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An act to amend Sections 224.1 and 11461.36 of the Welfare and Institutions Code, relating to public social services.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 224.1 of the Welfare and Institutions Code is amended to read:

224.1. (a) As used in this division, unless the context requires otherwise, the terms "Indian," "Indian child," "Indian custodian," "Indian tribe," "reservation," and "tribal court" shall be defined as provided in Section 1903 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(b) As used in connection with an Indian child custody proceeding, the term "Indian child" also means an unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe, and who is under the jurisdiction of the dependency court, unless that person or ~~his or her~~ their attorney elects not to be considered an Indian child for purposes of the Indian child custody proceeding. All Indian child custody proceedings involving persons 18 years of age and older shall be conducted in a manner that respects the person's status as a legal adult.

(c) As used in connection with an Indian child custody proceeding, the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the federal Indian Child Welfare Act.

(d) (1) "Indian child custody proceeding" means a hearing during a juvenile court proceeding brought under this code, or a proceeding under the Probate Code or the Family Code, involving an Indian child, other than an emergency proceeding under Section 319, that may culminate in one of the following outcomes:

(A) Foster care placement, which includes removal of an Indian child from ~~his or her~~ their parent, parents, or Indian custodian for placement in a foster home, institution, or the home of a guardian or conservator, in which the parent or Indian custodian may not have the child returned upon demand, but in which parental rights have not been terminated. Foster care placement does not include an emergency placement of an Indian child pursuant to Section ~~309~~ 309, as long as the emergency proceeding requirements set forth in Section 319 are met.

(B) Termination of parental rights, which includes any action involving an Indian child resulting in the termination of the parent-child relationship.

(C) Preadoptive placement, which includes the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to, or in lieu of, adoptive placement.

(D) Adoptive placement, which includes the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(E) If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is considered an Indian child custody proceeding.

(2) "Indian child custody proceeding" does not include a voluntary foster care or guardianship placement if the parent or Indian custodian retains the right to have the child returned upon demand.

(e) (1) "Indian child's tribe" means the Indian tribe in which an Indian child is a member or citizen or eligible for membership or citizenship, or in the case of an Indian child who is a member or citizen of, or eligible for membership or citizenship



in, more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(2) In the case of an Indian child who meets the definition of "Indian child" through more than one tribe, deference should be given to the tribe of which the Indian child is already a member or citizen, unless otherwise agreed to by the tribes.

(3) If an Indian child meets the definition of "Indian child" through more than one tribe because the child is a member or citizen of more than one tribe or the child is not a member or citizen but is eligible for membership or citizenship in more than one tribe, the court shall provide the tribes the opportunity to determine which tribe shall be designated as the Indian child's tribe.

(4) If the tribes are able to reach an agreement, the agreed-upon tribe shall be designated as the Indian child's tribe.

(5) If the tribes are unable to reach an agreement, the court shall designate as the Indian child's tribe, the tribe with which the Indian child has the more significant contacts, taking into consideration all of the following:

- (A) Preference of the parents for membership of the child.
- (B) Length of past domicile or residence on or near the reservation of each tribe.
- (C) Tribal membership of the child's custodial parent or Indian custodian.
- (D) Interest asserted by each tribe in the child custody proceeding.
- (E) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.

(F) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

(6) If an Indian child becomes a member of a tribe other than the one designated by the court as the Indian child's tribe under paragraph (5), actions taken based on the court's determination prior to the child's becoming a tribal member continue to be valid.

(7) A determination of the Indian child's tribe for purposes of the federal Indian Child Welfare Act does not constitute a determination for any other purpose.

(f) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with ~~his or her~~ their family. If an agency is involved in an Indian child custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, but are not limited to, any of the following:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal.

(2) Identifying appropriate services and helping the parents overcome barriers, including actively assisting the parents in obtaining those services.

(3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues.



(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents.

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe.

(6) Taking steps to keep siblings together whenever possible.

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible, as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.

(8) Identifying community resources, including housing, financial assistance, transportation, mental health and substance abuse services, and peer support services, and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources.

(9) Monitoring progress and participation in services.

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available.

(11) Providing postreunification services and monitoring.

(g) "Assistant Secretary" means the Assistant Secretary of the Bureau of Indian Affairs.

(h) "Bureau of Indian Affairs" means the Bureau of Indian Affairs of the Department of the Interior.

(i) "Continued custody" means physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law, that a parent or Indian custodian already has or had at any time in the past. The biological mother of an Indian child is deemed to have had custody of the Indian child.

(j) "Custody" means physical custody or legal custody or both, under any applicable tribal law or tribal custom or state law.

