NLWJC - Kagan

DPC - Box 023 - Folder 016

Family - Adoption, Legislative [2]

Family-Adoption-Legislation

November 10, 1997

MEMORANDUM

TO: Elena Kagan
Jennifer Klein

FROM: Nicole Rabner

RE: Adoption and Safe Families Act of 1997

Attached please find the conference report and the bill itself. OMB has both and is reviewing. Mary is going to have a conversation with Ron Haskins tomorrow morning. If we have any edits or issues, we should forward them to her quickly.

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Contents

I. "Reasonable Efforts" and Child Safety Provisions

1. "Reasonable Efforts" to Preserve and Reunify Families

House Bill

As a component of their state Title IV-E plan, states would continue to be required to make reasonable efforts to preserve and reunify families; however, this requirement would not apply in cases in which a court has found that:

- a child has been subjected to "aggravated circumstances" as defined in state law (which may include abandonment, torture, chronic abuse, and sexual abuse);
- a parent has assaulted the child or another of their children or has killed another of their children (as defined in the Child Abuse Prevention and Treatment Act); or
- a parent's rights to a sibling have been involuntarily terminated.

In these cases, states would not be required to make reasonable efforts on behalf of any parent who has been involved in subjecting the child to these circumstances.

Reasonable efforts to preserve or reunify families could be made concurrently with efforts to place the child for adoption, with a legal guardian, or in another planned permanent arrangement (see item 3). (Section 2)

Senate Amendment

As a component of their state Title IV-E plan, states would be required to make reasonable efforts to preserve families when the child can be cared for at home without endangering the child's health or safety, or to make it possible for the child to safely return home. Such reasonable efforts would not be required on behalf of any parent:

- if a court has determined that the parent has killed or assaulted another of their children; or
- if a court has determined that returning the child home would pose a serious risk to the child's health or safety (including but not limited to cases of abandonment, torture, chronic physical abuse, sexual abuse, or a previous involuntary termination of parental rights to a sibling); or
- if the state has specified in legislation cases in which reasonable efforts would not be required because of serious circumstances that endanger a child's health or safety.

Reasonable efforts to place a child for adoption or with a legal guardian or custodian could be made concurrently with reasonable efforts to preserve or reunify families (see item 3).

Nothing in Title IV-E, as amended by this Act, would be construed as precluding state courts from exercising their discretion to protect the health and safety of children in individual cases, when such cases do not include aggravated circumstances as defined by state law. (Section 101)

Conference Agreement

The conference agreement follows the House bill (with minor technical differences in wording), except:

- makes explicit that the state law definition of "aggravated circumstances" may include, but need not be limited to, abandonment, torture, chronic abuse, and sexual abuse; and
- adds a rule of construction specifying that nothing in this legislation would be construed as precluding state courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in this provision;
- establishes new definitions, under Title IV-E, of the terms "legal guardianship" and "legal guardian." (Section 101)

2. Consideration of Child Health and Safety

House Bill

In determining and making reasonable efforts on behalf of a child, the child's health and safety must be of paramount concern. (Section 2)

Senate Amendment

Same as House bill. (Section 101) In addition, current law would be amended to include references to child safety in provisions dealing with child welfare services, case plan and case review procedures. (Section 102)

Conference Agreement

The conference agreement follows the Senate amendment.

3. "Reasonable Efforts" to Place Children for Adoption or Other Permanent Arrangement

House Bill

If reasonable efforts to preserve or reunify a family are not made because of reasons cited in item 1 (or are no longer consistent with the child's permanency plan), then states would be required to make reasonable efforts to place the child for adoption, with a legal guardian, or (if adoption or guardianship were not appropriate) in another planned, permanent arrangement.

Reasonable efforts to preserve or reunify families could be made concurrently with efforts to place the child for adoption, guardianship, or in another planned, permanent arrangement. (Section 2)

Senate Amendment

If reasonable efforts to preserve or reunify a family are not made because of reasons cited in item 1 (as determined by a court), then it would be required that a permanency planning hearing be held for the child within 30 days of the court determination. In such cases, states would be required to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the placement.

Reasonable efforts to place a child for adoption or with a legal custodian could be made concurrently with reasonable efforts to preserve or reunify the family. (Section 101)

Conference Agreement

The conference agreement follows the Senate amendment (with minor technical differences in wording). (Section 101)

4. Documentation of Efforts to Adopt

House Bill

For every child whose permanency plan is adoption or another permanent placement, states would be required to document the steps taken to find an adoptive family or permanent home; to place the child with the adoptive family, legal guardian, or other permanent home (including the custody of a fit and willing relative); and to finalize the adoption or guardianship. The documentation must include child-specific recruitment efforts such as use of adoption information exchanges, including electronic exchange systems. (Section 7)

Senate Amendment

Same as House bill (with minor technical differences in wording). (Section 108)

Conference Agreement

The conference agreement follows the House bill and Senate amendment. (Section 107)

5. Termination of Parental Rights

House Bill

In the case of a child who is younger than 10 and has been in foster care for 15 of the most recent 24 months, states would be required to initiate a petition (or join any existing petition) to terminate parental rights, unless:

- at the option of the state, the child is being cared for by a relative;
- a state court or agency has documented a compelling reason for determining that filing such a petition would not be in the best interests of the child; or
- the state has not provided the family with services deemed appropriate by the state (in cases where reasonable efforts to preserve or reunify the family have been required).

This provision would apply only to children who enter foster care on or after October 1, 1997. (Section 3)

Senate Amendment

In the case of (1) a child who has been in foster care for 12 of the most recent 18 months; (2) an infant who is determined by the court to have been abandoned (as defined under state law); or (3) a court determination that a parent of a child has assaulted the child or killed or assaulted another of their children; states would be required to initiate a petition (or join any existing petition) to terminate parental rights, and concurrently, to identify, recruit, process, and approve a qualified adoptive family, unless:

- at the option of the state, the child is being cared for by a relative;
- a state agency has documented to the state court a compelling reason for determining that filing such a petition would not be in the best interests of the child; or
- the state has not provided the family of the child with services deemed necessary by the state for the child's safe return home. (Section 104(a))

A child would be considered as having entered foster care on the earlier of the date of the first judicial hearing on the child's removal from home or 30 days after the child's removal from home. (Section 104(b))

Nothing in Title IV-E, as amended by this legislation, would be construed as precluding state courts or agencies from initiating termination of parental rights for other reasons, or according to earlier timetables, than those specified, when determined to be in the child's best interests, including cases where the child has experienced multiple foster care placements of varying durations. (Section 104(c))

This provision would apply to children entering foster care after the date of enactment. For children in foster care on or before the date of enactment, this provision would apply as though the children first entered care on the date of enactment. The provisions of this bill, providing time for state legislatures to enact necessary legislation, would apply to this provision (see item 29). (Section 104(d))

Conference Agreement

The conference agreement follows the House bill and Senate amendment with modifications as follows.

In the case of:

- a child who has been in foster care for 15 of the most recent 22 months;
- a child who the court has determined to be an abandoned infant (as defined in state law); or
- a court determination that a parent of a child has assaulted the child or killed or assaulted another of their children;

states would be required to initiate a petition (or join any existing petition) to terminate parental rights, and concurrently, to identify, recruit, process, and approve a qualified adoptive family, unless:

- at the option of the state, the child is being cared for by a relative;
- a state agency has documented in the case plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child; or
- the state has not provided to the family of the child, consistent with the time period in the case plan, such services as the state deems necessary for the safe return of the child (in cases where reasonable efforts to reunify the family have been required). (Section 103(a))

A child would be considered as having entered foster care on the earlier of:

- the date of the first judicial finding that the child has been subjected to child abuse or neglect; or
- 60 days after the child's removal from home. (Section 103(b))

With regard to children who enter foster care after the date of enactment, states would be required to comply with this provision when any such child has been in care for 15 of the most recent 22 months, but no later than three months after the end of the first regular session of the state's legislature that begins after the date of enactment. With regard to one-third of children who are in foster care on the date of enactment, states would be required to comply with this provision no later than 6 months after the end of the first legislative session, and would give priority to children with permanency plans of adoption and children who have been in foster care for the greatest length of time. With regard to two-thirds of children who are in foster care on the date of enactment, states would be required to comply with this provision no later than 12 months after the end of the first legislative session, and with regard to all children who are in foster care on the date of enactment, states would be required to comply with this provision no later than 18 months after the end of the first legislation session. (Section 103(c))

Nothing in Title IV-E, as amended by this legislation, would be construed as precluding state courts or state agencies from initiating the termination of parental rights for other reasons, or according to earlier timetables, than those specified, when determined to be in the child's best interests, including cases where the child has experienced multiple foster care placements of varying durations. (Section 103(d))

6. Child Death Review Teams

House Bill

No provision.

Senate Amendment

To be eligible for payments under Title IV-E, no later than 2 years after enactment, states would have to certify that they have established and are maintaining a state child death review team (and, if necessary, regional and local teams) to investigate child deaths, including those

where there has been a prior report of abuse or neglect or there is reason to suspect that the death was related to abuse or neglect, or the child was a ward of the state or otherwise known to the child welfare agency. State, regional, or local teams may be existing citizen review panels, as authorized under CAPTA, or existing foster care review boards.

In addition, HHS would be required to establish a federal child death review team (with representatives from other federal agencies) to investigate deaths on federal lands, provide guidance and technical assistance to states and localities upon request, and make recommendations to prevent child deaths. (Section 103)

Conference Agreement

The conference agreement follows the House bill.

7. Criminal Record Checks

House Bill

At state option, states could provide (as a component of their Title IV-E plan) procedures for criminal records checks and checks of a state's child abuse registry for any prospective foster parents or adoptive parents, and employees of child care institutions, before the parents or institutions are finally approved for a placement of a child eligible for federal subsidies under Title IV-E.

In any case of a criminal conviction of child abuse or neglect, spousal abuse, crimes against children, or crimes involving violence (including rape, sexual or other assault, or homicide), approval could not be granted. In any case of a criminal conviction for a felony or misdemeanor not involving violence, or the existence of a substantiated report of abuse or neglect, final approval could be granted only after consideration of the nature of the offense, the length of time since it occurred, the individual's life experiences since the offense occurred, and any risk to the child. (Section 17)

Senate Amendment

States would be required to provide (as a component of their Title IV-E plan) procedures for federal and state criminal records checks for any prospective foster or adoptive parents and other adults living in their home, and employees of residential child care institutions, before the parents or institutions are finally approved for placement of a child eligible for federal subsidies under Title IV-E.

In any case of a criminal conviction of child abuse or neglect, spousal abuse, crimes against children (including child pornography), or crimes involving violence (including rape, sexual or other physical assault, battery, or homicide), approval could not be granted. In addition, if a state finds that a court of competent jurisdiction has determined that a drug-related offense has occurred within the past 5 years, approval could not be granted. (Section 107(a))

This provision would not be construed to supercede any provision of state law regarding criminal records checks and other background checks for prospective foster and adoptive parents and employees of residential child care institutions, unless such provisions prevent the application of the requirements in this amendment. (Section 107(b))

Conference Agreement

The conference agreement follows the Senate amendment with modifications, as follows:

States would be required to provide (as a component of their Title IV-E plan) procedures for federal and state criminal records checks for any prospective foster or adoptive parents, before the parents are finally approved for placement of a child eligible for federal subsidies under Title IV-E. In any case of a felony conviction for child abuse or neglect, spousal abuse, crimes against children (including child pornography), crimes involving violence (including rape, sexual or other physical assault, battery, or homicide), or a drug-related offense, approval could not be granted if a court of competent jurisdiction determined that the felony was committed within the past 5 years. States could opt out of this provision through a written notification from the Governor to the Secretary, or through state law enacted by the legislature.

8. Quality Standards for Out-of-home Care

House Bill

No provision.

