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COMPTROLLER GENERAL OF THE UNITED STATES
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October 2, 1979

SEN 07101

The Honorable Alan D. Cranston
Chairman, Subcommittee on Child
and Human Development
Committee on Labor and Human Resources
United States Senate

Dear Mr. Chairman:

Pursuant to the Subcommittee's request, the following
[comments are provided on Amendment Number 392 to S. 966, a ID
bill to amend the Social Security Act]. The bill, introduced
in the Senate August 3, 1979, was referred to the Committee
on Finance for consideration.

Section 471 "STATE PLAN FOR ADOPTION ASSISTANCE AND FOSTER CARE"

This section establishes requirements for State plans.

Subsection 471(a)(8)(D) provides for access by authorized
audit agencies to information concerning individuals assisted
under the State plan regarding adoption assistance and foster
care programs. The final clause in subsection (8), however,
permits a State to provide for stricter disclosure standards
than are provided for in subsection 471(a)(8).

Section 1125 of the Social Security Act authorizes GAO to
issue subpoenas in order to obtain information concerning
Social Security Act programs. Because GAO has this authority
we do not believe the qualifying language in subsection (8)
will adversely affect GAO access to information concerning
individuals. However, in the interest of avoiding potential
disputes between GAO and State agencies concerning access to
such records, we believe the subsection should be modified
to specify that this clause is not intended to restrict
access by authorized audit agencies to information concerning
individuals.

Subsection 471(a)(13) of the bill provides for inde-
pendent audits at least once every 3 years. The provision
does not indicate the type of audits to be performed, who
the recipients of the audits should be, or who is responsible
for insuring that deficiencies found are corrected. We
believe more specificity regarding audit requirements should
be included in the bill or its legislative history, such as

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the Committee report. In particular, we believe the nature of the audit such as compliance or program results reviews should be specified along with the intended recipients such as local agencies and HEW. In addition, the bill should require that HEW's Office of the Inspector General receive copies of all audit reports, periodically review the adequacy of the reports, and insure that corrective actions are taken.

Section 471 addresses Federal access to records and audit authority for title IV-E in only limited circumstances. In order to assure that authority is provided for audit of recipients of Federal funds under this title, we recommend that the following language be added to Section 471.

"Sec. (a) Each institution (public or private) receiving Federal assistance under this title, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into under other than by formal advertising, and which are otherwise authorized by this title, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources and such other records as will facilitate an effective audit.

"(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of 3 years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, loans, or other arrangements referred to in subsection (a)."

Section 472 "FOSTER CARE MAINTENANCE PAYMENTS PROGRAM"

This section sets forth conditions under which foster care maintenance payments will be reimbursed to the States.

For a State to receive Federal reimbursement for foster care maintenance payments under the bill as well as under current law (42 U.S.C. §608(a)) the child who is placed in foster care must, among other things, have been removed from the home of a relative and have received or would have been eligible to receive aid under title IV-A. To determine eligibility for title IV-A maintenance payments, current law requires States to analyze the income of the individual(s) in the home from which the child was removed to determine need, without regard to the income capabilities of the parent(s) if they are not living in the home from which the child was removed (42 U.S.C. §602). This can result in States seeking Federal reimbursement for foster care payments when in fact the parent(s) of the child may be capable of financially supporting the child. We believe the bill should be amended to require States to consider the income capabilities of the parent(s) as well as those relatives from whom the child was removed, when determining eligibility for foster care payments.

Section 473 "ADOPTION ASSISTANCE PROGRAM"

This section provides for Federal subsidized adoption assistance payments by States to parents adopting, pursuant to an adoption assistance agreement, a child with special needs.

Subsection 473(a)(5) provides that individuals with whom a child is placed for adoption, under an interlocutory decree, are eligible for adoption assistance payments. Neither current law nor the bill addresses the issue of whether such individuals would have a right to receive foster care payments instead of adoption assistance payments. Conceivably, foster care maintenance payments could be higher than the adoption assistance payments.

Presently, States apply various criteria to determine when foster care payments should be terminated when a child is placed for adoption including,

- date of placement in an adoptive situation,
- date of relinquishment,
- date of interlocutory decree, and
- date of final adoption decree.

We believe the language or intent of this subsection should be clarified to address the issue of whether an individual with whom a child is placed for adoption, pursuant to an interlocutory decree, has the option of seeking either foster care or adoption assistance payments.

Section 474 "PAYMENTS TO STATES"

This section provides for, among other things, the percentage of specified foster care and adoption assistance expenses reimbursable to States and the transfer of a State's unclaimed title IV-E funds to its title IV-B program.

Subsection 474(a)(3)(B) provides for a reimbursement of 50 percent of the administrative costs other than training. Currently, HEW and some States disagree over whether certain foster care expenditures should be allowable as administrative costs or maintenance payments under title IV-A, or whether the expenditures should be more appropriately considered as social service costs under titles XX or IV-B. For example, expenditures for the following activities are currently being claimed by some States under title IV-A as administrative and maintenance costs and by other States under titles XX or IV-B as social service costs:

- AFDC eligibility determination and redetermination;
- Case planning review and report preparation;
- Visiting foster children, foster parents, and/or biological parents to determine the child's needs to continue in foster care;
- Recruiting and training foster parents; and
- Providing placement and replacement services.

