERAL PROGRAMS, AND ISSUES FOR CONGRESS, 14 (Sept. 2008), available at <http://wikileaks.org/wiki/CRS-RL34499>.

⁷⁴ *Id.* at 43.

⁷⁵ MARK E. COURTNEY, AMY DWORSKY & CLARK M. PETERS, CALIFORNIA'S FOSTERING CONNECTIONS TO SUCCESS ACT AND THE COSTS AND BENEFITS OF EXTENDING FOSTER CARE TO 21, at 4 (2009).

⁷⁶ *Id.* at 6.

predicted to increase work-life earnings by about \$92,000 per person through increased attainment of bachelor's degrees.⁷⁷ This represents about \$2.40 in earnings for every dollar spent. Other researchers found that extending foster care placements beyond the age of 18 increased access to post-secondary education, delayed pregnancy, increased earnings, and provided a greater likelihood of a youth receiving independent living services.⁷⁸ While work-life earnings benefit individuals primarily, a portion will be returned to the government through income tax and other revenue programs.

In order to optimally apply Fostering Connections, states should have the option to allow youth to re-enter care, similar to children in natural homes who need varying degrees of assistance from their families while transitioning to adulthood and return home several times before reaching full independence. A re-entry policy would safeguard the rights of older youth to make the decision to leave care without the consequences of permanently losing supports once their case has been closed. Both California and Michigan provide a re-entry into care option for their older voluntary foster youth populations in their state enactments of the Fostering Connections provisions.

1. California's Implementation of the Extension Provision

Approximately 57,708 youth belonged to California's foster youth population in 2010.⁷⁹ California chose to participate in the optional federally funded program to extend foster care and to the age of 21.⁸⁰ On September 30, 2010, Governor Arnold Schwarzenegger signed into law the California Fostering Connections Act (California Fostering Connections).⁸¹ In addition to extending foster care, the California Act codifies case planning, educational, health and transition planning requirements for older foster youth.

The California extension of foster care benefits uses a phased-in approach. Beginning in January 2012, the legislation provides for the voluntary extension of foster care to the age of 19. In January 2013, the voluntary foster care benefits extend up to the age of 20.⁸²

⁷⁷ *Id.* at 16.

⁷⁸ PETERS ET AL., *supra* note 8, at 12.

⁷⁹ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *supra* note 18.

⁸⁰ California Fostering Connections to Success Act, Assemb. 12, 2010 Leg., Reg. Sess. (Cal. 2010), *amended by* Assemb. 212, 2011 Leg., Reg. Sess. (Cal. 2011).

⁸¹ *Id.*

⁸² Under Assemb. 12, 2010 Leg., Reg. Sess. §47 (Cal. 2010), the extension of foster care benefits to the age of 21 on January 1, 2014, will depend upon the approval of California

In order to qualify for the extension of foster care benefits, the youth must be under a foster care placement order on her eighteenth birthday.⁸³ The youth is not required to physically reside in the foster care placement upon reaching the age of eighteen in order to be eligible.⁸⁴ This allows for youth who are in a residential facility, graduated early and are living in a dormitory or other living situation to still be able to extend foster care benefits. Additionally, California Fostering Connections created two new types of foster care placements beginning on or after January 1, 2012.⁸⁵

Beginning on or after January 1, 2012, California Fostering Connections also provides for a trial independence period to allow the minor to leave foster care on a trial basis.⁸⁶ During this period, the court may terminate dependency jurisdiction and subsequently resume jurisdiction if the youth decides to return to care without losing foster care benefits providing the youth continues to meet the requirements for status as a non-minor dependent.⁸⁷ This type of trial independence allows a youth to experience true emancipation while maintaining a safety net if things do not go as smoothly as anticipated. The legislation also allows a foster youth who has left care and not yet attained the age of 21 to subsequently file a petition for the resumption of dependency jurisdiction.⁸⁸ The court may vacate its previous order dismissing

appropriations legislation for FY 2013-2014. CAL. WELF. & INST. CODE, § 11403(k) (West 2012).

⁸³ CTR. FOR FAMILIES, CHILDREN & THE COURTS, ADMINISTRATIVE OFFICE OF THE COURTS, CALIFORNIA'S FOSTERING CONNECTIONS TO SUCCESS ACT: COURT PROCEDURES 2 (2012).

