



**Nonminor Dependents:
Policy, Statutes, Case Law
and Practical Considerations**

by Linda Fabian & Alice Shotton (April 2014)

The status “nonminor dependent” came about when California chose to participate in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. In California: “Assembly Bill 12,” effective January 1, 2012, provided for:

- extensive policy and program changes to improve the well being and outcomes for children in the foster care system
- changes related to the extension of federal funding for foster care services for nonminors from ages 18 to 21 if they meet certain participation criteria
- AFDC or CalWORKS benefits, extended Kin-GAP assistance or AAP (Adoption Assistance payments) continue to age 21
- Main provisions found at Welfare & Institutions Code section 11400 et seq. (pertains to AFDC)
- Website: California Fostering Connections to Success:
<http://www.cafosteringconnections.org> “AB 12 Primer”

ELIGIBILITY

A. Age and Foster Care Placement

If the youth turned 18 after January 1, 2014, he or she is able to participate in extended foster care until they reach 21 as long as there was an order for a foster care placement on the youth's 18th birthday

If the youth turned 18 prior to January 1, 2014, he or she is able to participate in extended foster care if:

(1) there was an order for foster care placement on the youth's 18th birthday (NOTE: the order for foster care placement must have been in effect sometime on or after January 1, 2012) AND

(2) the youth is still under the age of 21 as of January 1, 2014.

(Welf & Inst. Code 11400, subdivision (v))

B. Other Eligibility Requirements

(1) agree to continue under juvenile court jurisdiction as a dependent or as a ward (sign a mutual agreement with social services agency within 6 months after turning 18 consenting to continued care)

(2) meet one of the five participation conditions (described in section "C" below)

(3) agree to live in a supervised placement that is licensed or approved under new standards for 18 to 21 year olds

(W & I §§ 11400, subd. (u), 11403, subd.(b))

Benefits and support will continue until the youth reaches 21 years of age

C. Youth Participation Criteria

In order to receive benefits and services of extended foster care, the youth must meet one of the following participation criteria:

(1) completing high school or equivalent program (i.e. GED); OR

(2) enrolled in college, community college or a vocational education program (half time enrollment ok);OR

(3) employed at least 80 hours a month (must be paid employment); OR

(4) participating in a program or activity designed to remove barriers to employment (this is the “safety net” category intended to capture all youth who are not eligible under the employment or education conditions); OR

(5) unable to do one of the above requirements because of a medical condition (verified short or long term medical or mental health condition)

(W & I § 14003, subd. (b))

D. Opt Out

Participation in foster care after age 18 is voluntary, and automatic; jurisdiction will continue unless the youth decides to opt out. (W & I § 391, subd (c))

Youth who leave (opt out of) extended foster care prior to turning 21 can reenter extended foster care (filing a 388 petition) and begin receiving assistance again as long as:

- youth had an order for foster care on his/her 18th birthday,
and
- is under the age of 21 (W & I § 388, subd. (e)(1))

E. Benefits Suspended

- (1) the nonminor dependent requests to be discharged from foster care;
- (2) the juvenile court makes a finding that the nonminor dependent is not in compliance with a reasonable plan to meet one of the five participation conditions; or
- (3) the nonminor dependent is not living in an approved foster care setting or cannot be located

(In these instances, the court may terminate dependency jurisdiction and assume general jurisdiction, which will allow the youth to file a section 388 petition to opt back in)

- (4) the nonminor dependent turns 21

(W & I §§ 391, subds. (c), (d), 11403, subd. (e))

PLACEMENT

A. Placements available to youth participating in extended foster care after age 18 include:

- (1) Home of relative or non related extended family member (NREFM)(approved);
- (2) Foster family home (licensed) –including whole family foster homes and regional center homes;
- (3) Foster Family Agency certified home (licensed);

(4) Home of non related legal guardian (NRLG) (approved by the juvenile court);

(5) Group home, (licensed) subject to limitations;

(6) THP-Plus Foster Care (licensed)(transitional housing placement);

(7) Supervised Independent Living setting (SILP) (approved)
– can include apartment living, room and board arrangements, college dorms and shared roommate settings

– youth may receive foster care benefit directly

(W & I § 11402)

B. Eligible to receive Medi-Cal and county clothing allowance

– youth who exit foster care after 18 are still eligible for Medi-Cal until age 26 (under the Affordable Care Act), Independent Living Program Services and non-federally funded transitional housing placement until age 24, though space in these programs is limited

COURT REVIEW

A. Last Review Hearing Before Minor Turns 18 (W & I § 366.31, subd. (a))

(1) At the last review hearing to be held before the minor turns 18, court must ensure:

– there is a plan for minor to satisfy a participation condition;

– the minor is informed of benefits of continued dependency and right to seek termination of dependency, and to have dependency reinstated (§ 388, subd. (e))

(2) Agency's report for this hearing must describe:

- minor's plan: to continue as a nonminor dependent or terminate dependency jurisdiction
- if plan is still reunification with parent, whether return to parent may safely occur
- assistance provided to minor to meet participation conditions
- effort made to provide minor with information and documents listed in section 391, subdivision (e), including: written information regarding family history, Indian heritage, siblings, social security card, certified copy of birth certificate, health and education summary, driver's license, agency's verification letter, death certificate of parents (if applicable), proof of citizenship or legal residence, advance healthcare directive form, judicial council form for filing 388 petition to resume dependency jurisdiction, written 90-day transition plan, assistance in applying for Medi-Cal, housing referrals, obtaining employment, assistance in maintaining relationships with individuals important to the minor, etc.

B. Six-Month Review Hearings (W & I § 366.31, subds. (c), (e))

(1) Because dependency jurisdiction is continuing, court must conduct six-month review hearings

(2) If minor's plan is not reunification, court must determine progress made to provide permanent connection with caring committed adults, and the following:

- appropriateness and continuing need of the placement
- agency's reasonable efforts to provide services, its compliance with transitional independent living plan, its efforts to prepare youth for independence, to maintain sibling relationships

- whether prospective adoptive parent identified
(section 366.31, subd. (f) permits court to order adoption of nonminor dependent)
- whether agency provided nonminor information and documents described in section 391, subdivision (e)

CASE LAW

In re K.L. (2012) 210 Cal.App.4th 632 (4th Dist., Div 1)

In re Nadia G. (2013) 216 Cal.App.4th 1110 (2nd Dist., Div 3)

In re A.F. (2013) 219 Cal.App.4th 51 (1st Dist., Div 5)

In re Shannon M. (2013) 221 Cal.App.4th 282 (1st Dist., Div 5)

In re J.C. (2014) 222 Cal.App.4th 1489 (4th Dist., Div. 3)