Senate Amendment

As a component of their state Title IV-E plan, states would be required to provide, no later than January 1, 1999, that the state will develop and implement standards to ensure that children in foster care placements in public or private agencies receive quality services that protect their safety and health of children. (Section 308)

Conference Agreement

The conference agreement follows the Senate amendment. (Section 308)

II. Adoption Promotion Provisions

9. Adoption Incentive Payments

House Bill

The Secretary of Health and Human Services (HHS) would be required to make adoption incentive payments to eligible states for any adoptions of foster children in a given fiscal year that exceed the number of such adoptions in FY1997, or in a subsequent base year. Adoption incentive payments would equal $4,000 for each adoption of a foster child above the base number,

plus an additional $2,000 for each adoption of a foster child with special needs (total of $6,000 for each special needs adoption). For these incentive payments, $15 million would be authorized for each of fiscal years 1999 through 2003. Relevant budget acts would be amended to require adjustments in discretionary spending limits (Section 4)

Senate Amendment

Same as House bill, except:

- the Secretary would be authorized, rather than required, to make adoption incentive payments;
- to be eligible to receive incentive payments, states would be required to provide health insurance coverage to any special needs child for whom there is an adoption assistance agreement between a state and the child's adoptive parents;
- adoption incentive payments would equal $3,000 for each adoption of a foster child above the base number, and an additional $3,000 for each adoption of a foster child with special needs (total of $6,000 for each special needs adoption); and
- the base number of adoptions for determining adoption incentive payments would be the average number of adoptions for the 3 most recent fiscal years. (Section 201)

Information required by this legislation would be supplied through the Adoption and Foster Care Analysis and Reporting System (AFCARS), to the extent available (see item 27).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with modifications as follows.

The Secretary of HHS would be required to make adoption incentive payments to eligible states. An eligible state is one in which adoptions of foster children in FY1998 exceed the average number during FY1995-FY1997, or in FY1998 and subsequent years, in which adoptions of foster children exceed the preceding fiscal year. To be eligible to receive adoption incentive payments for FY2001 or FY2002, states would be required to provide health insurance coverage to any special needs child for whom there is an adoption assistance agreement between a state and the child's adoptive parents. Adoption incentive payments would equal $4,000 for each adoption of a foster child above the base number, and an additional $2,000 for each adoption of a foster child with special needs (thus becoming a total of $6,000 for each special needs adoption). For these incentive payments, $20 million would be authorized to be appropriated for each of FYs 1999 through 2003, and discretionary budget caps would be adjusted. (Section 201)

10. Technical Assistance to Promote Adoption

House Bill

HHS would be authorized to provide technical assistance to states and localities to promote adoption for foster children, including:

- guidelines for expediting termination of parental rights;
- encouraged use of concurrent planning;
- specialized units and expertise in moving children toward adoption;
- risk assessment tools for early identification of children who would be at risk of harm if returned home;
- encouraged use of fast tracking for children under age 1 into pre-adoptive placements;
- programs to place children into pre-adoptive placements prior to termination of parental rights.

For technical assistance, $10 million would be authorized for each of fiscal years 1998-2000. (Section 12)

Senate Amendment

HHS would be required to provide technical assistance, upon request, to assist states and localities reach their targets for increased numbers of adoptions. No authorization of appropriations would be included. (Section 201)

Conference Agreement

The conference agreement follows the House bill, except HHS would be required to use half of funds appropriated for technical assistance to the courts. (Section 201)

11. Eligibility for Adoption Assistance in Cases of Disrupted Adoptions

House Bill

No provision.

Senate Amendment

Children with special needs who had previously been eligible for federally subsidized adoption assistance under Title IV-E, and who again become available for adoption because of the disruption of their adoption or death of their adoptive parents, would continue to be eligible for federally subsidized adoption assistance under Title IV-E in a subsequent adoption. (Section 307(a))

This provision would only apply to children who become available for adoption due to the disruption of their previous adoption or the death of their adoptive parents, and whose subsequent adoption occurs on or after October 1, 1997. (Section 307(b))

Conference Agreement

The conference agreement follows the Senate bill (with minor technical differences in wording). (Section 307)

12. Health Care Coverage for Special Needs Adopted Children

House Bill

No provision.

Senate Amendment

As a component of their state Title IV-E plans, states would be required to provide for health insurance coverage for any child determined to be a child with special needs, for whom there is an adoption assistance agreement between the state and the adoptive parents, and who the state has determined could not be placed for adoption without medical assistance because the child has special needs for medical or rehabilitative care.

In addition:

- such health insurance coverage could be provided through one or more state medical assistance program;
- the state would ensure that medical benefits, including mental health benefits, would be of the same type and kind as those provided for children by the state under Medicaid;
- if the state provides such health insurance coverage through a program other than Medicaid, and the state exceeds its funding for services under such program, then any such child would be deemed to be Title IV-E-eligible for purposes of Medicaid; and
- in determining cost-sharing requirements, the state would be required to take into consideration the circumstances of the adoptive parents and the needs of the child. (Section 306)

Conference Agreement

The conference agreement follows the Senate amendment, except makes explicit that the state may choose to comply with this provision by covering the child under Medicaid. (Section 306)

13. Interjurisdictional Adoption

House Bill

No provision.

Senate Amendment

As a component of their state Title IV-E plan, states would be required to provide that neither the state nor any other entity in the state that receives federal funds and is involved in adoption would delay or deny the adoptive placement of a child on the basis of the geographic residence of the adoptive parent or child involved. (Section 202(a))

In addition, the Secretary of HHS would be required to appoint an advisory panel to study interjurisdictional adoption issues. The panel would submit a report to the Secretary within 12 months of their appointment, including recommendations for improvements. The Secretary would forward the report to Congress, and, if relevant, make recommendations for legislation. (Section 202(b))

Conference Agreement

The conference agreement follows the Senate amendment, with modifications as follows.

As a component of their Title IV-B state plan, states would be required to assure that the state would develop plans for the effective use of cross-jurisdictional resources to facilitate timely permanent placements for waiting children.

In addition, states would not be eligible for any Title IV-B payment if the Secretary found that, after the date of enactment, a state had denied or delayed the placement of a child when an approved family was available outside the jurisdiction with responsibility for handling the case of the child, or denied to grant an opportunity for a fair hearing to an individual whose allegation of a violation of this provision was denied by the state or not acted upon with reasonable promptness. (Sections 202(a) and (b))

The General Accounting Office (rather than HHS through an advisory panel) would be required to study and report to Congress on interjurisdictional adoption issues. (Section 202(b))

III. System Accountability and Improvement Provisions

14. Permanency Planning Hearings

House Bill

States would be required to hold a first dispositional hearing within 12 months of a child's placement, instead of the current 18, and the name of the proceeding would be changed to "permanency" hearing. The hearing's purpose would be to determine the child's permanency plan, which could include:

- returning home;
- referral for adoption and termination of parental rights;
- guardianship; or
- another planned, permanent arrangement, which could include the custody of a fit and willing relative. (Section 5)

Senate Amendment

States would be required to hold a first dispositional hearing within 12 months of the date the child is considered to have entered foster care, defined as the earlier of the date of the first judicial hearing on the child's removal, or 30 days after the removal. The hearing would be

renamed "permanency planning" hearing, and its purpose would be to determine the child's permanency plan, which could include:

- returning home;
- being placed for adoption and the state would file a petition to terminate parental rights;
- being referred for legal guardianship; or
- (in cases where the state agency has documented to the state court a compelling reason why it would not be in the child's best interest to return home, be referred for termination of parental rights, be placed for adoption, with a qualified relative, or with a legal guardian) being placed in another planned, permanent living arrangement. (Section 302)

Conference Agreement

The conference agreement follows the Senate amendment, except the name of the proceeding is changed to a "permanency" hearing. (Section 302)

15. Participation in Case Reviews and Hearings

House Bill

Foster parents and relatives providing care for a child would be given notice and an opportunity to be heard at any review or hearing held with regard to the child, except that this provision would not be construed to make any foster parent a party to such a review or hearing. (Section 6)

Senate Amendment

Same as House bill, except:

- would also apply to any pre-adoptive parent, or any other individual who has provided substitute care for the child; and
- would make explicit that relative caretakers, pre-adoptive parents, and other individuals who have cared for the child, in addition to foster parents, would not be considered parties to reviews or hearings, solely on the basis of receiving notice and an opportunity to be heard. (Section 105)

Conference Agreement

The conference agreement follows the House bill and Senate amendment, with modifications as follows.

Foster parents and preadoptive parents or relatives providing care for a child would be given notice and an opportunity to be heard at any review or hearing held with regard to the child, except that this provision would not be construed to make any foster parent a party to such a review or hearing, solely on the basis of receiving notice and an opportunity to be heard. (Section 104)

16. Performance Measures for State Child Welfare Programs

House Bill

The Secretary of HHS (in conjunction with the American Public Welfare Association, National Governors Association, and child advocates) would be required to develop outcome measures to assess state child welfare programs, and to rate state performance according to these measures. HHS would submit an annual report to Congress on state performance, with recommendations for improving state performance; the first report would be due on May 1, 1999. Outcome measures would include length of stay in foster care, number of foster care placements, and number of adoptions, and, to the maximum extent possible, would be developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS). (Section 10)

Senate Amendment

The Secretary of HHS would be required to issue an annual report, containing ratings of state performance in protecting children, with the first report due on May 1, 1999. The Secretary would be required to develop outcome measures in consultation with the American Public Welfare Association, National Governors Association, National Conference of State Legislatures, and child welfare advocates, that could track state performance over time in the following categories:

- number of placements for adoption, in foster care, with a relative or a guardian;
- number of children who "age out" of foster care without having been adopted or placed with a guardian;
- length of stay in foster care;
- length of time between a child's availability for adoption and actual adoption;
- number of deaths and substantiated cases of child abuse or neglect in foster care;
- specific steps taken by the state to facilitate permanence for children. (Section 203(a))

In addition, the Secretary of HHS, in consultation with state and local public child welfare officials and child welfare advocates, would be required to develop and recommend to Congress a performance-based incentive funding system for payments under Titles IV-B and IV-E, based (to the extent feasible) on the annual reports required by this provision. The report would be due no later than 6 months after enactment to the House Ways and Means Committee and Senate Finance Committee. (Section 203(b))

Information required by this legislation would be supplied through the Adoption and Foster Care Analysis and Reporting System (AFCARS), to the extent available (see item 27).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with modifications as follows.

The Secretary of HHS (in conjunction with Governors, state legislatures, state and local public officials responsible for administering child welfare programs, and child advocates) would be required to develop outcome measures to assess state child welfare programs, and to rate state performance according to these measures. HHS would submit an annual report to Congress on state performance, with recommendations for improving state performance; the first report would be due on May 1, 1999. Outcome measures would include length of stay in foster care, number of foster care placements, and number of adoptions, and, to the maximum extent possible, would be developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS). (Section 203(a))

In addition, the Secretary of HHS, in consultation with state and local public child welfare officials and child welfare advocates, would be required to develop and recommend to Congress a performance-based incentive funding system for payments under Titles IV-B and IV-E, based (to the extent feasible) on the annual reports required by this provision. No later than 6 months after enactment, the Secretary would report to Congress on the feasibility of a performance-based incentive system, including the process for developing such a system. The report may include other recommendations for restructuring the program and payments under Titles IV-B and IV-E. (Section 203(b))

17. Child Welfare Demonstrations

House Bill

The number of child welfare demonstrations would be increased to 15 states. At least one of the additional demonstrations would have to address the issue of kinship care. (Section 11)

Senate Amendment

The current law limitation on the number of demonstrations that HHS could approve would be eliminated. Demonstrations would have to be designed to achieve one or more of the following goals:

- reducing a backlog of children in long-term foster care or awaiting adoptive placement;
- ensuring an adoptive placement for a child no later than 1 year after the child enters foster care;
- identifying and addressing barriers that result in delays to adoptive placements for children in foster care;
- identifying and addressing parental substance abuse problems that endanger children and result in foster care placement, including through placement of children and parents together in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together to promote family reunification and that can ensure the health and safety of the children;
- overcoming barriers to the adoption of children with special needs resulting from a lack of health insurance coverage for such children; and
- any other goal that the Secretary has already approved on the date of enactment, or, after the date of enactment, specifies by regulation.

In considering applications for waivers from states where there has been a court order determining a state's failure to comply with provisions of Titles IV-B or IV-E or the Constitution, the Secretary would be required to consider the effect of the waiver on the terms and conditions of the court order. (Section 301(a))

This provision would not be construed to affect the terms and conditions of any demonstrations that had been approved as of the date of enactment. (Section 301(b))

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with modifications, as follows.

