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HOUSE BILL NO. 1081

Offered January 9, 2014

A BILL to amend and reenact §§ 63.2-1300 through 63.2-1303 of the Code of Virginia, relating to adoption assistance.

Patron—Farrell

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1300 through 63.2-1303 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1300. Purpose and intent of adoption assistance.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs. Adoption assistance may include Title IV-E maintenance payments, state-funded maintenance payments, state special services payments and nonrecurring expense payments made pursuant to requirements set forth in this chapter.

B. A child with special needs is a child who is a citizen or legal resident of the United States who meets the criteria set forth in § 473 of Title IV of the Social Security Act (42 U.S.C. § 673) and (i) is unlikely to be adopted within a reasonable period of time without the provision of adoption assistance due to one or more of the following factors:

1. Physical, mental or emotional condition existing prior to adoption;
2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or
3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

A child with special needs will be eligible for adoption assistance if (i) the child cannot or should not be returned to the home of his parents and (ii) reasonable efforts to place the child in an appropriate adoptive home without the provision of adoption assistance have been unsuccessful. An exception may be made to the requirement that efforts be made to place the child in an adoptive home without the provision of adoption assistance when the child has developed significant emotional ties with his foster parents while in their care and that the foster parents wish to adopt the child a physical, mental, or emotional condition existing prior to adoption, a hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability, or individual circumstances of the child including the child's age, ethnic background, or close relationship with one or more siblings or (ii) has been adopted, was in foster care immediately prior to the adoption, and has been diagnosed as having a physical, mental, or emotional problem or a hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability that existed at the time of adoption but was not diagnosed at the time of adoption and that would have made it unlikely that the child would be adopted within a reasonable period of time without the provision of adoption assistance had it been diagnosed at the time of adoption, provided that no more than one year has elapsed since the date of diagnosis.

§ 63.2-1301. Adoption assistance; types; eligibility; amount.

A. A local board shall provide Title IV-E maintenance payments shall be made to the adoptive parents on behalf of an adopted child placed in accordance with the requirements of Part E of Title IV of the Social Security Act (42 U.S.C. § 670 et seq.) if it is determined that the child is a child with special needs and the child meets the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673):

1. The child is a child with special needs pursuant to subsection B of § 63.2-1300;
2. The child is a citizen or legal resident of the United States;
3. The child cannot or should not be returned to the home of his parents; and
4. Reasonable efforts to place the child with appropriate adoptive parents without providing adoption assistance have been unsuccessful, except that in cases in which a child with special needs has developed significant emotional ties with his foster parents while in their care, the foster parents wish to adopt the child, and the adoption of the child by the foster parents would be in the child's best interests, such reasonable efforts shall not be required.

B. ~~State-funded~~ A local board may provide state-funded maintenance payments shall be made to the adoptive parents on behalf of an adopted child if it is determined that the child who was in foster care immediately prior to the adoption who does not meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673) but the child is a child with special needs. For this purpose

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59 of state-funded maintenance payments only; a child with special needs may include:

60 1. A child for whom the factors set forth in subdivision 1 or 2 of § 63.2-1300 are present at the time
61 of adoption but are not diagnosed until after the final order of adoption, when no more than one year
62 has elapsed from the date of diagnosis; or

63 2. A child who has lived with his foster parents for at least 12 months and has developed significant
64 emotional ties with his foster parents while in their care, when the foster parents wish to adopt the child
65 and state-funded maintenance payments are necessary to enable the adoption if:

66 1. The child was in the custody of the local board or a licensed child-placing agency at the time the
67 child was adopted;

68 2. The child is a child with special needs pursuant to subsection B of § 63.2-1300;

69 3. The child is a citizen or legal resident of the United States;

70 4. The child cannot or should not be returned to the home of his parents; and

71 5. Reasonable efforts to place the child with appropriate adoptive parents without providing adoption
72 assistance have been unsuccessful, except that in cases in which a child with special needs has
73 developed significant emotional ties with his foster parents while in their care, the foster parents wish to
74 adopt the child, and the adoption of the child by the foster parents would be in the child's best interests,
75 such reasonable efforts shall not be required.

76 C. ~~State~~ A local board shall provide special services payments shall be made to the adoptive parents
77 and other appropriate persons on behalf of a child in the custody of the local board or in the custody of
78 a licensed child-placing agency and placed for adoption, pursuant to this chapter, if it is determined that
79 to pay the cost of services directed related to the child's special needs provided to the child in
80 accordance with the adoption assistance agreement that the adoptive parents cannot afford and that are
81 not covered by insurance or other sources of assistance, including medical, surgical, and dental care
82 services, hospitalization, individual remedial education services, psychological and psychiatric treatment,
83 speech and physical therapy, and special equipment, treatment, and training for children with physical
84 or mental disabilities, if:

85 1. The child is a child with special needs pursuant to subsection B of § 63.2-1300;

86 2. The child is receiving Title IV-E maintenance payments pursuant to subsection A or state-funded
87 maintenance payments pursuant to subsection B; and

88 3. The adoptive parents are capable of providing the permanent family relationships needed by the
89 child in all respects except financial.