(k) "Domicile" means either of the following:

(1) For a parent, Indian custodian, or legal guardian, the place that a person has been physically present and that the person regards as home. This includes a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents, Indian custodian, or legal guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child means the domicile of the Indian child's custodial parent.

(l) "Emergency proceeding" for purposes of juvenile dependency proceedings is the initial petition hearing held pursuant to Section 319.

(m) "Indian foster home" means a foster home where one or more of the licensed or approved foster parents is an Indian as defined in Section 3 of the federal Indian Child Welfare Act of 1978.

(n) "Involuntary proceeding" means an Indian child custody proceeding in which the parent does not consent of ~~his or her~~ their free will to the foster care, preadoptive, or adoptive placement, or termination of parental rights. "Involuntary proceeding" also



means an Indian child custody proceeding in which the parent consents to the foster care, preadoptive, or adoptive placement, under threat of removal of the child by a state court or agency.

(o) "Status offense" means an offense that would not be considered criminal if committed by an adult, including, but not limited to, school truancy and incorrigibility.

(p) "Upon demand" means, in the case of an Indian child, the parent or Indian custodian may regain physical custody during a voluntary proceeding simply upon verbal request, without any delay, formalities, or contingencies.

(q) "Voluntary proceeding" means an Indian child custody proceeding that is not an involuntary proceeding, including, but not limited to, a proceeding for foster care, preadoptive or adoptive placement that either parent, both parents, or the Indian custodian has, ~~of his or her~~ or their free will, without a threat of removal by a state agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

(r) "Trially approved home" means a home that has been licensed or approved by an Indian child's tribe, or a tribe or tribal organization designated by the Indian child's tribe, for foster care or adoptive placement of an Indian child using standards established by the child's tribe pursuant to Section 1915 of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.). A trially approved home is not required to be licensed or approved by the state or county and is equivalent to a state-licensed or county-licensed or approved home, including an approved resource family home. Background check requirements for foster care or adoptive placement as required by Sections 1522 and 1522.1 of the Health and Safety Code shall apply to a trially approved home.

SEC. 2. Section 11461.36 of the Welfare and Institutions Code is amended to read:

11461.36. (a) It is the intent of the Legislature to provide support to emergency caregivers, as defined in subdivision (c), who care for children and nonminor dependents before approval of an application under the Resource Family Approval Program.

(b) For placements made on and after July 1, 2018, each county shall provide a payment equivalent to the resource family basic level rate of the home-based family care rate structure, pursuant to Section 11463, to an emergency caregiver on behalf of a child or nonminor dependent placed in the home of the caregiver pursuant to subdivision (d) of Section 309 or Section 361.45, or based on a compelling reason pursuant to subdivision (e) of Section 16519.5, subject to the availability of state and federal funds pursuant to subdivision (e), if all of the following criteria are met:

(1) The child or nonminor dependent is not otherwise eligible for AFDC-FC or the Approved Relative Caregiver Funding Program, pursuant to Section 11461.3, while placed in the home of the emergency caregiver.

(2) The child or nonminor dependent resides in California.

(3) The emergency caregiver has signed and submitted to the county an application for resource family approval.

(4) An application for the Emergency Assistance Program has been completed.

(c) For purposes of this section, an "emergency caregiver" means an individual who has a pending resource family application filed with an appropriate agency on or after July 1, 2018, and who meets one of the following requirements:

(1) The individual has been assessed pursuant to Section 361.4.



(2) The individual has successfully completed the home environment assessment portion of the resource family approval pursuant to paragraph (2) of subdivision (d) of Section 16519.5.

(d) The beginning date of aid for payments made pursuant to subdivision (b) shall be the date of placement.

(e) Funding for payments made pursuant to subdivision (b) shall be as follows:

(1) For emergency or compelling reason placements made during the 2018–19 fiscal year:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), beyond 180 days, or, if the conditions of subparagraph (E) are met, beyond 365 days, whichever occurs first.

(E) The federal and state share of payment made pursuant to this paragraph shall be available beyond 180 days of payments, and up to 365 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for the delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or ~~his or her~~ their designee, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 90 days and the reason for the delays.

(2) For emergency or compelling reason placements made during the 2019–20 fiscal year, ~~and each fiscal year thereafter:~~ year:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.



(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), or beyond ~~90~~ 120 days, whichever occurs first.