⁸⁴ *Id.*

⁸⁵ The first type of newly created placement is the Supervised Independent Living Placement. This type of placement provides youth who possess adequate life skills with the opportunity to live in an apartment, rent a room in a home, or live in a college dorm. The youth may live alone or with roommates and will receive continuing guidance from the placement agency and financial support. The youth is responsible for herself as there is no caregiver or provider with this type of living arrangement, other than the agency worker who checks in periodically with the youth. The second type of foster care placement created by the California Fostering Connections Act is a Transitional Housing Program Plus Foster Care. This type of placement is for youth who are not yet ready for a highly independent living environment. The placement provides supervised living and comprehensive supportive services to the youth. Cal. Assemb. 12, *amended by* Cal. Assemb. 212.

⁸⁶ ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 83, at 11.

⁸⁷ *Id.* The legislation allows the juvenile court to authorize a period longer than six months. The operation of this portion of the legislation was made contingent upon the receipt of the required federal approvals.

⁸⁸ Cal. Assemb. 12, *amended by* Cal. Assemb. 212.

dependency jurisdiction over the youth and reopen the case.⁸⁹ As long as the youth continues to meet the nonminor dependent status requirements, there is no limit to the number of times she may exit the foster care system to test her ability at self-sufficiency prior to the age of 21.⁹⁰

As of January 1, 2012, during a foster youth's last court review hearing prior to turning eighteen, the courts must ensure that youth's transitional independent living plan includes a plan to meet one of the federal criteria to maintain eligibility to remain in voluntary foster care until age 21.⁹¹ The youth must be informed of his or her right to terminate dependency jurisdiction and the benefits of continuing jurisdiction.⁹² The youth must also be informed that even if she decides to terminate dependency jurisdiction, she has the right to have dependency reinstated and the benefits that entails.⁹³

At any hearing where a youth reached age eighteen and the court is considering terminating jurisdiction and foster care services, California Fostering Connections requires the child welfare agency to not only ensure the youth is in court, or document efforts when the youth is not available, but also to submit a report to the court that the following information, services and documents have been provided to the youth: 1) written information about the child's case including family and placement history, known whereabouts of any siblings, any known Indian heritage or tribal connections, and any non-forensic family photographs; 2) social security card; 3) certified birth certificate; 4) health and education summary; 5) driver's license; 6) assistance in completing an application for Medi-Cal or assistance with obtaining other health insurance, transitional housing, employment assistance, or other financial support; 7) a letter from the county welfare department including the child's name and date of birth, the dates the child was under court jurisdiction, a statement the child was a foster youth in compliance with federal and state financial aid documentation requirements, the death certificate of the child's parents, if applicable, 8) proof of the child's citizenship or legal residence, if applicable; 9) assistance with applying to college, other education institution, or vocational school and with obtaining financial aid where appropriate.⁹⁴ Ensuring an emancipated foster youth possesses these basic

⁸⁹ ADMINISTRATIVE OFFICE OF THE COURTS, *supra* note 83, at 8.

⁹⁰ *Id.* at 11.

⁹¹ *Id.* at 7-8 (referencing Review Hearing Requirements for Child Approaching Majority).

⁹² *Id.*

⁹³ Cal. Assemb. 12, *amended by* Cal. Assemb. 212.

⁹⁴ *Id.*

necessities that non-foster youth often take for granted, helps the foster youth with a smoother transition to independence.

Courts are expected to conduct subsequent status reviews of non-minor dependents in a manner that respects the youth's status as a legal adult, focuses on the transitional living plan's goals and services, and the efforts made to achieve permanency for the youth including maintaining and sustaining permanent relationships with caring, committed adults.⁹⁵

2. Michigan's Implementation of the Extension Provision

At the end of fiscal year 2010, Michigan's foster youth population consisted of 16,412 children.⁹⁶ Michigan has implemented various Fostering Connections provisions through both legislation and state agency policy. The Young Adult Voluntary Foster Care Act was signed into law by Governor Rick Snyder on November 22, 2011.⁹⁷ The law accesses federal Title IV-E funds available under Fostering Connections and allows eligible youth between ages 18 and 21 to voluntarily remain in foster care until the age of 21.⁹⁸ In order to be eligible, the youth must meet one of the requirements set forth in the Fostering Connections.⁹⁹ Additionally, there are federal and state procedural and judicial requirements.¹⁰⁰ Michigan implemented its Voluntary Foster Care Act program on April 2, 2012.