The Secretary would be authorized to conduct demonstrations that the Secretary finds are likely to promote the objectives of Title IV-B or IV-E. The Secretary would beauthorized to approve no more than 10 such demonstrations in each of FYs 1998 through 2002. If appropriate applications were submitted, the Secretary would be required to consider applications designed to identify and address barriers that result in delays to adoptive placements for foster children; identify and address parental substance abuse problems that endanger children and result in their placement in foster care, including through placement of children and parents together in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together to promote family reunification and that can ensure the health and safety of the children; and to address kinship care. In addition, waivers could be approved only for those states which provide health insurance coverage to any child with special needs for whom there is in effect an adoption assistance agreement between a state and an adoptive parent or parents. (Section 301)

IV. Additional Provisions

18. Reauthorization and Renaming of the Family Preservation Program

House Bill

No provision.

Senate Amendment

The family preservation and family support program under Title IV-B, Subpart 2, would be reauthorized through FY2001, at the following levels: $275 million in FY1999; $295 million in FY2000; and $305 million in FY2001. Existing allocation formula provisions, including a 1% reserve for Indian tribes, would remain intact. Set-asides for court improvement grants and for evaluation and research would also be reauthorized. (Section 305(a))

States would be required to devote significant portions of their expenditures (after spending no more than 10% of their allotment for administrative costs) to each of the following 4

categories of services: community-based family support services, family preservation services, time-limited family reunification services, and adoption promotion and support services.

Time-limited family reunification services would be defined as services and activities provided to children (and their parents) who have been removed from home and placed in foster care, for no longer than the 1-year period beginning on the date of their removal from home, to facilitate the child's safe and appropriate reunification with the family. Such services and activities would be counseling, substance abuse treatment, mental health services, assistance to address domestic violence, and transportation.

Adoption promotion and support services would be defined as services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including certain specified activities.

Subpart 2 of Title IV-B would be renamed: Promoting Adoptive, Safe, and Stable Families. (Section 305(b))

State plans under Subpart 2 would be required to contain assurances that in administering and conducting service programs, the safety of the children to be served would be of paramount concern. Additional references to child safety would be added to the statute. (Section 305(c))

Maintenance of effort provisions in current law would be clarified to define nonfederal funds as meaning state funds, or at the option of the state, state and local funds. This provision would take effect as if included in the Omnibus Budget Reconciliation Act of 1993. (Section 305(d))

Conference Agreement

The conference agreement follows the Senate amendment, except specific examples of adoption promotion and support services would be deleted. The program would be renamed: Promoting Safe and Stable Families. (Section 305)

19. Report on Substance Abuse and Child Protection

House Bill

The Secretary of HHS would be required to submit a report to the Committees on Ways and Means and Finance on the problem of substance abuse in the child welfare population, services provided, and the outcomes of such services. This report would be based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families within HHS, and would be due within 1 year of enactment. The report would include recommendations for legislation. (Section 13)

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment. (Section 405)

20. Kinship Care Report

House Bill

The Secretary of HHS would be required to convene an advisory panel on kinship care no later than March 1, 1998. By the same date, the Secretary would submit an initial report to the advisory panel on the extent to which foster children are placed with relatives. The advisory panel would review the Secretary's initial report and submit comments by July 1, 1998. Based on these comments and other information, the Secretary would submit a final report, by November 1, 1998, to the Committees on Ways and Means and Finance, containing recommendations. (Section 8)

Senate Amendment

Same as House bill (slight differences in data to be collected by advisory panel). (Section 303)

Conference Agreement

The conference agreement follows the Senate amendment, except the dates are changed so that the Secretary would be required to convene the advisory panel, and submit an initial report to the advisory panel, no later than June 1, 1998; the advisory panel would submit comments to the Secretary no later than October 1, 1998; and the Secretary would report to Congress no later than June 1, 1999. (Section 303)

21. Federal Parent Locator Service

House Bill

Child welfare agencies would be authorized to use the Federal Parent Locator Service to assist in locating absent parents. (Section 9)

Senate Amendment

Same as House bill (technical differences in wording). (Section 106)

Conference Agreement

The conference agreement follows the Senate amendment. (Section 105)

22. Eligibility for Independent Living Services

House Bill

The primary target population for independent living services would be revised to include children who are no longer eligible for foster care subsidies under Title IV-E, because they have accumulated assets of up to $5,000. (Section 14)

Senate Amendment

Same as House bill. (Section 304)

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

23. Standby Guardianship

House Bill

It would be the sense of Congress that states should have laws and procedures that would permit a parent who is chronically ill or near death to designate a standby guardian for their minor child, without surrendering their own parental rights. The standby guardian's authority would take effect upon the parent's death, mental incapacity, or physical debilitation and consent. (Section 18)

Senate Amendment

Same as House bill. (Section 403)

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

24. Purchase of American-made Equipment

House Bill

It would be the sense of Congress that, to the greatest extent possible, all equipment and products purchased with funds provided under the Adoption Promotion Act should be American-made. (Section 16)

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. (Section 406)

25. Voluntary Reunions Between Adopted Adults and Birth Parents and Siblings

House Bill

No provision.

Senate Amendment

At the discretion of the Secretary and at no net cost to the federal government, the Secretary would be authorized to use the facilities of HHS to facilitate the voluntary, mutually requested exchange of information by an adult adopted individual (age 21 or older), with a birth parent or adult adopted sibling (age 21 or older), if all individuals involved have consented by notarized statement. A National Voluntary Mutual Reunion Registry would have to meet specified requirements. (Section 404)

Conference Agreement

The conference agreement follows the House bill.

26. Preservation of Reasonable Parenting

House Bill

No provision.

Senate Amendment

Specifies that nothing in this legislation is intended to disrupt the family unnecessarily or intrude inappropriately into family life, or prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. (Section 401)

Conference Agreement

The conference agreement follows the Senate amendment. (Section 401)

27. Use of AFCARS Data

House Bill

No provision.

Senate Amendment

Any information required to be reported by this legislation would be supplied through AFCARS, to the extent available. The Secretary would be required to modify the AFCARS regulations if necessary to allow states to obtain data required by this legislation. (Section 402)

Conference Agreement

The conference agreement follows the Senate amendment. (Section 402)

28. Temporary Reduction in Contingency Fund

House Bill

No provision.

Senate Amendment

The federal matching rate under Medicaid for state expenditures related to skilled professional medical personnel would be reduced to 73%. (Section 405)

Conference Agreement

V. Effective Dates

29. Effective Dates

House Bill

October 1, 1997. If the Secretary determines that states need to enact legislation to comply with state plan requirements imposed by this legislation, a state plan would not be considered out of compliance solely because it fails to meet these requirements until after the close of the next regular session of the state legislature. In states with a 2-year legislative session, each year would be deemed a separate regular session. (Section 15)

Senate Amendment

Same as House bill, except for provisions dealing with termination of parental rights (see item 5), disrupted adoptions (see item 11), and the definition of nonfederal funds under family preservation (see item 18). (Section 501)

Conference Agreement

The conference agreement follows the House bill and Senate amendment, with a modification to change October 1, 1997, to the date of enactment. (Section 501)

F:\M5\SHAW\SHAW.056 H.L.C.

[DISCUSSION DRAFT]

105TH CONGRESS
1ST SESSION

H. RES. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. SHAW submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Providing for the consideration of the bill H.R. 867 and the Senate amendment thereto.

Resolved, That, upon the adoption of this resolution, the House shall be considered to have taken from the Speaker's table the bill H.R. 867 and an amendment of the Senate thereto and to have concurred in the amendment of the Senate with an amendment as follows: in lieu of the matter proposed to be inserted by the Senate, insert the following:

as of last change included yet

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Adoption and Safe Families Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE V—EFFECTIVE DATE

Sec. 501. Effective date.

TITLE I—REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS

SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

(a) IN GENERAL.—Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(15) provides that—

"(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

"(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

"(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

"(ii) to make it possible for a child to safely return to the child's home;

"(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

"(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

"(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

"(ii) the parent has—

"(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial ju-

risdiction of the United States) of another child of the parent;

"(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

"(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

"(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

"(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

"(i) a permanency planning hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and

"(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

"(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);".

(b) DEFINITION OF LEGAL GUARDIANSHIP.—Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

"(7) The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmak-

ing. The term 'legal guardian' means the caretaker in such a relationship.".

(c) CONFORMING AMENDMENT.—Section 472(a)(1) of such Act (42 U.S.C. 672(a)(1)) is amended by inserting "for a child" before "have been made".

(d) RULE OF CONSTRUCTION.—Part E of title IV of such Act (42 U.S.C. 670–679) is amended by inserting after section 477 the following:

"SEC. 478. RULE OF CONSTRUCTION.

"Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D).".

SEC. 102. INCLUDING SAFETY IN CASE PLAN AND CASE REVIEW SYSTEM REQUIREMENTS.

Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended—

(1) in section 422(b)(10)(B)—

(A) in clause (iii)(I), by inserting "safe and" after "where"; and

(B) in clause (iv), by inserting "safely" after "remain"; and

(2) in section 475—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting "safety and" after "discussion of the"; and

(ii) in subparagraph (B)—

(I) by inserting "safe and" after "child receives"; and

(II) by inserting "safe" after "return of the child to his own"; and

(B) in paragraph (5)—

(i) in subparagraph (A), in the matter preceding clause (i), by inserting "a safe setting that is" after "placement in"; and

(ii) in subparagraph (B)—

(I) by inserting "the safety of the child," after "determine"; and

(II) by inserting "and safely maintained in" after "returned to".

SEC. 103. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.

(a) REQUIREMENT FOR PROCEEDINGS.—Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following:

"(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law), or made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

"(i) at the option of the State, the child is being cared for by a relative;

"(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

"(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.".

(b) DETERMINATION OF BEGINNING OF FOSTER CARE.—Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following:

"(F) a child shall be considered to have entered foster care on the earlier of—

"(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

"(ii) the date that is 60 days after the date on which the child is removed from the home.".

(c) TRANSITION RULES.—

(1) NEW FOSTER CHILDREN.—In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act) under the responsibility of a State after the date of the enactment of this Act—

(A) if the State plan under part E of title IV of the Social Security Act comes into compliance with the amendments made by subsection (a) of this section before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and

(B) if the State plan under such part comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

(2) CURRENT FOSTER CHILDREN.—In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall—

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than ⅛ of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time;

(B) not later than 12 months after the end of such first regular session, comply with such

section 475(5)(E) with respect to not less than ⅔ of such children as the State shall select; and

(C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

(3) TREATMENT OF 2-YEAR LEGISLATIVE SESSIONS.—For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

(4) REQUIREMENTS TREATED AS STATE PLAN REQUIREMENTS.—For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child,

including cases where the child has experienced multiple foster care placements of varying durations.

SEC. 104. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 103, is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by adding at the end the following:

"(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.".

SEC. 105. USE OF THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE SERVICES.

Section 453 of the Social Security Act (42 U.S.C. 653) is amended—

(1) in subsection (a)(2)—

(A) in the matter preceding subparagraph (A), by inserting "or making or enforcing child custody or visitation orders," after "obligations,"; and

(B) in subparagraph (A)—

(i) by striking "or" at the end of clause (ii);

(ii) by striking the comma at the end of clause (iii) and inserting "; or"; and

(iii) by inserting after clause (iii) the following:

"(iv) who has or may have parental rights with respect to a child,"; and

(2) in subsection (c)—

(A) by striking the period at the end of paragraph (3) and inserting "; and"; and

(B) by adding at the end the following:

"(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E.".

SEC. 106. CRIMINAL RECORDS CHECKS FOR PROSPECTIVE FOSTER AND ADOPTIVE PARENTS.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(1) by striking "and" at the end of paragraph (18);

(2) by striking the period at the end of paragraph (19) and inserting "; and"; and

(3) by adding at the end the following:

"(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that, in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), for a crime involving violence, including rape, sexual or other physical assault, battery, or homicide, or for a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the

past 5 years, such final approval shall not be granted; and

"(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State.".

SEC. 107. DOCUMENTATION OF EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.

Section 475(1) of the Social Security Act (42 U.S.C. 675(1)) is amended—

(1) in the last sentence—

(A) by striking "the case plan must also include"; and

(B) by redesignating such sentence as subparagraph (D) and indenting appropriately; and

(2) by adding at the end the following:

"(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing rel-

ative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.".

