

1 SENATE BILL 86

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO CHILDREN AND FAMILIES; DIRECTING THE SECRETARY OF
12 CHILDREN, YOUTH AND FAMILIES TO ESTABLISH A THREE-YEAR
13 STATEWIDE DEMONSTRATION PROJECT TO PROVIDE MAINTENANCE PAYMENTS
14 TO KINSHIP CAREGIVERS; MAKING AN APPROPRIATION.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. TEMPORARY PROVISION--DEMONSTRATION PROJECT--
18 KINSHIP CAREGIVER MAINTENANCE PAYMENTS--REPORTING.--

19 A. By January 1, 2017, the secretary shall adopt
20 and promulgate rules to establish a three-year demonstration
21 project statewide to provide kinship caregivers with
22 maintenance payments for the care and support of children
23 placed in their care. Maintenance payments shall be subject to
24 the availability of appropriated funds.

25 B. The secretary shall adopt and promulgate rules

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1 to establish eligibility for kinship caregivers to participate
2 in the demonstration project. The rules shall establish that a
3 kinship caregiver is eligible to participate in the
4 demonstration project if the kinship caregiver:

5 (1) has been the child's primary caregiver for
6 at least six months preceding application for participation in
7 the demonstration project;

8 (2) has had a child residing in the kinship
9 caregiver's home for at least six months preceding application
10 for participation in the demonstration project;

11 (3) has not had the child's parent residing in
12 the kinship caregiver's home for at least the previous six
13 months; provided that a parent may reside in the home without
14 disqualifying the kinship caregiver from participating in the
15 demonstration project if the parent:

16 (a) has designated the kinship caregiver
17 as the child's caregiver; and

18 (b) is a minor who: 1) is enrolled in
19 school full-time; or 2) has a physical or mental disability
20 that constitutes or results in a substantial impediment to
21 employment, as established pursuant to department rules;

22 (4) has, and all adults residing in the
23 kinship caregiver's home for any period of time have, undergone
24 a criminal background check;

25 (5) has a household income that is under two

1 hundred percent of the federal poverty level;

2 (6) is a resident of the state;

3 (7) has applied for temporary assistance for
4 needy families benefits for the child;

5 (8) has entered into a maintenance payment
6 agreement, established pursuant to department rules, that
7 includes a provision that no payments received under the
8 agreement shall inure to the benefit of the child's parent but
9 shall be solely for the benefit of the child;

10 (9) is not currently receiving a separate
11 foster parent maintenance payment or guardianship- or adoption-
12 assistance payment for the child;

13 (10) has provided, in accordance with
14 department rules, a signed statement, sworn under penalty of
15 perjury, that the information provided to establish eligibility
16 for participation in the demonstration project is true and
17 accurate to the best of the kinship caregiver's belief; and

18 (11) has met any additional requirements set
19 forth in rules the secretary has adopted and promulgated.

20 C. The secretary may by rule provide for waiver of
21 the eligibility requirements established in Paragraph (1) or
22 (2) of Subsection B of this section in cases where:

23 (1) the department determines that the child
24 is at risk of removal from the child's parent, guardian or
25 custodian;

1 (2) the child's parent, guardian or custodian
2 permits the kinship caregiver to be the child's primary
3 caregiver; and

4 (3) the child's parent, guardian or custodian
5 permits the child to reside with the kinship guardian.

6 D. The department shall recertify the eligibility
7 of each kinship caregiver participating in the demonstration
8 project on at least an annual basis. The secretary may require
9 the kinship caregiver to provide a signed statement, sworn
10 under penalty of perjury, that the information provided to
11 establish continued eligibility for participation in the
12 demonstration project remains true and accurate to the best
13 belief of the kinship caregiver.

14 E. The secretary shall terminate a kinship
15 caregiver's participation in the demonstration project at any
16 time if:

17 (1) the department determines that the kinship
18 caregiver no longer meets the eligibility requirements
19 established pursuant to Subsection A or B of this section; or

20 (2) there is substantiated finding of child
21 abuse or neglect against the kinship caregiver resulting in the
22 removal of the child from the kinship caregiver's home.

23 F. A kinship caregiver whose application for
24 participation in the demonstration project has been denied or
25 whose maintenance payment has been terminated shall be entitled

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1 to a fair hearing in accordance with rules the secretary has
2 adopted and promulgated; provided that a kinship caregiver
3 shall not be entitled to a hearing if the denial or termination
4 of a maintenance payment is based upon the unavailability of
5 appropriated funds.