⁹⁵ *Id.*

⁹⁶ CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERV., ADMIN. FOR CHILDREN & FAMILIES, FOSTER CARE FY2003-FY2011 ENTRIES, EXITS, AND NUMBERS OF CHILDREN IN CARE ON THE LAST DAY OF EACH FEDERAL FISCAL YEAR, *available at* <http://www.acf.hhs.gov/sites/default/files/cb/entryexit2011.pdf>.

⁹⁷ Young Adult Voluntary Foster Care Act, Mich. Comp. Laws §§ 400.641-400.671 (2012).

⁹⁸ MICH. DEP'T OF HUMAN SERV., FOM 722-16: YOUNG ADULT VOLUNTARY FOSTER CARE at 1 (2012), *available at* <http://www.mfia.state.mi.us/olmweb/ex/fom/722-16.pdf> [hereinafter FOM 722-16].

⁹⁹ Fostering Connections §§ 201. Fostering Connections requires the youth to either be: 1) actively completing high school or a program leading to a general equivalency diploma; 2) enrolled on at least a part-time basis in a college, university, trade school or vocational program; 3) employed either part or full-time, or participating in an employment program a minimum of 80 hours per month; or 4) unable to participate in any of the required activities due to a medical condition.

¹⁰⁰ MICH. COMP. LAWS § 400.641- 400.671; MICH. DEP'T OF HUMAN SERV., FOM 722-6: FOSTER CARE- DEVELOPING THE SERVICE PLAN (2012), *available at* <http://www.mfia.state.mi.us/olmweb/ex/fom/722-6.pdf> [hereinafter FOM 722-6]. The youth must sign an agreement upon reaching the age of 18 to remain in care with the Michigan Department of Human Services, original abuse and neglect court jurisdiction must be terminated, a petition to open a Young Adult Voluntary Foster Care Case must be filed with the court for entry into voluntary foster care where the youth resides. This

The extension of foster care allows the Michigan Department of Human Services (DHS) to work with the youth and provide the following benefits: 1) continued oversight by DHS caseworkers to ensure services and needs are pursued and secured before the youth's case is closed; 2) extension of foster care maintenance payments to the youth or provider who continues to care for the youth; 3) continuation of health care coverage; 4) counseling services; 5) independent living skills training; and 6) additional time to complete high school and pursue a secondary or vocational education.¹⁰¹ Similar to the California program, the Michigan program allows a youth to re-enter voluntary foster care prior to the age of 21, regardless of the reason for a prior case closure as long as the youth continues to meet the eligibility requirements.¹⁰²

DHS policy requires each youth to have a transition plan in place ninety days before reaching her eighteenth birthday. The caseworker must discuss the option of voluntary foster care with the youth at the annual transition meeting, the ninety day discharge meeting and a minimum of thirty days prior to the youth's eighteenth birthday.¹⁰³ The discharge plan is also required for older youth who have remained in voluntary foster care but who are getting ready to transition out. The DHS policy prescribes the required elements for the discharge plan which includes information on housing, education, supportive adult connections, workforce or employment services, and any continuing support services the youth will be receiving.¹⁰⁴ As a best practice, the Michigan State Court Administrative Office encourages courts to address the youth's options for voluntary foster care beginning at review hearings when the youth reaches age seventeen.¹⁰⁵

may be a different county from the county that maintained original abuse and neglect jurisdiction. The petition must be accompanied by the voluntary agreement and a caseworker report. The court must then make a best interests determination within 21 days.

¹⁰¹ *Q&A on Extension of Foster Care*, MICH. DEPARTMENT OF HUMAN SERVICES, <http://www.mi.gov/dhs/0,4562,7-124--270841--,00.html> (last visited Nov. 11, 2012).

¹⁰² FOM 722-16, *supra* note 98, at 12.

¹⁰³ MICH. DEP'T OF HUMAN SERV., FOM 722-15 FOSTER CARE- DEVELOPING THE SERVICE PLAN 2-4 (2012), *available at* <http://www.mfia.state.mi.us/olmweb/ex/fom/722-15.pdf> [hereinafter FOM 722-15].