TITLE II—INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

SEC. 201. ADOPTION INCENTIVE PAYMENTS.

(a) IN GENERAL.—Part E of title IV of the Social Security Act (42 U.S.C. 670–679) is amended by inserting after section 473 the following:

"SEC. 473A. ADOPTION INCENTIVE PAYMENTS.

"(a) GRANT AUTHORITY.—Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

"(b) INCENTIVE-ELIGIBLE STATE.—A State is an incentive-eligible State for a fiscal year if—

"(1) the State has a plan approved under this part for the fiscal year;

"(2) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

"(3) the State is in compliance with subsection (c) for the fiscal year;

"(4) in the case of fiscal years 2001 and 2002, the State provides health insurance coverage to any child with special needs (as determined under section 473(c)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

"(5) the fiscal year is any of fiscal years 1998 through 2002.

"(c) DATA REQUIREMENTS.—

"(1) IN GENERAL.—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2) for fiscal years 1995 through 1997 (or, if later, the fiscal year that precedes the 1st fiscal year for which the State seeks a grant under this section)

and for each succeeding fiscal year that precedes such 1st year.

"(2) DETERMINATION OF NUMBERS OF ADOPTIONS.—

"(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 479, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

"(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by November 30,

1997, and approved by the Secretary by March 1, 1998.

"(3) NO WAIVER OF AFCARS REQUIREMENTS.—This section shall not be construed to alter or affect any requirement of section 479 or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

"(d) ADOPTION INCENTIVE PAYMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

"(A) $4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; and

"(B) $2,000, multiplied by the amount (if any) by which the number of special needs adoptions in the State during the fiscal year exceeds the base number of special needs adoptions for the State for the fiscal year.

"(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.—For any fiscal year, if the total

amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

"(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year; multiplied by

"(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

"(e) 2-YEAR AVAILABILITY OF INCENTIVE PAYMENTS.—Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

"(f) LIMITATIONS ON USE OF INCENTIVE PAYMENTS.—A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B or E. Amounts expended by a State in accordance with the preceding sentence shall

be disregarded in determining State expenditures for purposes of Federal matching payments under section 474.

"(g) DEFINITIONS.—As used in this section:

"(1) FOSTER CHILD ADOPTION.—The term 'foster child adoption' means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

"(2) SPECIAL NEEDS ADOPTION.—The term 'special needs adoption' means the final adoption of a child for whom an adoption assistance agreement is in effect under section 473.

"(3) BASE NUMBER OF FOSTER CHILD ADOPTIONS.—The term 'base number of foster child adoptions for a State' means—

"(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

"(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the preceding fiscal year.

"(4) BASE NUMBER OF SPECIAL NEEDS ADOPTIONS.—The term 'base number of special needs adoptions for a State' means—

"(A) with respect to fiscal year 1998, the average number of special needs adoptions in

the State in fiscal years 1995, 1996, and 1997; and

"(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the preceding fiscal year.

"(h) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—For grants under this section, there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 1999 through 2003.

"(2) AVAILABILITY.—Amounts appropriated under paragraph (1) are authorized to remain available until expended, but not after fiscal year 2003.

"(i) TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

"(2) DESCRIPTION OF THE CHARACTER OF THE TECHNICAL ASSISTANCE.—The technical assistance provided under paragraph (1) may support the goal

of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

"(A) The development of best practice guidelines for expediting termination of parental rights.

"(B) Models to encourage the use of concurrent planning.

"(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

"(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

"(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

"(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

"(3) TARGETING OF TECHNICAL ASSISTANCE TO THE COURTS.—Not less than 50 percent of any amount appropriated pursuant to paragraph (4)

shall be used to provide technical assistance to the courts.

"(4) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 1998 through 2000.".

(b) DISCRETIONARY CAP ADJUSTMENT FOR ADOPTION INCENTIVE PAYMENTS.—

(1) SECTION 251 AMENDMENT.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)), as amended by section 10203(a)(4) of the Balanced Budget Act of 1997, is amended by adding at the end the following new subparagraph:

"(G) ADOPTION INCENTIVE PAYMENTS.—Whenever a bill or joint resolution making appropriations for fiscal year 1999, 2000, 2001, 2002, or 2003 is enacted that specifies an amount for adoption incentive payments for the Department of Health and Human Services—

"(i) the adjustments for new budget authority shall be the amounts of new budget authority provided in that measure

for adoption incentive payments, but not to exceed $20,000,000; and

"(ii) the adjustment for outlays shall be the additional outlays flowing from such amount.".

(2) SECTION 314 AMENDMENT.—Section 314(b) of the Congressional Budget Act of 1974, as amended by section 10114(a) of the Balanced Budget Act of 1997, is amended—

(A) by striking "or" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting "; or"; and

(C) by adding at the end the following:

"(6) in the case of an amount for adoption incentive payments (as defined in section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985) for fiscal year 1999, 2000, 2001, 2002, or 2003 for the Department of Health and Human Services, an amount not to exceed $20,000,000.".

SEC. 202. ADOPTIONS ACROSS STATE AND COUNTY JURISDICTIONS.

(a) STATE PLAN REQUIREMENT.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 106, is amended—

(1) in paragraph (19), by striking "and" at the end;

(2) in paragraph (20), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(21) contains assurances that the State shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely permanent placements for waiting children.".

(b) CONDITION OF ASSISTANCE.—Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following:

"(e) Notwithstanding subsection (a), a State shall not be eligible for any payment under this section if the Secretary finds that, after the date of the enactment of this subsection, the State has—

"(1) denied or delayed the placement of a child when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

"(2) failed to grant an opportunity for a fair hearing, as described in section 471(a)(12), to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the State or not acted upon by the State with reasonable promptness.".

(c) STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES.—

(1) IN GENERAL.—The Comptroller General of the United States shall—

(A) study and consider how to improve procedures and policies to facilitate the timely and permanent adoptions of children across State and county jurisdictions; and

(B) examine, at a minimum, interjurisdictional adoption issues—

(i) concerning the recruitment of prospective adoptive families from other States and counties;

(ii) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties;

(iii) arising from a review of the comity and full faith and credit provided to

adoption decrees and termination of parental rights orders from other States; and

(iv) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children.

(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the appropriate committees of the Congress a report that includes—

(A) the results of the study conducted under paragraph (1); and

(B) recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children, including interstate and intercounty adoptions, so that children will be assured timely and permanent placements.

SEC. 203. PERFORMANCE OF STATES IN PROTECTING CHILDREN.

(a) ANNUAL REPORT ON STATE PERFORMANCE.—Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by adding at the end the following:

"SEC. 479A. ANNUAL REPORT.

"The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—

"(1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to parts B and E to ensure the safety of children;

"(2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;

"(3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;

"(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condi-

tion of the State receiving funds under this part; and

"(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved.".

(b) DEVELOPMENT OF PERFORMANCE-BASED INCENTIVE SYSTEM.—The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall develop and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State's performance under such a system. Such a system shall, to the extent the Secretary determines feasible and appropriate, be based on the annual report required by section 479A of the Social Security Act (as added by subsection (a) of this section) or on any proposed modifications of the annual report. Not later than 6 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Ways and Means

of the House of Representatives and the Committee on Finance of the Senate a report on the feasibility of a performance-based incentive system, including the process for developing such a system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.

TITLE III—ADDITIONAL IMPROVEMENTS AND REFORMS

SEC. 301. EXPANSION OF CHILD WELFARE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Section 1130(a) of the Social Security Act (42 U.S.C. 1320a–9) is amended to read as follows:

"(a) AUTHORITY TO APPROVE DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.

"(2) LIMITATION.—The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2001.

"(3) CERTAIN TYPES OF PROPOSALS REQUIRED TO BE CONSIDERED.—

"(A) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address barriers that result in delays to adoptive placements for children in foster care.

"(B) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address parental substance abuse problems that endanger children and result in the placement of children in foster care, including through the placement of children with their parents in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements.

"(C) If an appropriate application therefor is submitted, the Secretary shall consider au-

thorizing a demonstration project which is designed to address kinship care.

"(4) LIMITATION ON ELIGIBILITY.—The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 473(c)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents.".

(b) RULE OF CONSTRUCTION.—Nothing in the amendment made by subsection (a) shall be construed as affecting the terms and conditions of any demonstration project approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9) before the date of the enactment of this Act.

(c) AUTHORITY TO EXTEND DURATION OF DEMONSTRATIONS.—Section 1130(d) of such Act (42 U.S.C. 1320a–9(d)) is amended by inserting ", unless in the judgement of the Secretary, the demonstration project should be allowed to continue" before the period.

SEC. 302. PERMANENCY HEARINGS.

Section 475(5)(C) of the Social Security Act (42 U.S.C. 675(5)(C)) is amended—

(1) by striking "dispositional" and inserting "permanency";

(2) by striking "eighteen" and inserting "12";

(3) by striking "original placement" and inserting "date the child is considered to have entered foster care (as determined under subparagraph (F))"; and

(4) by striking "future status of" and all that follows through "long term basis)" and inserting "permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a qualified relative, or with a legal guardian) placed in another planned permanent living arrangement".

SEC. 303. KINSHIP CARE.

(a) REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall—

(A) not later than June 1, 1998, convene the advisory panel provided for in subsection (h)(1) and prepare and submit to the advisory panel an initial report on the extent to which children in foster care are placed in the care of a relative (in this section referred to as "kinship care"); and

(B) not later than June 1, 1999, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a final report on the matter described in subparagraph (A), which shall—

(i) be based on the comments submitted by the advisory panel pursuant to subsection (b)(2) and other information and considerations; and

(ii) include the policy recommendations of the Secretary with respect to the matter.

(2) REQUIRED CONTENTS.—Each report required by paragraph (1) shall—

(A) include, to the extent available for each State, information on—

(i) the policy of the State regarding kinship care;

(ii) the characteristics of the kinship care providers (including age, income, ethnicity, and race, and the relationship of the kinship care providers to the children);

(iii) the characteristics of the household of such providers (such as number of other persons in the household and family composition);

(iv) how much access to the child is afforded to the parent from whom the child has been removed;

(v) the cost of, and source of funds for, kinship care (including any subsidies such as medicaid and cash assistance);

(vi) the permanency plan for the child and the actions being taken by the State to achieve the plan;

(vii) the services being provided to the parent from whom the child has been removed; and

(viii) the services being provided to the kinship care provider; and

(B) specifically note the circumstances or conditions under which children enter kinship care.

(b) ADVISORY PANEL.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate, shall convene an advisory panel which shall include parents, foster parents, relative caregivers, former foster children, State and local public officials responsible for administering child welfare programs, private persons involved in the delivery of child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts.

(2) DUTIES.—The advisory panel convened pursuant to paragraph (1) shall review the report prepared pursuant to subsection (a), and, not later than October 1, 1998, submit to the Secretary comments on the report.

SEC. 304. CLARIFICATION OF ELIGIBLE POPULATION FOR INDEPENDENT LIVING SERVICES.

Section 477(a)(2)(A) of the Social Security Act (42 U.S.C. 677(a)(2)(A)) is amended by inserting "(including

children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed $5,000, which are otherwise regarded as resources for purposes of determining eligibility for benefits under this part)" before the comma.

SEC. 305. REAUTHORIZATION AND EXPANSION OF FAMILY PRESERVATION AND SUPPORT SERVICES.

(a) REAUTHORIZATION OF FAMILY PRESERVATION AND SUPPORT SERVICES.—

(1) IN GENERAL.—Section 430(b) of the Social Security Act (42 U.S.C. 629(b)) is amended—

(A) in paragraph (4), by striking "or" at the end;

(B) in paragraph (5), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

"(6) for fiscal year 1999, $275,000,000;

"(7) for fiscal year 2000, $295,000,000; and

"(8) for fiscal year 2001, $305,000,000.".

(2) CONTINUATION OF RESERVATION OF CERTAIN AMOUNTS.—Paragraphs (1) and (2) of section 430(d) of the Social Security Act (42 U.S.C. 630(d)) are each amended by striking "and 1998" and inserting "1998, 1999, 2000, and 2001".

(3) CONFORMING AMENDMENTS.—Section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) is amended—

(A) in subsection (c), by striking "1998" each place it appears and inserting "2001"; and

(B) in subsection (d)(2), by striking "and 1998" and inserting "1998, 1999, 2000, and 2001".