90 D. ~~Nonrecurring~~ A local board shall provide nonrecurring adoption expense payments shall be made
91 to the adoptive parents for expenses related to the adoption including reasonable and necessary adoption
92 fees, court costs, attorney fees and other legal service fees, as well as any other expenses that are
93 directly related to the legal adoption of a child with special needs including costs related to the adoption
94 study, any health and psychological examinations, supervision of the placement prior to adoption, and
95 any transportation costs and reasonable costs of lodging and food for the child and the adoptive parents
96 when necessary to complete the placement or adoption process for which the adoptive parents carry
97 ultimate liability for payment and that have not been reimbursed from any other source, as set forth in
98 45 C.F.R. § 1356.41. However, the total amount of nonrecurring expense payments made to adoptive
99 parents for the adoption of a child shall not exceed \$2,000 or an amount established by federal law.

100 E. The total amount of adoption assistance provided to the adoptive parents on behalf of the child in
101 accordance with subsection A or B shall not exceed the total amount of the foster care payment that
102 would have been paid for the provision of foster care services for the child at the time the agreement
103 for adoption assistance was signed.

104 F. The amount of Title IV-E maintenance payments made pursuant to subsection A shall be changed
105 only in accordance with the provisions of § 473 of Title IV-E of the Social Security Act (42 U.S.C.
106 § 673). The amount of state-funded maintenance payments paid in accordance with subsection B shall be
107 changed only in accordance with regulations of the Board, which shall be consistent with requirements
108 for changing the amount of Title IV-E maintenance payments.

109 G. Adoption assistance provided to adoptive parents on behalf of a child pursuant to this section
110 shall cease when the child reaches 18 years of age. However, if the child is diagnosed as having a
111 mental or physical disability, or an educational delay resulting from such disability, adoption assistance
112 may be provided until the child reaches 21 years of age.

113 **§ 63.2-1302. Adoption assistance agreement; procedural requirements.**

114 A. Adoption assistance payments may include:

115 1. Title IV-E or state-funded maintenance payments that shall be payable monthly to provide for the
116 support and care of the child; however, Title IV-E or state-funded maintenance payments shall not
117 exceed the foster care payment that would otherwise be made for the child; and

118 2. State special services payments to provide special services to the child that the adoptive parents
119 cannot afford and that are not covered by insurance or otherwise, including, but not limited to:

120 a. Medical, surgical and dental care;

- b. Hospitalization;
- c. Individual remedial educational services;
- d. Psychological and psychiatric treatment;
- e. Speech and physical therapy; and
- f. Special services, equipment, treatment and training for physical and mental handicaps.

State special services payments may be paid to the vendor of the goods or services directly or to the adoptive parents.

B. Adoption assistance payments shall cease when the child with special needs reaches the age of 18 years. If it is determined that the child has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance, adoption assistance payments may be made until the child reaches the age of 21 years.

C. *Adoptive parents who wish to receive adoption assistance on behalf of a child shall submit an application for adoption assistance to the local board, and the local board shall determine eligibility for adoption assistance in accordance with regulations promulgated by the Board.*

B. Adoption assistance payments shall be made ~~on the basis of~~ *in accordance with* an adoption assistance agreement entered into by the local board and the adoptive parents or, in cases in which the child is in the custody of a licensed child-placing agency *at the time of adoption*, an agreement between the local board, the licensed child-placing agency, and the adoptive parents.

Prior to entering into an adoption assistance agreement, the local board or licensed child-placing agency shall ensure that adoptive parents have received information about ~~their~~ *the* child's eligibility for adoption assistance; about their child's special needs and, to the extent possible, the current and potential impact of those special needs. The local board or licensed child-placing agency shall also ensure that adoptive parents receive information about the process for appeal in the event of a disagreement between the adoptive parent and the local board or the adoptive parent and the child-placing agency and information about the procedures for revising the adoption assistance agreement.

C. Adoptive parents shall submit annually to the local board within ~~thirty~~ 30 days of the anniversary date of the approved agreement an affidavit ~~which~~ *that* certifies that (i) *that* the child on whose behalf they are receiving adoption assistance ~~payments~~ remains in their care, (ii) *that* the child's condition requiring adoption assistance continues to exist, and (iii) whether or not changes to the adoption assistance agreement are requested.

~~Title IV-E and state-funded maintenance payments made pursuant to this section shall be changed only in accordance with the provisions of § 473 of Title IV-E of the Social Security Act (42 U.S.C. § 673).~~

D. Responsibility for adoption assistance payments for a child placed for adoption shall be continued by the local board that initiated the agreement in the event that the adoptive parents live in or move to another jurisdiction.

E. Payments may be made under this chapter from appropriations for foster care services for the maintenance and medical or other services for children who have special needs in accordance with § 63.2-1301. Within the limitations of the appropriations to the Department, the Commissioner shall reimburse any agency making payments under this chapter. Any such agency may seek and accept funds from other sources, including federal, state, local, and private sources, to carry out the purposes of this chapter. *A local board that enters into an agreement with adoptive parents, or with a child-placing agency and adoptive parents, for the provision of adoption assistance on behalf of a child shall continue to be responsible for the provision of adoption assistance in accordance with the agreement until the child ceases to be eligible for adoption assistance, regardless of the jurisdiction in which the adoptive parents reside during the duration of the agreement.*

§ 63.2-1303. Funding for adoption assistance

Qualification for adoption assistance payments shall be determined by the local board in response to an application for adoption assistance submitted in accordance with regulations adopted by the Board. *Payments may be made in accordance with the provisions of this chapter from appropriations for adoption subsidy payments for the maintenance of and medical or other services for children with special needs pursuant to subsection B of § 63.2-1300. Within the limitations of the appropriation to the Department, the Commissioner shall reimburse any agency making payments in accordance with the provisions of this chapter. Any such agency may seek and accept funds from other sources, including federal, state, local, and private sources, to carry out the purposes of this chapter.*