¹⁰⁴ *Id.* at 3-4.

¹⁰⁵ KELLY HOWARD, MICHIGAN STATE COURT ADMINISTRATIVE OFFICE MEMORANDUM 2012-04, at 2 (April 2012), *available at* <http://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2012-04.pdf>.

B. Educational Stability

Minimal data is available to document any advances made under the educational provisions of Fostering Connections. Tracking data such as attendance, number of school changes and enrollment delays will be critical to assess the implementation of these provisions.¹⁰⁶ Without effective information and data sharing across child welfare and education agencies, it will be difficult to capture critical information to assess the impact of the educational provisions.

Several states have begun to implement their own postsecondary educational assistance programs. These include tuition waivers and other scholarship-based programs for foster youth attending state-supported colleges and universities.¹⁰⁷ States that contribute targeted educational resources for foster youth realize greater numbers of these youth accessing postsecondary education and training.¹⁰⁸ For states that supplement the Education and Training Voucher program, opportunities are expanded to allow for public university education in addition to vocational education or community college classes. Foster youth may also benefit from the College Cost Reduction Act of 2009, which allows students who were in foster care at age 13 or older to claim independent status when applying for federal financial aid.¹⁰⁹

The Fostering Connections Act has not addressed the legal barriers that impede foster care youth from accessing education.¹¹⁰ For example, many foster care youth are victims of identity theft because their social security numbers are accessible to so many different people. The most cited perpetrators of identity theft are their biological parents.¹¹¹ Identity theft can directly impact a youth's financial aid eligibility.

¹⁰⁶ McNaught, *supra* note 10.

¹⁰⁷ AMY DWORSKY & ALFRED PEREZ, HELPING FORMER FOSTER YOUTH GRADUATE FROM COLLEGE: CAMPUS SUPPORT PROGRAMS IN CALIFORNIA AND WASHINGTON STATE 4 (2009); SOCIAL SCIENCE RESEARCH CENTER COLLEGE OF SCIENCES & HUMANITIES, BALL STATE UNIVERSITY, AN OVERVIEW OF POST-SECONDARY SUPPORT PROGRAMS FOR FORMER FOSTER YOUTH (2007), available at http://cms.bsu.edu/~media/DepartmentalContent/SSRC/DOCS/gs_supportguide.ashx.

¹⁰⁸ Collins, *supra* note 33, at 1057-60.

¹⁰⁹ Fernandez, *supra* note 75.

¹¹⁰ Benedetto, *supra* note 25, at 381-425.

¹¹¹ *Id.* at 390.

1. California's Implementation of the Education Provisions
of the Act

Beginning January 1, 2010, all case plans for California foster youth were required to address the educational stability of the youth while in care. California Fostering Connections requires the case plan include both that: 1) the placement choice was based on the consideration of the appropriateness of the current educational setting of the child and the proximity to the child's school of enrollment at the time of the placement; and 2) an assurance the placement agency coordinated with the appropriate educational agencies to maintain the child's school of enrollment at the time of placement, or, if it is determined that remaining in the same school is not in the child's best interests, that coordination with the local educational agency occurred in order to provide immediate and appropriate enrollment in a new school and all of the child's educational records.¹¹² Ensuring foster youth remain in the same school, or are expediently enrolled in a new school can minimize the loss of education that occurs when a youth must undergo a change in school. Assisting older youth with career planning and financial aid assistance during their transition to independence can ameliorate some of the disadvantages of not having a parent to guide them through this process.

While not provided for through California Fostering Connections, philanthropic organizations help make college education a reality for some foster youth. Due to private philanthropy, California is a leader in the provision of scholarships and other support available to youth aging out of foster care. Although each of the state's programs are unique, most provide academic, social/emotional, financial, and logistical (e.g., housing) supports to help former foster youth remain in and graduate from college.¹¹³

The State of California Department of Social Services has enacted policies and procedures to carry out the California Fostering Connections legislation. The legislature also provided a remarkably thorough framework upon which policy could be built. The impact of the California Fostering Connections is not yet known due to its implementation being so recent. However, following the data trends will be interesting to determine if some of the policy concerns that stimulated the passage of the federal legislation are successfully addressed.