(b) EXPANSION FOR ADOPTION PROMOTION AND SUPPORT SERVICES.—

(1) ADDITIONS TO STATE PLAN; MINIMUM SPENDING REQUIREMENTS.—Section 432 of the Social Security Act (42 U.S.C. 629b) is amended—

(A) in subsection (a)—

(i) in paragraph (4), by striking "and community-based family support services" and inserting ", community-based family support services, time-limited family reunification services, and adoption promotion and support services,"; and

(ii) in paragraph (5)(A), by striking "and community-based family support services" and inserting ", community-based family support services, time-limited family

reunification services, and adoption promotion and support services"; and

(B) in subsection (b)(1), by striking "and family support" and inserting ", family support, time-limited family reunification services, and adoption promotion and support".

(2) DEFINITIONS OF TIME-LIMITED FAMILY REUNIFICATION SERVICES AND ADOPTION PROMOTION AND SUPPORT SERVICES.—Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)) is amended by adding at the end the following:

"(7) TIME-LIMITED FAMILY REUNIFICATION SERVICES.—

"(A) IN GENERAL.—The term 'time-limited family reunification services' means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child is removed from the child's home.

"(B) SERVICES AND ACTIVITIES DESCRIBED.—The services and activities described in this subparagraph are the following:

"(i) Individual, group, and family counseling.

"(ii) Inpatient, residential, or outpatient substance abuse treatment services.

"(iii) Mental health services.

"(iv) Assistance to address domestic violence.

"(v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.

"(vi) Transportation to or from any of the services and activities described in this subparagraph.

"(8) ADOPTION PROMOTION AND SUPPORT SERVICES.—The term 'adoption promotion and support services' means services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including such activities as pre-and post-adoptive services and activities designed to expedite the adoption process and support adoptive families.".

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) PURPOSES.—Section 430(a) of the Social Security Act (42 U.S.C. 629(a)) is amended by striking "and community-based family support services" and inserting ", community-based family support services, time-limited family reunification services, and adoption promotion and support services".

(B) PROGRAM TITLE.—The heading of subpart 2 of part B of title IV of the Social Security Act (42 U.S.C. 629 et seq.) is amended to read as follows:

"Subpart 2—Promoting Safe and Stable Families".

(c) EMPHASIZING THE SAFETY OF THE CHILD.—

(1) REQUIRING ASSURANCES THAT THE SAFETY OF CHILDREN SHALL BE OF PARAMOUNT CONCERN.—Section 432 of the Social Security Act (42 U.S.C. 629b), as amended by section 202, is amended—

(A) in paragraph (8), by striking "and" at the end;

(B) by redesignating paragraph (9) as paragraph (10); and

(C) by inserting after paragraph (8), the following:

"(9) contains assurances that in administering and conducting service programs under the plan, the safety of the children to be served shall be of paramount concern; and".

(2) DEFINITIONS OF FAMILY PRESERVATION AND FAMILY SUPPORT SERVICES.—Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting "safe and" before "appropriate" each place it appears; and

(ii) in subparagraph (B), by inserting "safely" after "remain"; and

(B) in paragraph (2)—

(i) by inserting "safety and" before "well-being"; and

(ii) by striking "stable" and inserting "safe, stable,".

(d) CLARIFICATION OF MAINTENANCE OF EFFORT REQUIREMENT.—

(1) DEFINITION OF NON-FEDERAL FUNDS.—Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)), as amended by subsection (b)(2), is amended by adding at the end the following:

"(8) NON-FEDERAL FUNDS.—The term 'non-Federal funds' means State funds, or at the option of a State, State and local funds.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect as if included in the enactment of section 13711 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–33; 107 Stat. 649).

SEC. 306. HEALTH INSURANCE COVERAGE FOR CHILDREN WITH SPECIAL NEEDS.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 106 and 202(a), is amended—

(1) in paragraph (20), by striking "and" at the end;

(2) in paragraph (21), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(22) provides for health insurance coverage (including, at State option, through the program under the State plan approved under title XIX) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an

adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

"(A) such coverage may be provided through 1 or more State medical assistance programs;

"(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under title XIX;

"(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1902(a)(10)(A)(i)(I); and

"(D) in determining cost-sharing requirements, the State shall take into consideration

the circumstances of the adopting parent or parents and the needs of the child being adopted.".

SEC. 307. CONTINUATION OF ELIGIBILITY FOR ADOPTION ASSISTANCE PAYMENTS ON BEHALF OF CHILDREN WITH SPECIAL NEEDS WHOSE INITIAL ADOPTION HAS BEEN DISRUPTED.

(a) CONTINUATION OF ELIGIBILITY.—Section 473(a)(2) of the Social Security Act (42 U.S.C. 673(a)(2)) is amended by adding at the end the following: "Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part in respect of a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).".

(b) APPLICABILITY.—The amendment made by subsection (a) shall only apply to children who are adopted on or after October 1, 1997.

SEC. 308. STATE STANDARDS TO ENSURE QUALITY SERVICES FOR CHILDREN IN FOSTER CARE.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 106, 202(a) and 306, is amended—

(1) in paragraph (21), by striking "and" at the end;

(2) in paragraph (22), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(23) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.".

TITLE IV—MISCELLANEOUS

SEC. 401. PRESERVATION OF REASONABLE PARENTING.

Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.

SEC. 402. REPORTING REQUIREMENTS.

Any information required to be reported under this Act shall be supplied to the Secretary of Health and Human Services through data meeting the requirements of the Adoption and Foster Care Analysis and Reporting System established pursuant to section 479 of the Social Security Act (42 U.S.C. 679), to the extent such data is available under that system. The Secretary shall make such modifications to regulations issued under section 479 of such Act with respect to the Adoption and Foster Care Analysis and Reporting System as may be necessary to allow States to obtain data that meets the requirements of such system in order to satisfy the reporting requirements of this Act.

SEC. 403. SENSE OF CONGRESS REGARDING STANDBY GUARDIANSHIP.

It is the sense of Congress that the States should have in effect laws and procedures that permit any parent who is chronically ill or near death, without surrendering parental rights, to designate a standby guardian for the parent's minor children, whose authority would take effect upon—

(1) the death of the parent;

(2) the mental incapacity of the parent; or

(3) the physical debilitation and consent of the parent.

SEC. 404. TEMPORARY ADJUSTMENT.

[Policy not yet finalized.]

(b) RECOMMENDATIONS FOR IMPROVING THE OPERATION OF THE CONTINGENCY FUND.—Not later than March 1, 1998, the Secretary of Health and Human Services shall make recommendations to the Congress for improving the operation of the Contingency Fund for State Welfare Programs.

SEC. 405. COORDINATION OF SUBSTANCE ABUSE AND CHILD PROTECTION SERVICES.

Within 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health of Human Services, shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population. The report shall include recommendations for any legislation that may be needed to improve coordination in providing such services to such population.

SEC. 408. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.

(a) IN GENERAL.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act should be American-made.

(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act take effect on the date of enactment of this Act.

(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of

the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Family - adoption - legislative

Adoption and Medicaid Options

- Medicaid now covers children who receive Federal adoption assistance under Title IV E.

- States also have the option in 1902(a)(10)(A)(ii)(VIII) to cover children receiving State-funded adoption assistance.

- According to ACF, 44 states opt to cover children receiving State adoption assistance. The six states that do not offer this coverage include: Arizona, California, Colorado, Michigan, New Mexico and Tennessee. As a note, almost all children are eligible for Medicaid (with some premium contribution) in Tennessee given their 1115 waiver. CBO estimates that 2,000 children in these States who receive state adoption assistance but not Medicaid.

- **Original Administration proposal:** The Administration proposed to make the optional eligibility category (1902(a)(10)(A)(ii)(VIII)) a mandatory eligibility category. This proposal would require all states to provide Medicaid to children receiving State-funded adoption assistance. CBO scored this proposal with costs of approximately $35 million over five years. Only those States who do not currently offer this optional eligibility category would incur costs. Congressional staff were opposed to this provision because it places a mandate on States.

- **Options to extend coverage to all states without an explicit mandate:** There are only two basic approaches to getting all states to cover children who receive state adoption assistance:

  1. **Financial incentives**: We could propose 100 percent matching for coverage of these optional children. However, it would be very costly because it would buy out the state spending in the 44 states that already take this option.

  2. **Deeming Children Eligible**: We could propose to deem that children who receive state-funded adoption assistance as children who receive Federal adoption assistance under Title IV-E for the purposes of their Medicaid coverage. All children who receive Title IV-E assistance are eligible for Medicaid. This proposal has the same effect as creating a new mandatory eligibility category, but it may not sound as much like a new Federal mandate on states.

     Advantages of deeming these children as eligible under IV E:

     - **Limits Federal costs:** The only costs are for the Federal share in

the 6 states that have not yet taken this option. CBO estimates that this costs $35 million / 5.

- **Not explicitly creating a new mandatory eligibility category:** This option simply treats children receiving state assistance as though they were receiving Federal IV-E assistance for the purposes of Medicaid eligibility.
- **Most consistent with the effect of the original Chafee-Rockeller adoption bill:** The "de-linking" proposal in the original S. 1150 treated children receiving state-only adoption assistance as receiving IV-E and therefore were eligible for Medicaid.

Other Fall back Options:

1. **Make new adoption assistance funding contingent on States choosing to cover these optionally-eligible these children:** The disadvantage is that [redacted] the amount of new adoption assistance funding is less than the amount of state share of the Medicaid costs for children in these states.

2. **Combine the deeming children eligible via IV E with a limited buy-out of the state share:** Have the Federal government pay for the state share for the 6 states for one year / with a phase-out to the regular matching rate. The disadvantages include: it is administratively difficult, would be inequitable to states that have already taken this option, and the enhanced FMAP could be extended to all States and made permanent -- this would be a costly precedent.

Fax
514-2105

Bruce - FYI. We're trying Option 1 first.
Elena

Fam Pres Reauth - 125

OPTIONS ON DE-LINKING TITLE IV-E ADOPTION ASSISTANCE PROGRAM

Background

The Federal Adoption Assistance Program under title IV-E of the Social Security Act was enacted in 1981 to support the adoption of children with special needs who have been permanently removed from their homes due to abuse or neglect. The program provides reimbursement to the States for a portion of the adoption subsidies used to support the adoption of children whom the State has determined meet the definition of having "special needs" that make them hard to place in adoptive homes. To be eligible to receive the Federal adoption assistance subsidy, the children must meet the statutory definition of special needs and either be eligible for Supplemental Security Income or be removed from a family that meets the eligibility criteria for Aid to Families with Dependent Children (AFDC), as it was in effect on July 16, 1996.*.

The title IV-E adoption assistance program provides reimbursement to the States at the Federal Medical Assistance Percentage (FMAP) for the monthly adoption subsidies to parents who adopt these eligible special needs children, the one-time non-recurring adoption expenses incurred by such parents, and State administrative and training costs associated with the adoption of such children. These children are also eligible for medical assistance under title XIX (Medicaid), and for social services under title XX. While the adoptive parents do not have to meet any financial eligibility criteria in order to receive a title IV-E adoption subsidy, the income of the adoptive parent may be considered in determining the subsidy level. The program supports approximately 150,000 children at an annual cost to the Federal government of over $700 million.

Special needs children who do not meet the requirements for title IV-E reimbursement -- because they neither meet SSI eligibility criteria nor were removed from AFDC-eligible families -- may be eligible for State-funded adoption assistance subsidies. All but three States (PA, SD and WV) provide adoption assistance payments on behalf of adopted special needs children not meeting the Federal title IV-E eligibility requirements, although in several States the State-funded adoption assistance is tied to the adoptive parents' financial eligibility. Most States (all but 6) also provide Medicaid coverage for at least some children receiving State-funded adoption assistance. Such coverage, however, may not be automatic. In addition, families receiving State-funded adoption assistance subsidies may lose access to Medicaid and other State-funded post-legal adoption services when they move from one State to another. These families should continue to receive their State-funded adoption assistance cash subsidies from the State in which the adoption took place.