~~(E) The department shall consider extending the payments required pursuant to subdivision (b) beyond the 90-day limit identified in subparagraph (D) if it makes a determination that the resource family approval process cannot be completed within 90 days due to circumstances outside of a county's control.~~

(E) The federal and state share of payment made pursuant to this paragraph shall be available beyond 120 days of payments, and up to 180 days of payments, if all of the following conditions are met:

(i) On a monthly basis, the county has documented good cause for the delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or their designee, or the chief probation officer, or their designee, as applicable, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 120 days and the reason for the delays.

(3) For emergency or compelling reason placements made during the 2020–21 fiscal year, and each fiscal year thereafter:

(A) Payments shall be made to an emergency caregiver through the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant.

(B) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), if the child or nonminor dependent is determined to be ineligible for the Emergency Assistance Program included in the state's Temporary Assistance for Needy Families block grant, 70 percent of the cost of emergency payments made to the emergency caregiver shall be funded by the department and 30 percent shall be funded by the county.

(D) Notwithstanding subparagraphs (A), (B), and (C), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), or beyond 90 days, whichever occurs first.

(f) (1) An emergency caregiver eligible for payments pursuant to subdivision (b) of Section 11461.35, as that section read on June 30, 2018, shall continue to be eligible for those payments on and after July 1, 2018, until the emergency caregiver's resource family application is approved or denied.

(2) Funding for a payment described in paragraph (1) shall be as follows:

(A) If the emergency caregiver was eligible to receive payments funded through the Approved Relative Caregiver Funding Program, payments shall be made through that program until the application for resource family approval is approved or denied.



(B) If the emergency caregiver was eligible to receive payments funded through the Emergency Assistance Program, payments shall be made through that program, subject to the following conditions:

(i) Up to 180 total days or, if the conditions of subparagraph (D) are met, up to 365 total days of payments shall be made to the emergency caregiver through the Emergency Assistance Program. For the purpose of this subdivision, "total days of payments" includes all payments made to the emergency caregiver through the Emergency Assistance Program pursuant to this section and Section 11461.35, as that section read on June 30, 2018.

(ii) The county shall be solely responsible for the nonfederal share of cost.

(C) Notwithstanding subparagraphs (A) and (B), payments required to be provided pursuant to subdivision (b) shall not be eligible for the federal or state share of cost upon approval or denial of the resource family application, consistent with subdivision (g), beyond 180 days, or, if the conditions of subparagraph (D) are met, beyond 365 days, whichever occurs first.

(D) The federal and state share of payment made pursuant to this subdivision shall be available beyond 180 total days of payments, and up to 365 total days of payments, when the following conditions are met:

(i) On a monthly basis, the county has documented good cause for the delay in approving the resource family application that is outside the direct control of the county, which may include delays in processing background check clearances or exemptions, medical examinations, or delays that are based on the needs of the family.

(ii) On a monthly basis, the deputy director or director of the county child welfare department, or ~~his or her~~ their designee, has been notified of the delay in approving the resource family application and that notification is documented in the resource family approval file.

(iii) On a monthly basis, the county provides to the department a list of the resource family applications that have been pending for more than 90 days, the number of cases that have received more than 90 total days of payments pursuant to this section and Section 11461.35, and the reason for the delays in approval or denial of the resource family applications.

(g) (1) If the application for resource family approval is approved, the funding source for the placement shall be changed to AFDC-FC or the Approved Relative Caregiver Funding Program, as appropriate and consistent with existing eligibility requirements.

(2) If the application for resource family approval is denied, eligibility for funding pursuant to this section shall be terminated.

(h) A county shall not be liable for any federal disallowance or penalty imposed on the state as a result of a county's action in reliance on the state's instruction related to implementation of this section.

(i) (1) For the 2018–19 and 2019–20 fiscal years, the department shall determine, on a county-by-county basis, whether the timeframe for the resource family approval process resulted in net assistance costs or net assistance savings for assistance payments, pursuant to this section.

(2) For the 2018–19 and 2019–20 fiscal years, the department shall also consider, on a county-by-county basis, the impact to the receipt of federal Title IV-E funding that may result from implementation of this section.



(3) The department shall work with the California State Association of Counties to jointly determine the timeframe for subsequent reviews of county costs and savings beyond the 2019–20 fiscal year.

(j) (1) The department shall monitor the implementation of this section, including, but not limited to, tracking the usage and duration of Emergency Assistance Program payments made pursuant to this section and evaluating the duration of time a child or nonminor dependent is in a home pending resource family approval. The department may conduct county reviews or case reviews, or both, to monitor the implementation of this section and to ensure successful implementation of the county plan, submitted pursuant to subparagraph (B) of paragraph (2) of subdivision (e) of Section 11461.35, to eliminate any resource family approval backlog by September 1, 2018.