¹¹² Cal. Assemb. 12, *amended by* Cal. Assemb. 212.

¹¹³ DWORSKY & PEREZ, *supra* note 107, at 4. For example, the Guardian Scholars campus-based model.

2. Michigan's Implementation of the Education Provisions of the Act

In accordance with Fostering Connections requirements, the Michigan Department of Human Services is responsible for making efforts to meet the educational needs of Michigan's foster youth by promoting educational stability and appropriate school attendance through agency policy. The placement of the youth must take into account the appropriateness of the current educational setting and the proximity of the placement to the school of origin at the time of placement.¹¹⁴ All foster youth must be enrolled and be attending school full-time within five days of the initial placement or any placement change.¹¹⁵ No foster youth are allowed to be home schooled and an educational needs screening must be completed within thirty days of foster care placement.¹¹⁶

Educational and career planning is also part of older foster youths' transition planning. One of the benefits to remaining in voluntary foster care is the ability to pursue an advanced education while receiving the additional supportive services voluntary foster care offers.

C. Health Care Oversight and Coordination

Although the provision of health care for foster youth is mandated, many youth have failed to receive even basic care. According to a 1995 Government Accountability Office report, 12% of foster care youth did not receive routine health care and the needs of 32% were not met, despite regulations requiring comprehensive routine health care.¹¹⁷ The implementation of Fostering Connections should help to reduce health disparities faced by youth in the foster care system, but there are several issues that make implementation problematic. Health disparities are perpetuated among the foster care population because many physicians are unwilling to accept Medicaid due to low reimbursement rates.¹¹⁸ Many youth also enter the foster care system with existing health concerns and

¹¹⁴ FOM 722-6, *supra* note 100, at 40-41.

¹¹⁵ *Id.* at 40.

¹¹⁶ *Id.*

¹¹⁷ FIRST FOCUS, ADDRESSING THE HEALTH CARE NEEDS OF FOSTER CARE CHILDREN 1 (2008), available at http://firstfocus.net/sites/default/files/r.2008-6.2.ff_.pdf.

¹¹⁸ Sandra L. Decker, *In 2011 Nearly One-Third Of Physicians Said They Would Not Accept New Medicaid Patients, But Rising Fees May Help*, 31(8) HEALTH AFFAIRS 1673, 1673-79 (2012).

without access to adequate medical histories.¹¹⁹ Inaccurate histories delay adequate treatment and can compound medical problems.¹²⁰ Foster care youth also lack a consistent adult responsible for their care which is often exacerbated by placement changes.¹²¹ Health care providers are also deterred from providing care to youth in foster care because of increased paperwork, reporting requirements and potential involvement in court proceedings.¹²² The implementation of a centralized location of medical records for each foster child, known as a medical home, will not eliminate these barriers.

According to the Congressional Budget Office, it is estimated that more than 60% of foster youth are eligible for Medicaid regardless of the Medicaid expansion because of another type of eligibility (i.e. pregnant and parenting youth and youth living with physical and mental health conditions or developmental disabilities that make them eligible to receive SSI).¹²³ It has been ten years since the passage of the Chafee Foster Care Independence Act (FCIA) expanded Medicaid eligibility for 18-21 year old foster youth.¹²⁴ Only nineteen states have chosen to expand Medicaid eligibility to their eligible populations.¹²⁵ States choosing not to expand Medicaid coverage to foster youth have forgone federal matching funds.¹²⁶ States and localities that fail to extend Medicaid coverage must fully cover medical costs on their own.¹²⁷ Whether Fostering Connections will have more impact than the FCIA in increasing health care access for foster youth remains unclear.

1. California's Implementation of the Health Care Provisions of the Act.

Fostering Connections requires states to develop a plan for the ongoing oversight and coordination of health care services for any child in

¹¹⁹ Inst. for Res. on Women and Families Center for Cal. Studies, *Code Blue*, HEALTH SERVICES FOR CHILDREN IN FOSTER CARE at 3 (1998), available at www.dhcs.ca.gov/formsandpubs/publications/documents/cms/codeblue.pdf.

¹²⁰ Patricia Lopez & Patricia Allen Jackson, *Addressing the Health Care Needs of Adolescents Transitioning out of Foster Care*, 33 PEDIATRIC NURSING 345, 349 (2007).