*The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) bases eligibility for title IV-E adoption assistance on standards for title IV-A (AFDC) as they existed in a State on July 16, 1996. Additionally, PRWORA amended the definition of "childhood disability" under SSI, making the eligibility criteria more restrictive. Therefore, the title IV-E adoption assistance subsidy will not be available to some special needs children who, prior to the passage of PRWORA, would have been eligible for this program, based on their SSI eligibility.

File: Family-adoption-legislation

De-linking Adoption Assistance

The Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS), S. 1195, would amend title IV-E to provide Federal reimbursement (at the FMAP) for all children meeting the Federal statutory definition of special needs criteria who are adopted from the public child welfare system. The proposal would apply retroactively to children in families now receiving State-funded adoption assistance payments, as well as to all special needs children adopted in the future.

This proposal would focus eligibility for all children who may be difficult to adopt on the child's special needs irrespective of the birth parents' financial status or whether the child had a disability severe enough to meet the SSI program eligibility criteria. It would also ensure that adopted children would retain Medicaid coverage when families move from one State to another.

The Congressional Budget Office (CBO) has initially estimated the proposal to cost approximately $2.3 billion over the next five years. The legislation also includes a provision intended to redirect savings accruing to the States to the variety of child welfare and adoption services allowed under title IV-B of the Social Security Act.

Budget Offsets

In order to finance the de-linking adoption assistance provision in S. 1195 or any alternative to that provision, such as Options 1 and 2, below, appropriate budget offsets will need to be identified. (The cost allocation offset identified in the bill is not likely to be available.) In addition, the reauthorization of the Family Preservation and Support Services Act contained in Section 307 of S. 1195, will also require a budgetary offset totaling $200 million over five years. Therefore, in considering the costs of the options presented below it is assumed that the offsets identified to cover any of the de-linking options must be large enough to cover the costs associated with the reauthorization of the Family Preservation and Family Support Services program, as well.

Alternatives to the De-linking Proposal in S. 1195

Following are four policy options, presented as alternatives and/or complementary components to the language in S. 1195. They are designed to achieve the following goals:

- **Provide Medicaid Coverage for All Adopted Children with Special Needs and Prevent Interjurisdictional Loss of Benefits** - Ensure that all special needs children adopted from the public child welfare system (regardless of their eligibility for title IV-E adoption assistance) have access to health care by providing them Medicaid eligibility. Address interjurisdictional issues to prevent adopted children from losing Medicaid benefits when they move from one State to another;

- **Continued title IV-E Eligibility in Cases of Disrupted Adoption** - Ensure that in cases of disrupted adoptions, children who were determined eligible for title IV-E adoption assistance at the time of the original adoption continue to retain their eligibility for title IV-E for adoption assistance and Medicaid;

- **Promoting More Equitable Treatment of Children with Special Needs** - Encourage increased numbers of adoptions and promote greater equity by ensuring that all children meeting special needs criteria are eligible to receive adoption assistance subsidies and health care through Medicaid;

- **Prevent Supplantation of State Adoption Dollars** - Ensure that any savings accruing to the States from de-linking be used for child welfare purposes, especially for providing post-legal adoption services to ensure the stability of adoptive placements and for reunification in those situations where a child can safely return home.

For each option below, the discussion of strengths and limitations details how or whether each option addresses the above goals.

OPTION 1

- **GUARANTEE MEDICAID COVERAGE FOR ALL SPECIAL NEEDS, ADOPTED CHILDREN AND**
- **CONTINUE TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY FOR DISRUPTED ADOPTIONS**

30 m over
4.4 m over

Proposal:
- Amend Federal law to make eligible for Medicaid all children who are adopted from the public child welfare system and who meet the special needs criteria.
- Amend title IV-E to ensure that any child who was determined to be eligible for title IV-E adoption assistance and was subsequently adopted would continue to retain that eligibility should the adoption disrupt.

Discussion:

Under current law, children receiving adoption subsidies that are reimbursed by the Federal government under title IV-E are categorically eligible to receive medical assistance under title XIX. Adopted children with special needs who receive State-funded adoption assistance may or may not be eligible for Medicaid, at State option. Under this option, all children adopted from the public child welfare system who meet the special needs criteria would be eligible to receive Medicaid. The Medicaid eligibility would apply to children already adopted and to children adopted in the future.

In addition, this option includes a proposal to protect adopted children's entitlement to adoption assistance in the event the adoption disrupts. Under current law, a child may be determined eligible for title IV-E reimbursed adoption assistance on the basis of the birth

family's eligibility for AFDC. If the child is then adopted, but the adoption is disrupted, the child could be found no longer eligible for title IV-E adoption assistance because the previous adoptive family's income exceeds AFDC eligibility criteria. Under this proposal, title IV-E would be amended to ensure that any child who was determined to be eligible for title IV-E adoption assistance and was subsequently adopted would continue to retain that eligibility should the adoption disrupt.

Cost: The Congressional Budget Office has estimated that providing Medicaid coverage to all adopted children with special needs would cost approximately $30 million over five years. (Most of this cost would come from extending Medicaid coverage to non-title IV-E eligible adopted children in the six States that do not now provide Medicaid coverage for adopted children receiving State-funded adoption assistance.)

The Department's preliminary estimate of the cost of protecting the title IV-E eligibility for children in disrupted adoptions is $4.4 million over five years, and $19.4 million over ten years. (This estimate is subject to revision based on further analyses.)

Strengths: This option addresses the goals of ensuring Medicaid coverage for all adopted children with special needs, including continued coverage when the family moves from one jurisdiction to another. It also ensures continued title IV-E eligibility in cases of disrupted adoption.

The option also partially addresses the goal of promoting more equitable treatment of children with special needs by ensuring Medicaid coverage for all children with special needs adopted from the public child welfare system, regardless of their title IV-E eligibility status.

Limitations: The option does not address the goal of ensuring more equitable treatment of children in the payment of adoption subsidies, since eligibility for non-Federal adoption assistance would continue to be determined by the State. This most directly affects children in the States of Pennsylvania, South Dakota and West Virginia, which do not operate State-funded adoption assistance programs.

OPTION 2 De-link Adoption Assistance Prospectively Only.

Proposal: • De-link Federally reimbursed Adoption Assistance from AFDC eligibility criteria for all future adoptions from the public child welfare system.

Discussion:

This option is similar to the de-linking proposal in S. 1195, except that the de-linking of title IV-E Federally reimbursed adoption assistance from AFDC criteria would apply prospectively only (i.e. it would only affect future adoptions; it would not affect

reimbursement of adoption subsidies now being paid by the States with State-only funds.) The proposal would ensure that all children with special needs who are adopted in the future will be eligible to receive a Federally-reimbursed adoption subsidy. By definition, this would make all of these children eligible for Medicaid, as well.

Cost: The Department estimates the cost of prospective de-linking at approximately $377 million over five years. However, it should be noted that the cost would continue to rise for a number of years before leveling off. The cost over ten years is estimated at approximately $2.0 billion.

Strengths: This option addresses the goal of promoting more equitable treatment of children with special needs. It would ensure that in the future all children meeting Federal special needs criteria are treated the same in terms of eligibility for adoption assistance subsidies and Medicaid health care coverage, regardless of the financial status of their birth parents.

For all future adoptions, this option also addresses the goals of providing interjurisdictional Medicaid coverage and ensuring continued title IV-E eligibility in cases of disrupted adoption, since children would no longer be at risk of losing Medicaid coverage when a family moves or title IV-E eligibility when an adoption disrupts.

This option also substantially reduces the Federal costs associated with de-linking over the next five years.

Limitations: The option does not address Medicaid coverage or continued title IV-E eligibility for children in disrupted adoption for children who have **already** been adopted. However, if Option 2 were combined with Option 1, these goals would be met as well.

OPTION 3 De-link Adoption Assistance, but Reduce Federal match

Proposal:
- De-link Federally reimbursed Adoption Assistance from AFDC eligibility criteria both prospectively and retrospectively.
- Pay for de-linking by lowering the rate of the Federal match for title IV-E adoption expenses.

Discussion:

This proposal would follow the proposal in S. 1195 to de-link adoption assistance from AFDC eligibility standards. Like S. 1195, it would apply not only prospectively to future adoptions, but retroactively to provide Federal reimbursement for adoption subsidies now being paid through State-only funds. However, the proposal would be made cost-neutral by

adjusting the level of the Federal match paid to States for adoption subsidies.

Under current law, States are reimbursed at the Federal Medical Assistance Percentage (FMAP) for a portion of the cost of adoption subsidies paid to the families of title IV-E eligible children. The rate of reimbursement varies by State, but the national average is about 55 percent. To make the de-linking proposal cost neutral the Federal match for adoption assistance reimbursements would either need to be set at 35 percent across the board, or each State's current FMAP would need to be adjusted downward proportionately by about 37 percent.

Cost: The extension of Medicaid coverage that occurs as a result of the de-linking is estimated by CBO to cost approximately $30 million over five years. The de-linking of adoption assistance would be cost neutral under this proposal.

Strengths: The proposal addresses the goal of equitable treatment of all adopted children with special needs in terms of both adoption subsidies and Medicaid coverage, as well as the issues of interjurisdictional Medicaid coverage and continued adoption assistance for children in disrupted adoptions. The proposal also addresses concerns about the cost in Federal dollars of de-linking, by making the de-linking cost-neutral.

Limitations: Changing the Federal match formula could be politically difficult, since it would create definite "winners and losers" among the States, depending on their current FMAP rate and the number of children in their caseload who have traditionally been title IV-E eligible.

OPTION 4 Develop a Maintenance of Effort (MOE) Provision that Captures Savings in State Costs and Uses them for Children and Families served by the Child Welfare System

Proposal:

- Establish a Maintenance of Effort (MOE) requirement for the States, either on the basis of a baseline dollar amount or as a percentage of the Federal title IV-E adoption assistance expenditures
- Require the States to spend these funds for services for children and families served by the child welfare system.
- Require the States to document their MOE and plans for spending the funds through the title IV-B planning process.

Discussion:

This proposal identifies a mechanism to ensure that any savings achieved by the State through de-linking are used to support post-legal adoption services and reunification services. The proposal could be applied in conjunction with either the de-linking provision currently in

S. 1195 or with Option 2 above. Under this option, States would be required to meet a Maintenance of Effort (MOE) requirement. The requirement could be based either on a baseline dollar amount of what was being spent by the State previously on State-only funded adoption assistance (if the de-linking applies retrospectively), or on the basis of a percentage of the Federal title IV-E adoption assistance expenditures (based on the State's historic State vs. Federal expenditures). Whichever of these methods was used, the States would be required to spend these funds for services for children and families served by the child welfare system. The States would be required to document their MOE and plans for spending the funds through the title IV-B planning process.

Cost: No added Federal costs associated with the MOE provision.

Strengths: The proposal meets the goal of ensuring that Federal dollars do not simply supplant State dollars in supporting adoptions. The proposal would also increase the availability of an array of much needed child welfare services.

Limitations: Because the States vary considerably in what they now expend on State-only adoption assistance, in some States there would be little or no expansion of services.

Discussion

In evaluating any of the above options or the original proposal for de-linking in S. 1195, it is important to be cognizant of the different effects of each proposal on the individual States and the adoptive children and families who live in them. The de-linking of title IV-E adoption assistance from AFDC eligibility criteria will most benefit adopted children and their families in those States that do not now provide State-only adoption subsidies and/or provide Medicaid coverage. Families residing in States that already provide both State-funded adoption assistance and Medicaid coverage will not receive any additional benefits under de-linking.

The financial effects on State budgets will depend on their current State policies with respect to providing Medicaid coverage and State-funded adoption assistance, their current percentage of adopted children that are title IV-E eligible, and their current matching percentage (FMAP). For instance, States that do not now provide State-funded adoption subsidies (or that have more restrictive eligibility criteria for adoption subsidies) will see increased costs, since they will need to cover a percentage of the matching costs for the increased numbers of children who will become eligible for adoption assistance subsidies.

States that have higher FMAP rates (e.g. Arkansas, Mississippi and West Virginia) will benefit more from de-linking than States with a lower FMAP rate (e.g. Illinois and Pennsylvania).