6 G. The secretary shall adopt and promulgate rules
7 to establish penalties for any person that makes a false
8 statement in applying to participate or to be recertified to
9 participate in the demonstration project established pursuant
10 to this section.

11 H. By November 1, 2017, November 1, 2018 and
12 November 1, 2019, the secretary shall issue a report to the
13 governor, the legislative finance committee and the legislative
14 health and human services committee regarding the demonstration
15 project established pursuant to this section. At a minimum,
16 the report shall include:

- 17 (1) the number of applications filed for
18 participation in the demonstration project;
- 19 (2) the number of applications approved for
20 participation in the demonstration project;
- 21 (3) the number of kinship caregiver households
22 that receive both a maintenance payment and cash assistance
23 through the temporary assistance for needy families program;
- 24 (4) the number of applications for
25 participation in the demonstration project that were denied for

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1 failure to meet eligibility criteria;

2 (5) the number of applications for
3 participation in the demonstration project that were denied due
4 to lack of appropriated funding;

5 (6) the number of maintenance payments denied
6 due to lack of appropriated funding;

7 (7) an estimate of the number of kinship
8 caregivers whose income is less than two hundred percent of the
9 federal poverty level but who have not applied for
10 participation in the demonstration project;

11 (8) the number of maintenance payments that
12 the secretary has terminated as a result of kinship caregiver
13 ineligibility;

14 (9) the number of maintenance payments that
15 kinship caregivers have had terminated voluntarily;

16 (10) the number of substantiated cases of
17 fraud and a comparison of this figure to the proportion of
18 cases of fraud involving participants in the temporary
19 assistance for needy families program, the supplemental
20 nutrition assistance program and child care assistance and
21 medicaid programs;

22 (11) the number of children removed from
23 households due to a substantiated allegation of child abuse or
24 neglect where a kinship caregiver is participating in the
25 demonstration project established pursuant to this section; and

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1 (12) any legislative, policy or administrative
2 recommendations for enhancing the effectiveness of the
3 demonstration project or for making permanent a statewide
4 program of maintenance payments for kinship caregivers.

5 I. As used in this section:

6 (1) "adult" means an individual eighteen years
7 of age or older;

8 (2) "child" means an individual under eighteen
9 years of age whose residence with a kinship caregiver is the
10 basis of the kinship caregiver's participation or application
11 to participate in the demonstration project;

12 (3) "child care assistance" means the program
13 of child care assistance that the department administers in
14 accordance with department rules;

15 (4) "criminal background check" means a review
16 of an individual's personal history in which the department
17 obtains the individual's set of fingerprints and submits the
18 fingerprints to the department of public safety and the federal
19 bureau of investigation;

20 (5) "demonstration project" means the
21 demonstration project established pursuant to this section to
22 provide maintenance payments to kinship caregivers;

23 (6) "department" means the children, youth and
24 families department;

25 (7) "federal poverty level" means the measure

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1 of individual or household income level issued annually by the
2 federal department of health and human services;

3 (8) "maintenance payment" means a payment that
4 the department makes to a kinship caregiver pursuant to this
5 section for the care and support of a child in the kinship
6 caregiver's care;

7 (9) "minor" means an individual younger than
8 eighteen years of age;

9 (10) "kinship caregiver" means a relative
10 within five degrees of consanguinity or affinity of a child
11 placed in the relative's care;

12 (11) "medicaid" means the joint federal-state
13 health coverage program that the human services department
14 administers pursuant to Title 19 or Title 21 of the federal
15 Social Security Act;

16 (12) "secretary" means the secretary of
17 children, youth and families;

18 (13) "supplemental nutrition assistance
19 program" means the supplemental nutrition assistance program
20 administered by the human services department and the federal
21 department of agriculture; and

22 (14) "temporary assistance for needy families"
23 means the program of cash assistance payments funded by the
24 temporary assistance for needy families block grant pursuant to
25 the federal Social Security Act and by state funds that the

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1 human services department administers pursuant to the New
2 Mexico Works Act.

3 SECTION 2. APPROPRIATION.--Three million dollars
4 (\$3,000,000) is appropriated from the general fund to the
5 children, youth and families department for expenditure in
6 fiscal years 2017 through 2020 to fund maintenance payments
7 made through the demonstration project established pursuant to
8 Section 1 of this act. Any unexpended or unencumbered balance
9 remaining at the end of fiscal year 2020 shall revert to the
10 general fund.

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