¹²¹ Sanchez, *supra* note 15, at 290.

¹²² Lopez, *supra* note 121, at 346.

¹²³ Collins, *supra* note 33, at 1060.

¹²⁴ 42 U.S.C. § 677 (2012).

¹²⁵ CENTER FOR THE STUDY OF SOCIAL POLICY, *supra* note 6, at 90.

¹²⁶ Collins, *supra* note 33, at 1060-61.

¹²⁷ *Id.* at 1061.

foster care.¹²⁸ In order to carry out this mandate, in 2009, the California legislature enacted Senate Bill 597 that was approved by the Governor on October 11, 2009.¹²⁹ The legislation sets forth requirements consistent with the federal Fostering Connections Act by requiring the California Department of Social Services to develop a plan for the ongoing oversight and coordination of health care services for youth in foster care placements. The plan must be developed collaboratively with health care experts, pediatricians, recipients of child welfare services and other experts.¹³⁰ As part of the care plan, the foster care social worker is expected to maintain contact with health providers and obtain written reports. These contacts and reports must be included in the foster youth's case record.¹³¹ Additionally, California's Fostering Connections requires that upon transition to independence the foster youth is provided his or her health information summary, and assistance with obtaining Medi-Cal or other health insurance.¹³²

2. Michigan's Implementation of the Health Care Provisions of the Act.

When a youth enters foster care, state law requires the court placing that youth to order the parents, custodian, or guardian to provide the youth's supervising agency with the name and address of each of the child's medical providers, and an order for each of the medical providers to release the youth's medical records to the agency.¹³³ State law also mandates the supervising child welfare agency to create a medical passport for each youth that contains basic medical history, immunization records, all medical information required by law or policy to be provided to foster parents, and any other information concerning the youth's physical or mental health.¹³⁴ This same provision in the law also requires the child's medical provider to remain constant when it does not create an unreasonable burden for the caregiver, that the child receives a medical

¹²⁸ Fostering Connections §§ 201 (requiring collaboration between the state Medicaid agency, state child welfare agency, and consultation with pediatricians and other experts in health care).

¹²⁹ S. 597, 2009 Leg., Reg. Sess. (Cal. 2009).

¹³⁰ *Id.* § 6.

¹³¹ CAL. DEP'T OF SOC. SERV., CHILD WELFARE SERVICES MANUAL 31-335, at 93, available at <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws3.pdf>. The full details of California's child welfare policy can be accessed at <http://www.cdss.ca.gov/ord/PG309.htm> (last visited Aug. 13, 2012).

¹³² California Fostering Connections to Success Act, Assemb. 12, 2010 Leg., Reg. Sess. (Cal. 2010), amended by Assemb. 212, 2011 Leg. Reg. Sess. (Cal. 2011).

¹³³ MICH. COMP. LAWS § 712A.13a(15).

¹³⁴ MICH. COMP. LAWS § 722.954c.

examination upon entry into foster care to establish his or her medical status and that children who have endured sexual abuse, serious physical abuse or mental illness receive an assessment or psychological evaluation.¹³⁵

DHS also created policy to carry out the Fostering Connections requirements for states to develop a plan for the ongoing oversight and coordination of health care services for any child in foster care.¹³⁶ DHS policy requires that the initial comprehensive medical examination is completed within thirty calendar days from the youth's initial placement, regardless of the date of the youth's last physical exam.¹³⁷ Annual medical exams are required for all youth between ages three through twenty years old.¹³⁸ Children under the age of three receive more frequent checkups and care according to the schedule recommended by the American Academy of Pediatrics.¹³⁹ Dental examinations are also required for all youth ages three and older, either six months before entry into care or no later than ninety calendar days after entry into foster care.¹⁴⁰ Annual dental re-examinations are also required unless a more frequent schedule is indicated for a particular youth.¹⁴¹ This coordination and fulfilling these requirements avoids the all too common situation where a foster youth's medical history is unknown and can result in jeopardizing the youth's well-being due to a lack of knowledge about allergies, chronic medical conditions and medications.

The Voluntary Foster Care Act also makes all youth who choose to continue in foster care categorically eligible for Medicaid.¹⁴² The children of a parent who is in the program are also categorically eligible for Medicaid.¹⁴³ The extension of Medicaid allows the youth access to necessary health care while the youth is working toward attaining independence thereby alleviating a major life stressor that many non-foster youth do not have to worry about.