(2) The department may request information or data necessary to oversee the implementation of this section until data collection is available through automation. Pending the completion of automation, information or data collected manually shall be determined in consultation with the County Welfare Directors Association of California.

(k) An appropriation shall not be made pursuant to Section 15200 for purposes of implementing this section.

(l) (1) On and after July 1, 2019, each county shall provide a payment equivalent to the resource family basic level rate of the home-based family care rate structure, pursuant to Section 11463, on behalf of an Indian child, as defined in subdivision (a) of Section 224.1, placed in the home of the caregiver who is pending approval as a tribally approved home, as defined in subdivision (r) of Section 224.1, if all of the following criteria are met:

(A) The placement is made pursuant to subdivision (d) of Section 309 or Section 361.45.

(B) The caregiver has been assessed pursuant to Section 361.4.

(C) The child is not otherwise eligible for AFDC-FC or the Approved Relative Caregiver Funding Program, pursuant to Section 11461.3, while placed in the home of the caregiver.

(D) The child resides in California.

(E) The tribe or tribal agency has initiated the process for the home to become tribally approved.

(F) An application for the Emergency Assistance Program has been completed by the placing agency.

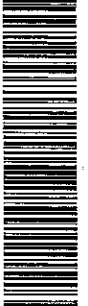
(2) The beginning date of aid for payments made pursuant to this subdivision shall be the date of placement.

(3) The funding source for the placement shall be changed to AFDC-FC or the Approved Relative Caregiver Funding Program, as appropriate and consistent with existing eligibility requirements, when the caregiver is approved as a tribally approved home. If the approval is denied, payments made pursuant to this subdivision shall cease.

(4) Subdivision (e) and subdivisions (h) to (k), inclusive, shall apply to payments made pursuant to this subdivision.

(m)

(m) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2



of the Government Code), the department may implement and administer this section through an all-county letter or similar instructions, which shall include instructions regarding the eligibility standards for emergency assistance until regulations are adopted.

SEC. 3. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No. _____
as introduced, _____
General Subject: CalWORKs benefits: emergency caregivers.

Existing law requires each county to provide cash assistance and other social services to needy families through the California Work Opportunity and Responsibility to Kids (CalWORKs) program using federal Temporary Assistance for Needy Families (TANF) block grant program, state, and county funds. Existing law provides for the temporary or emergency placement of dependent children of the juvenile court and nonminor dependents with relative caregivers or nonrelative extended family members under specified circumstances. Existing law provides for the implementation of the resource family approval program, which replaces the multiple processes for licensing foster family homes, certifying foster homes by foster family agencies, approving relatives and nonrelative extended family members as foster care providers, and approving guardians and adoptive families.

Existing law requires counties to provide a specified payment to an emergency caregiver if, among other things, the emergency caregiver has completed an application for resource family approval and an application for the Emergency Assistance Program. Existing law requires these payments to be made from Emergency Assistance Program funds included in the state's TANF block grant, with the county solely responsible for the nonfederal share of cost, except as specified. During the 2018–19 fiscal year, existing law makes these payments ineligible for the federal or state share of cost upon approval or denial of the resource family application or beyond 180 days, whichever occurs first. However, the federal or state share may be available for up to 365 days if certain conditions are met by the county, including, among others, monthly documentation by the county of good cause for the delay in approving the resource family application that is outside the direct control of the county, as specified.

Under existing law, during the 2019–20 fiscal year, and each fiscal year thereafter, payments provided under these provisions are ineligible for the federal or state share of cost upon approval or denial of the resource family application or beyond 90 days, whichever occurs first, but the department is required to consider extending payments beyond the 90 days if it determines that the resource family approval process cannot be completed within 90 days due to circumstances outside of a county's control.

This bill would revise and recast the provisions that apply to the 2019–20 fiscal year and would instead provide that these payments are ineligible for the federal or



state share of payment upon approval or denial of the resource family application or beyond 120 days, whichever comes first, subject to an extension beyond those payments, for up to 180 days of payments, if certain conditions are met by the county, including, among others, the provision of monthly documentation showing good cause for the delay in approving the resource family application that is outside the control of the county.

Commencing with the 2020–21 fiscal year, the bill would delete the process that would allow for an extension of payment for up to 180 days and would instead prohibit the extension of payments upon approval or denial of the resource family application or beyond 90 days, whichever occurs first.

The bill would also require each county, on and after July 1, 2019, to provide a payment equivalent to the resource family basic level rate of the home-based family care rate structure on behalf of an Indian child placed in the home of the caregiver who is pending approval as a tribally approved home, as defined, if specified criteria are met.

By expanding the duties of counties under these provisions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