States that have a high percentage of current cases that are title IV-E eligible will benefit relatively less from de-linking than States with lower percentages. For instance, in New

York approximately 90 percent of children adopted from the child welfare system are determined to be title IV-E eligible, whereas in Rhode Island the percentage is only 29. Likewise, States with a high percentage of title IV-E eligible children or no State-only funded adoption assistance program will have an MOE which may be relatively small or even non-existent. To ensure greater equity in the availability of services to children and families funded through an MOE provision, it might be necessary to establish a MOE at a minimum baseline dollar amount or as a percentage (for example, 25 percent) of the Federal title IV-E adoption assistance expenditures for a State.

Family - adoption - legislation

DRAFT--NOT FOR DISTRIBUTION

S. 1195 - The Promotion of Adoption Safety and Support For Abused and Neglected Children (PASS) Act
(Introduced September 18, 1997)
S. Chafee, Craig, Rockefeller, Jeffords, DeWine, Coats, Bond, Landrieu, and Levin

"A bill to promote the adoption of children in foster care, and for other purposes"

Title I: Reasonable Efforts and Safety Requirements for Foster Care and Adoption Placements.

Section 101: Clarification of the reasonable efforts requirement.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision is consistent with current policies and practices that promote child safety and with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- This provision would provide statutory clarification of the significance of safety in making reasonable efforts determinations.

- This provision identifies the relevance and importance of family preservation and support services as well as reunification as a legitimate permanency option. However, the inclusion of the language "when possible" introduces the concept that the decision to make reasonable efforts to preserve a family could be based on the State agency's resources rather than the unique circumstances of the case and the safety of the child. "When possible" could devolve to "when convenient" for the agency.

- This provision promotes permanency by focusing the attention of the judicial system and State agencies on making timely permanent arrangements for children.

- This provision provides statutory support for concurrent planning.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See page 3 of the attached mark-up

Section 102: Including Safety in Case Plan and Case Review System Requirements

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This language is consistent with current policy and with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

This provision provides legislative support for good social work practice.

Section 103: Multidisciplinary/Multiagency Child Death Review Teams

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision builds upon current policy and practice. Most States have State and/or local child death review teams in place or are in the process of developing them. In many places, the scope of child fatalities reviewed is broader than child abuse and neglect (e.g. accidental deaths, fires, etc.) This is one area that has been supported by the Children's Justice Act under CAPTA. In addition, CAPTA now requires States to establish citizen review panels to review the performance of State and local child protective services agencies, including, at the discretion of the panels, a review of child fatalities and near fatalities. However, it is not anticipated that these citizen review panels would conduct forensic reviews of specific child deaths.

POLICY/PRACTICE IMPLICATIONS:

- This proposal would mandate and, to some degree standardize, an activity which has been ongoing in many locations for several years and which has been encouraged but not required by Federal statute.

- The role of the Federal team with respect to "investigating" child deaths occurring on military installations and Indian reservations is unclear. It would be inappropriate for the Federal team to have responsibility for conducting investigations of individual deaths. The Federal team must have funding.

- To ensure that States are not discouraged from reviewing a broader scope of deaths than those outlined in the proposed bill, it might be advisable to add "at a minimum" to the sections outlining the types of deaths to be reviewed and the duties of the State and local teams.

- The list of experts to be represented on the State teams should be expanded to include the fields of child development and social work.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See pages 7, 8, and 10 of the attached mark-up

Section 104: States Required to Initiate or Join Proceedings to Terminate Parental Rights for Certain Children in Foster Care

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision in consistent with *Adoption 2002*'s discussion of model guidelines.

There are no existing Federal statutory requirements for filing or joining termination of parental rights (TPR) based on the length of time a child has been in care.

This provision adds a new requirement for States to begin a "clock" at the time a child is removed from his home pursuant to an allegation of child abuse or neglect.

No existing federal laws define the statutes of limitations for appeals of orders terminating parental rights or orders of removal.

POLICY/PRACTICE IMPLICATIONS:

- States will now be in a position of justifying not filing for a TPR rather than justifying TPR as an appropriate course of action.

- The "clock" should begin at the point the court makes a finding of child abuse and/or neglect and orders the child into a non-emergency foster care placement rather than at the hearing that physically removes the child from home. Services to the child and family do not begin until such an order is made. To begin the clock before the court has determined whether abuse or neglect has occurred would be premature and may constitute an inappropriate intrusion into family life.

- Mandating a 24 month lifetime limit in foster care could have harmful side-effects. Some families experience crises that require periodic foster care episodes. If this provision was enacted, these families, who are reasonably stable most of the time, could be separated permanently.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See pages 11 and 12 of the attached mark-up

Section 105: Notice of Reviews and Hearings; Opportunity to be Heard

This provision requires States to provide notice of and an opportunity to be heard at administrative or court reviews.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

None

POLICY/PRACTICE IMPLICATIONS:

This provision affords foster parents an opportunity to be present and provide information to the courts. The language clarifies that the provision does not make the foster parents a party to the case.

Section 106: Use of the Federal Parent Locator Service for Child Welfare Services

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision is consistent with *Adoption 2002*. It would amend title IV-D.

POLICY/PRACTICE IMPLICATIONS:

- None.

Section 107: Criminal Records Checks for Prospective Foster and Adoptive Parents and Group Care Staff

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision is consistent with current State requirements for screening prospective foster and adoptive parents.

POLICY/PRACTICE IMPLICATIONS:

- It is unclear why individuals with criminal records are required to provide evidence that they would be suitable foster/adoptive parents to law enforcement in addition to the child protection agency. Law enforcement is not involved in making determinations on who may be approved as a foster or adoptive parent, nor do they have any mechanism for utilizing this information.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See page 18 of the attached mark-up

Section 108: Development of State Guidelines to Ensure Safe, Quality Care to Children in Out-of-Home Placements

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision expands current State plan requirements to establish and implement guidelines for ensuring quality in foster care placements. It is generally consistent with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- This provision supports good practice by facilitating the establishment of guidelines for quality service delivery beyond minimum licensing standards.

Section 109: Documentation of Efforts for Adoption or Location of a Permanent Home

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision is generally consistent with *Adoption 2002*. It also creates an additional case plan requirement.

POLICY/PRACTICE IMPLICATIONS:

- This provision supports good practice by more clearly documenting the specific efforts that the State agency is making to achieve permanency for children. This may make it easier for courts and State agency personnel to make informed decisions.

Title II - Incentive for Providing Permanent Families for Children

Section 201. Adoption incentive payments.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

The incentive payments are generally consistent with the Department's recommendations in *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- The dollar amount for the incentives is $2000 less than those proposed in S.511 and in *Adoption 2002*. ACF believes this lower amount will not provide a sufficient incentive for States to achieve the goals of *Adoption 2002*. The original recommendation for $4000 was based on the maximum amount payable to the States to provide a sufficient incentive and remain cost neutral.

- As written, this section makes payment of adoption bonuses contingent upon an appropriation. ACF believes funding for the adoption bonuses should be mandatory.

- The reporting requirements contained in this provision are not consistent with current AFCARS data submission practices. Adhering to the data submission requirements as proposed in this section of S.1195 would result in under-reporting because States typically report data to AFCARS late in the fiscal year or at the beginning of the next fiscal year.

- Paragraph 473A(h) provides funds for bonus payments for fiscal years 1999 through 2003, until expended, but funds may not be used after FY 2003. This limitation conflicts, for purposes of FY 2003, with paragraph (e) of this section which provides for 2-year availability of bonus payments.

ALTERNATIVES:

Increase the adoption bonuses to $4,000 and revise the funding language from discretionary to mandatory.

Revise the language on reporting to eliminate the reference to two State reporting dates and instead specify a date certain (August 1) as the date by which ACF would make a determination of the numbers of adoptions for each State. This change would allow the use of three State submissions to establish each year's adoption figures (the two fiscal year reports and the carry-over data in the next fiscal year report), and permit complete tabulation of annual figures.

ACF suggests revising the cut-off date for the use of funds to allow States to spend fiscal year 2003 money through the end of fiscal year 2004, so that all bonus years are treated the same for purposes of expenditure of funds.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See pages 20 and 22-26 of the attached mark-up

Section 202. Promotion of adoption of children with special needs.

This section of S.1195 amends title IV-E to provide Federal reimbursement (at the Federal Medical Assistance Percentage) for all children meeting the Federal statutory definition of special needs criteria who are adopted from the public child welfare system. The proposal applies retroactively to children in families now receiving State-funded adoption assistance payments, as well as to all special needs children adopted in the future.

The Congressional Budget Office (CBO) has initially estimated the proposal to cost approximately $2.3 billion over the next five years. The legislation also includes a provision intended to redirect savings accruing to the States to the variety of child welfare and adoption services allowed under title IV-B of the Social Security Act.

In order to finance the de-linking adoption assistance provision in S. 1195 or any alternative to that provision, such as Options 1 and 2, below, appropriate budget offsets will need to be identified. (The cost allocation offset identified in the bill is not likely to be available.) In addition, the reauthorization of the Family Preservation and Support Services Act contained in Section 307 of S. 1195, will also require a budgetary offset totaling $200 million over five years. Therefore, in considering the costs of the options presented below it is assumed that the offsets identified to cover any of the de-linking options must be large enough to cover the costs associated with the reauthorization of the Family Preservation and Family Support Services program, as well.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

No, this provision removes the links to AFDC and SSI for the title IV-E Adoption Assistance program. However, it is generally consistent with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- This proposal would focus eligibility for all children who may be difficult to adopt on the child's special needs irrespective of the birth parents' financial status or whether the child had a disability severe enough to meet the SSI program eligibility criteria.

- It would also ensure that adopted children would retain Medicaid coverage when families move from one State to another.

- This provision requires States to reinvest their savings in child welfare services to encourage States to continue their commitment to these children and families. However, the current language does not define State savings and does not provide a mechanism for enforcing the provision. Without a standard by which "savings" are measured, it would be difficult to calculate the savings netted by a State or track whether that amount was spent appropriately. Further, the provision does not require the funds to be used for adoption services.

ALTERNATIVE:

Following are four policy options, presented as alternatives

and/or complementary components to the language in S. 1195. They are designed to achieve the following goals:

- **Interjurisdictional Medicaid Coverage** - Address interjurisdictional issues to prevent adopted children from losing Medicaid benefits when they move from one State to another;

- **Continued title IV-E Eligibility in Cases of Disrupted Adoption** - Ensure that in cases of disrupted adoptions, children who were determined eligible for title IV-E adoption assistance at the time of the original adoption continue to retain their eligibility for title IV-E for adoption assistance and Medicaid;

- **Promoting More Equitable Treatment of Children with Special Needs** - Encourage increased numbers of adoptions and promote greater equity by ensuring that all children meeting special needs criteria are eligible to receive adoption assistance subsidies and health care through Medicaid;

- **Prevent Supplantation of State Adoption Dollars** - Ensure that any savings accruing to the States from de-linking be used for child welfare purposes, especially for providing post-legal adoption services to ensure the stability of adoptive placements and for reunification in those situations where a child can safely return home.

For each option below, the discussion of strengths and limitations details how or whether each option addresses the above goals.

OPTION 1

- **GUARANTEE MEDICAID COVERAGE FOR ALL SPECIAL NEEDS, ADOPTED CHILDREN AND**
- **CONTINUE TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY FOR DISRUPTED ADOPTIONS**

Proposal:

- Amend Federal law to make eligible for Medicaid all children who are adopted from the public child welfare system and who meet the Federal special needs criteria.

- Amend title IV-E to ensure that any child who was determined to be eligible for title IV-E adoption assistance and was subsequently adopted would continue to retain that eligibility should the adoption disrupt.

Discussion:

Under current law, children receiving adoption subsidies that are reimbursed by the Federal government under title IV-E are categorically eligible to receive medical assistance under title XIX. Adopted children with special needs who receive State-funded adoption assistance may or may not be eligible for Medicaid, at State option. Under this option, all children adopted from the public child welfare system who meet the Federal special needs criteria would be eligible to receive Medicaid. The Medicaid eligibility would apply to children already adopted and to children adopted in the future.

In addition, this option includes a proposal to protect adopted children's entitlement to adoption assistance in the event the adoption disrupts. Under current law, a child may be determined eligible for title IV-E reimbursed adoption assistance on the basis of the birth family's eligibility for AFDC. If the child is then adopted, but the adoption is disrupted, the child could be found no longer eligible for title IV-E adoption assistance because the previous adoptive family's income exceeds AFDC eligibility criteria. Under this proposal, title IV-E would be amended to ensure that any child who was determined to be eligible for title IV-E adoption assistance and was subsequently adopted would continue to retain that eligibility should the adoption disrupt.