New York has been seeking cost reimbursement for these activities under title IV-A as maintenance payments for children placed by private nonprofit voluntary agencies. HEW has been reviewing these claims over the past several months because the activities involved are the same or similar to activities which many States fund under title XX as social services. Under current law, services described in title XX are not allowable costs for reimbursement under title IV-A. (42 U.S.C. §603(a)(3)). While the bill would clarify current law by defining foster care maintenance and adoption assistance payments, we believe it is also necessary for the bill to define allowable administrative costs in order to minimize the likelihood of disputes such as the one described above. We suggest, as a minimum, the following foster care and adoption assistance activities be allowed under title IV-E as administrative costs:

- Preparation and revision of the State title IV-E plan;
- AFDC eligibility determination and redeterminations;
- Case plan preparations and review; and
- State determination that a child is in special need and warrants subsidized adoption assistance; and
- Preparation of required reports, including audits.

Under the bill, costs not otherwise categorized as maintenance payments or administrative costs under title IV-E would be reimbursable under title XX or title IV-B. Defining administrative costs is particularly important because the bill establishes a ceiling for title IV-E which, beginning in fiscal year 1980, would be based on the State's title IV-A foster care maintenance payments and administrative costs incurred in fiscal year 1978.

Subsection 474(c) provides that sums available to a State under title IV-E, which the State does not claim as reimbursement for expenditures in such year, may be claimed by the State as reimbursement for expenditures in such year under title IV-B. The subsection appears to require that funds transferred in this manner, would have to be spent on title IV-B child welfare services during the year

of the transfer. Because States may find it difficult to fully utilize the funds during the year transferred, we recommend the funds be made available for expenditure beyond the year of the transfer.

Section 475 "DEFINITIONS"

Subsection 475(2) defines "parents" as biological, adoptive, or legal guardians. Three issues exist regarding the inclusion of legal guardians in this definition.

First, legal guardians, unlike biological and adoptive parents, generally have no legal responsibility for the financial support of the child except in administering the child's assets, unless the guardian has assumed the obligation. In a situation where a legal guardian is seeking foster care maintenance payments, we question whether AFDC-foster care eligibility should be determined on the basis of the income of the legal guardian. Second, current practice encourages returning the child to the home and relatives from whom the child was removed. We question whether it is preferable to return the child to the legal guardian instead of to the biological parents or relatives other than parents, if possible, if the individual from whom the child was removed was a legal guardian. Third, under current law (42 U.S.C. §608(a)(2)) and the bill (§472(a)(2)), the specified State agencies are responsible for the placement and care of children receiving foster care maintenance payments. These State agencies have no authority over children in the care of legal guardians. Since they lack such authority, State agencies cannot be responsible for the placement and care of such children, and therefore, States might be in violation of the law by making foster care maintenance payments to legal guardians.

Because of these problems, we believe legal guardians should not be included in the definition of "parents."

Subsection 475(4) sets forth a definition of "Foster Care Maintenance Payments" which allows States to claim for reimbursement the cost of "daily supervision," as

well as the "cost of providing * * * daily supervision." Under HEW's present policy, the foster care maintenance payment represents reimbursement for direct out-of-pocket expenses attributable to the child and not the cost of providing supervision or the cost of daily supervision. In this regard we noted that HEW's Office of Family Assistance, in a November 1977 memorandum to the Chicago regional office, stated that, if a State makes a payment directly to the foster parent in consideration for care of a foster child, then that State agency is responsible for (1) paying employment taxes on the amount considered salary, and (2) filing information returns for payments to the foster parents. Additionally, 45 C.F.R. 228.45 indicates that foster parents can be paid for specialized care provided to foster children with physical or mental handicaps from title XX and not title IV-A funds.

We believe the proposed definition raises several issues including:

- whether receipt of funds for daily supervision and cost of providing services to the child would change the tax status of a foster family home from nonprofit to profitmaking; and
- whether such payments would be income subject to the income and social security tax laws.

In addition, the bill does not provide guidance as to how the supervision costs are to be calculated for reimbursement.

According to HEW, States have traditionally built a care (supervision) factor into their foster care rate and have not separated it out as a salary item to foster parents or as a direct payment to the foster parent for care provided. In view of the change in tax status for foster family homes which could result from the language used in the bill, we believe congressional intent should be clarified in the bill.

In the case of institutional care, subsection 475(4) also allows reimbursement for "reasonable costs of administration and operation." We believe this phrase could be interpreted to include overhead costs. Currently, 45 C.F.R. 233.110 prohibits reimbursement to institutions

for overhead costs incurred in providing foster care. We recommend that the phrase "reasonable costs of administration operations" be defined in the bill to indicate the nature of the costs which are allowable.

Section 3(a) "STUDY OF TITLE IV-E"

Section 3(a) directs the Secretary of Health, Education, and Welfare to conduct an evaluation of the effectiveness of title IV-E foster care and adoption programs.

To insure that this task is assigned to an appropriate and independent staff, we believe the section should be changed to read "The Secretary of HEW shall have the Inspector General conduct a study of * * *." The study will then be independent of the operating group as required by generally accepted auditing principles.

We hope these comments will assist you in your efforts to improve the welfare of children.

Sincerely yours,



Deputy Comptroller General
of the United States