¹³⁵ *Id.*

¹³⁶ Fostering Connections §§ 201. (requiring collaboration between the state Medicaid agency, state child welfare agency, and consultation with pediatricians and other experts in health care); MICH. DEP'T OF HUMAN SERV., FOM 801: HEALTH SERVICES FOR FOSTER CHILDREN (2012), available at <http://www.mfia.state.mi.us/olmweb/ex/fom/801.pdf> [hereinafter FOM 801].

¹³⁷ FOM 801, *supra* note 137, at 3.

¹³⁸ *Id.* at 5.

¹³⁹ *Id.* at 4-5.

¹⁴⁰ *Id.* at 5.

¹⁴¹ *Id.*

¹⁴² FOM 722-16 *supra* note 98.

¹⁴³ *Id.*

VI. Identification, Evaluation, and Assessment of Alternative Policies/Policy Enhancements

Although there is evidence Fostering Connections includes language designed to improve the social outcomes of older foster care youth, the law does not adequately address key issues including education, health care, employment and independent living services. The following four enhancements to the current policy may hold great promise for obtaining the goals targeting older youth as outlined in Fostering Connections.¹⁴⁴

First, education advocates have rallied around Senate Bill 2801 and H.R. 5817, the Fostering Success in Education Act, introduced in Congress in the fall of 2009 as a way to provide more direction to states in the implementation of the educational provisions of Fostering Connections.¹⁴⁵ This bill did not pass, but has been reintroduced in the 112th Congress as an amendment to Title 1 of the Elementary and Secondary Education Act.¹⁴⁶ The Fostering Success in Education Amendment will require the full cooperation of state and local education agencies with child welfare agencies by placing requirements on them that both mirror and extend beyond those placed on child welfare agencies by Fostering Connections.¹⁴⁷ Specifically, the proposed amendment forbids states from segregating foster children by forcing them to attend separate, and often inferior, schools unless documentation exists that particular foster children have disabilities that demand alternative education settings under the Individuals with Disabilities Act (IDEA).¹⁴⁸ IDEA requires that state education authorities designate a foster care coordinator to collaborate with the state child welfare agency on the implementation of the act, create a process for resolving placement disputes, develop a system to ensure that foster youth can transfer and recover credits when they change schools, and allow foster youth who have attended multiple high schools with different graduation requirements to graduate.

Second, access to adequate health insurance largely accepted by the medical community is the largest barrier to foster youth accessing

¹⁴⁴ Fostering Connections §§ 201.

¹⁴⁵ *Id.* § 204.

¹⁴⁶ CHILD WELFARE LEAGUE OF AMERICA, FOSTERING SUCCESS IN EDUCATION AMENDMENT TO TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT: CONTEXT AND SUMMARY (2011), available at <http://www.cwla.org/advocacy/FrankenAmendmentSummary.pdf>.

¹⁴⁷ GOVTRACK, <http://www.govtrack.us/congress/bills/112/hr5868> (last visited Feb. 3, 2012).

¹⁴⁸ Individuals with Disabilities Act, 20 U.S.C. §§ 1400 -50 (2004).

necessary preventive care and timely treatments. As health care coordination under Fostering Connections is highly dependent on Medicaid resources to ensure implementation, there is a risk that limitations under Medicaid¹⁴⁹ will mean a shortage of providers available to ensure the policy is adequately implemented. The State Children's Health Insurance Program (CHIP) has not been utilized by any state to fill the gap in health care access for children and youth in the foster care system; yet, it provides great promise for addressing the health care provisions of Fostering Connections. Because reimbursement rates to states are higher than for Medicaid, CHIP may provide a more cost-effective and less stigmatizing alternative for foster care youth in reducing health care disparities. As Congressional discussion of health care access under the new Patient Protection and Affordable Care Act continues, it would be advantageous to establish nineteen and twenty year olds as CHIP eligible.¹⁵⁰

The third proposed enhancement is to strengthen the employment provisions of Fostering Connections by amending the Workforce Investment Act¹⁵¹ (WIA) to allow use of its resources to provide a more effective pathway to meaningful, stable employment for foster care youth through the creation of an exclusive foster youth program in existing one-stop comprehensive career centers. Under the WIA, a good job is one that pays a living wage and health benefits, allows for a healthy and safe working environment with social interaction among coworkers, affords access to continuous learning, and provides career advancement opportunities.¹⁵² The low employment rates and earning potential of foster youth suggest that workforce readiness programs currently available to foster care youth have not been successful in assisting them to be self sufficient. One employment program that has shown great promise in helping foster youth secure employment is the United Parcel Service (UPS) School-to-Career Partnership Program implemented in Maryland.¹⁵³ The UPS program provides youth paid work, health care benefits, and reimbursement for college tuition and vocational training.¹⁵⁴ Once stable employment has been obtained, it becomes much easier for youth to conquer other difficulties.

¹⁴⁹ Low provider reimbursements are one example of limitations under Medicaid.

¹⁵⁰ Patient Protection & Affordable Care Act § 119, No. 11-48, 124 (2010).

¹⁵¹ Workforce Investment Act of 1998, 20 U.S.C. §§ 2801-945.

¹⁵² Henig, *supra* note 41, at 577.

¹⁵³ Rachel H. Sherman, *Serving Youth Aging out of Foster Care*, THE FINANCE PROJECT, Oct. 2004, at 1, 5 (2004), available at http://www.financeproject.org/Publications/serving_youthagingoutLN.pdf.

¹⁵⁴ *Id.*

Although amending the WIA could improve the employment outcomes of foster youth, true change depends on the willingness of the business community to hire foster youth. Built-in incentives may increase corporate participation, but it doesn't come without a cost. Tax breaks and partial salary reimbursement would mean that additional restrictions would have to be placed on the already very marginal resources allocated to provide youth with independent living services.

The final enhancement to Fostering Connections should include incentives for states to expand independent living programs to provide services like mandatory legal skills training, expanded housing services, employment subsidies, and access to secondary and post-secondary educational training. States with statutes governing the emancipation of older foster youth will now gain access to additional supports to expand existing independent living services. Many states have fulfilled the requirements of the federal FCIA statute by simply providing a brochure to foster youth with contact information about employment, housing and education services. This minimal action does not ensure that youth will be successful in these areas. Foster youth should be educated about basic legal skills required to properly function in society. These skills include how to negotiate a contract, the essentials of landlord/tenant law and how to ensure a good credit rating. The Youth Outreach Project is the first program in the U.S. to provide civil legal services specifically for former foster youth, and may serve as a best practice model for other states interested in adopting a similar program.¹⁵⁵

Incorporating the provisions of Fostering Connections in state law establishes the commitment of states to adopt the provisions. Federal policies that are codified in state legislation also help to ensure that state agencies are held accountable to ensure their timely implementation.

All of these suggested enhancements should be promoted. They all play a role in maximizing the provisions outlined in Fostering Connections. Foster care youth that are physically, emotionally, mentally and socially healthy are better equipped to perform in the classroom (in terms of both secondary and post-secondary education) and in the job market.

¹⁵⁵ Benedetto, *supra* note 25, at 395.

Summary and Conclusion

Changes resulting from Fostering Connections provide a commitment by the federal government to ensure the success and well-being of older foster youth in care. Additional work is necessary to ensure the goals of permanency and successful independence for former foster youth can be achieved. Several enhancements to Fostering Connections, including clarity on which stakeholders are responsible for the implementation of the various provisions identified in the law, the adoption of accountability measures, and the appropriation of adequate funding to support the mandates of the law, would significantly improve outcomes of older youth in care. Accountability measures should include the collection and sharing of data across systems, and adding reporting requirements for education authorities, community health, and employment agencies in addition to child welfare authorities to strengthen use of the National Youth in Transition¹⁵⁶ database. With proper funding and direction, foster youth can have the support they need to lead emotionally satisfying and socially productive adult lives.

¹⁵⁶On February 26, 2008, the U.S. Department of Health and Human Services Administration for Children and Families published the final rule for the National Youth in Transition Database (NYTD), which is used to track states' independent living services provided to foster youth and to assess each state's performance as measured by foster youth outcomes. NATIONAL RESOURCE CENTER FOR CHILD WELFARE DATA AND TECHNOLOGY, <http://www.nrccwdt.org/category/nytd/> (last visited Nov. 11, 2012).