Cost:

The Congressional Budget Office has estimated that providing Medicaid coverage to all adopted children with special needs would cost approximately $30 million over five years. (Most of this cost would come from extending Medicaid coverage to non-title IV-E eligible adopted children in the six States that do not now provide Medicaid coverage for adopted children receiving State-funded adoption assistance.)

The Department's preliminary estimate of the cost of protecting the title IV-E eligibility for children in disrupted adoptions at $4.1 million over five years, and $18.0 million over ten years. (This estimate is subject to revision based on further analyses.)

Strengths:

This option addresses the goals of providing interjurisdictional Medicaid coverage and ensuring continued title IV-E eligibility in cases of disrupted adoption.

The option also partially addresses the goal of promoting

more equitable treatment of children with special needs by ensuring Medicaid coverage for all children with special needs adopted from the public child welfare system, regardless of their title IV-E eligibility status.

Limitations:

The option does not address the goal of ensuring more equitable treatment of children in the payment of adoption subsidies, since eligibility for non-Federal adoption assistance would continue to be determined by the State. This most directly affects children in the States of Pennsylvania, South Dakota and West Virginia, which do not operate State-funded adoption assistance programs.

OPTION 2 De-link Adoption Assistance Prospectively Only.

Proposal:
- De-link Federally reimbursed Adoption Assistance from AFDC eligibility criteria for all future adoptions from the public child welfare system.

Discussion:

This option is similar to the de-linking proposal in S. 1195, except that the de-linking of title IV-E Federally reimbursed adoption assistance from AFDC criteria would apply prospectively only (i.e. it would only affect future adoptions; it would not affect reimbursement of adoption subsidies now being paid by the States with State-only funds.) The proposal would ensure that all children with special needs who are adopted in the future will be eligible to receive a Federally-reimbursed adoption subsidy. By definition, this would make all of these children eligible for Medicaid, as well.

Cost:

The Department estimates the cost of prospective de-linking at approximately $377 million over five years. However, it should be noted that the cost would continue to rise for a number of years before leveling off. The cost over ten years is estimated at approximately $2.0 billion.

Strengths:

This option addresses the goal of promoting more equitable treatment of children with special needs. It would ensure that in the future all children meeting Federal special needs criteria are treated the same in terms of eligibility for adoption assistance subsidies and Medicaid health care coverage, regardless of the financial status of their birth

parents.

For all future adoptions, this option also addresses the goals of providing interjurisdictional Medicaid coverage and ensuring continued title IV-E eligibility in cases of disrupted adoption, since children would no longer be at risk of losing Medicaid coverage when a family moves or title IV-E eligibility when an adoption disrupts.

This option also substantially reduces the Federal costs associated with de-linking over the next five years.

Limitations:

The option does not address interjurisdictional Medicaid coverage or continued title IV-E eligibility for children in disrupted adoption for children who have **already** been adopted. However, if Option 2 were combined with Option 1, these goals would be met as well.

OPTION 3 De-link Adoption Assistance, but Reduce Federal match

Proposal:

- De-link Federally reimbursed Adoption Assistance from AFDC eligibility criteria both prospectively and retrospectively.
- Pay for de-linking by lowering the rate of the Federal match for title IV-E adoption expenses.

Discussion:

This proposal would follow the proposal in S. 1195 to de-link adoption assistance from AFDC eligibility standards. Like S. 1195, it would apply not only prospectively to future adoptions, but retroactively to provide Federal reimbursement for adoption subsidies now being paid through State-only funds. However, the proposal would be made cost-neutral by adjusting the level of the Federal match paid to States for adoption subsidies.

Under current law, States are reimbursed at the Federal Medical Assistance Percentage (FMAP) for a portion of the cost of adoption subsidies paid to the families of title IV-E eligible children. The rate of reimbursement varies by State, but the national average is about 55 percent. To make the de-linking proposal cost neutral the Federal match for adoption assistance reimbursements would either need to be set at 35 percent across the board, or each State's current FMAP would need to be adjusted downward proportionately by about 37 percent.

Cost:

The extension of Medicaid coverage that occurs as a result of the de-linking is estimated by CBO to cost approximately $30 million over five years. The de-linking of adoption assistance would be cost neutral under this proposal.

Strengths:

The proposal addresses the goals of equity, as well as the issues of interjurisdictional Medicaid coverage and continued adoption assistance for children in disrupted adoptions. The proposal also addresses concerns about the cost in Federal dollars of de-linking, by making the de-linking cost-neutral.

Limitations:

Changing the Federal match formula could be politically difficult, since it would create definite "winners and losers" among the States, depending on their current FMAP rate and the number of children in their caseload who have traditionally been title IV-E eligible.

OPTION 4 Develop a Maintenance of Effort (MOE) Provision that Captures Savings in State Costs and Uses them for Children and Families served by the Child Welfare System

Proposal:

- Establish a Maintenance of Effort (MOE) requirement for the States, either on the basis of a baseline dollar amount or as a percentage of the Federal title IV-E adoption assistance expenditures
- Require the States to spend these funds for services for children and families served by the child welfare system.
- Require the States to document their MOE and plans for spending the funds through the title IV-B planning process.

Discussion:

This proposal identifies a mechanism to ensure that any savings achieved by the State through de-linking are used to support post-legal adoption services and reunification services. The proposal could be applied in conjunction with either the de-linking provision currently in S. 1195 or with Option 2 above. Under this option, States would be required to meet a Maintenance of Effort (MOE) requirement. The

requirement could be based either on a baseline dollar amount of what was being spent by the State previously on State-only funded adoption assistance (if the de-linking applies retrospectively), or on the basis of a percentage of the Federal title IV-E adoption assistance expenditures (based on the State's historic State vs. Federal expenditures). Whichever of these methods was used, the States would be required to spend these funds for services for children and families served by the child welfare system. The States would be required to document their MOE and plans for spending the funds through the title IV-B planning process.

Cost:

No added Federal costs associated with the MOE provision.

Strengths:

The proposal meets the goal of ensuring that Federal dollars do not simply supplant State dollars in supporting adoptions. The proposal would also increase the availability of an array of much needed child welfare services.

Limitations:

Because the States vary considerably in what they now expend on State-only adoption assistance, in some States there would be little or no expansion of services.

Discussion

In evaluating any of the above options or the original proposal for de-linking in S. 1195, it is important to be cognizant of the different effects of each proposal on the individual States and the adoptive children and families who live in them. The de-linking of title IV-E adoption assistance from AFDC eligibility criteria will most benefit adopted children and their families in those States that do not now provide State-only adoption subsidies and/or provide Medicaid coverage. Families residing in States that already provide both State-funded adoption assistance and Medicaid coverage will not receive any additional benefits under de-linking.

The financial effects on State budgets will depend on their current State policies with respect to providing Medicaid coverage and State-funded adoption assistance, their current percentage of adopted children that are title IV-E eligible, and their current matching percentage (FMAP). For instance, States that do not now provide State-funded adoption

subsidies (or that have more restrictive eligibility criteria for adoption subsidies) will see increased costs, since they will need to cover a percentage of the matching costs for the increased numbers of children who will become eligible for adoption assistance subsidies.

States that have higher FMAP rates (e.g. Arkansas, Mississippi and West Virginia) will benefit more from de-linking than States with a lower FMAP rate (e.g. Illinois and Pennsylvania).

States that have a high percentage of current cases that are title IV-E eligible will benefit relatively less from de-linking than States with lower percentages. For instance, in New York approximately 90 percent of children adopted from the child welfare system are determined to be title IV-E eligible, whereas in Rhode Island the percentage is only 29. Likewise, States with a high percentage of title IV-E eligible children or no State-only funded adoption assistance program will have an MOE which may be relatively small or even non-existent. To ensure greater equity in the availability of services to children and families funded through an MOE provision, it might be necessary to establish a MOE at a minimum baseline dollar amount or as a percentage (for example, 25 percent) of the Federal title IV-E adoption assistance expenditures for a State.

Section 203. Technical assistance.

This section provides the Secretary the authority to provide technical assistance to States in meeting their goals for moving children to adoptive or other permanent placements.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision supports the Department's proposal in *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- None; however, ACF suggests that technical assistance emphasize expediting TPR, especially for infants (children under 1 year of age).

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See pages 29 and 30 of the attached mark-up

Section 204. Adoptions across State and county jurisdictions.

This provision provides a new title IV-E State plan requirement which forbids the State from delaying or denying

foster or adoptive placements based on the geographic location of the potential foster/adoptive parent. This provision also requires the Department to convene an advisory panel for studying interjurisdictional adoption issues.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

Currently, the placement of children in adoptive homes across State jurisdictions is governed by the Interstate Compact on the Placement of Children (ICPC). The Interstate Compact on Adoption and Medical Assistance (ICAMA) is the mechanism relied upon by its members to regulate and coordinate the interstate delivery of services to adopted children with special needs. The Federal government has not been involved in the policy discussions and/or decisions of the ICPC. It is; however, generally consistent with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- The "delay/deny" language suggests that the rights of potential adoptive/foster parents are being infringed upon if geography is considered in making placement decisions.

- This provision is consistent with the title IV-B State plan recruiting requirements and would be most appropriately addressed through the joint planning process.

- The foster home language in this provision creates conflicting requirements within the title IV-E program. The case plan provision at section 475(5)(A) requires foster care placements to be "... in close proximity to the parents home..." Including foster home placements in this provision would interfere with timely family reunification.

- The creation of an advisory panel responsible for studying adoption across State and county jurisdictions supports the Department's recommendation, in *Adoption 2002*, to consider placements across geographical boundaries when in the best interest of the child.

- The Department will require additional funding to convene the advisory panel and complete the required study.

ALTERNATIVES:

ACF suggests this section be revised to amend title IV-B rather than title IV-E. Additionally, rather than framing interjurisdictional barriers to making placements as a "rights" issue, ACF suggests reframing this section to require States to develop plans for the effective use of

cross-jurisdictional resources to facilitate timely permanent placements for children.

ACF strongly suggests removing the references to foster home placements since foster care is temporary and a child's placement in a foster home is not considered permanent, as are adoptive placements.

ACF must have funding to convene the advisory panel and complete the interjurisdictional study.

Section 205. Facilitation of voluntary mutual reunions between adopted adults and birth parents and siblings.

This provision authorizes the Department to facilitate reunions between adoptees and their birth families.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

No Federal statute regulates adoption files for the purpose of facilitating contact between birth parents and adopted children. Forty-six States have adoption registries that provide information to birth families, adoptive parents, and adoptees. The type and amount of information varies from State to State.

POLICY/PRACTICE IMPLICATIONS:

- Currently States legislate whether to "open" adoption files for the purpose of facilitating contact between birth parents and adopted children. This provision would require the Department to become involved in the confidential, State regulated process of facilitating contact between adopted children and their birth parents.

- The provision states that the Department, "at no net expense to the Federal Government, may use the facilities...to facilitate the voluntary, mutually requested reunion...." It is doubtful that this can be done "at no net expense."

DEPARTMENT POSITION:

The decision to facilitate contact between adoptees and their birth parents is one that requires careful consideration by and emotional preparation of all parties. This process should be supported and monitored by appropriate clinical staff. The Department lacks appropriate staff, facilities and infrastructure to be able to support this provision. Additionally, this is a State function. Therefore, ACF recommends that the section be deleted.

Section 206: Annual Report on State Performance in Protecting Children

This section requires the Secretary to issue an annual report containing ratings of the performance of each State in protecting children who are placed in foster care, for adoption, or with a relative or guardian.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This section of the bill reflects an interest in moving forward with the development of outcome measures and the broad dissemination of State-level data on key indicators. This interest in outcomes supports implementation of the Government Performance and Results Act (GPRA) and builds on work HHS has already undertaken in this area.

The proposal is basically consistent with the commitment made by the Department in the *Adoption 2002* report to issue an annual State-by-State report, beginning in the Spring of 1999, on the Nation's progress in meeting the adoption goals, as well as on measures that reflect the experience of children in the child welfare system, such as the length of time in care and the timeliness of permanency decisions.

In addition, the proposal would complement the revised child and family services monitoring strategy in which States are asked to use data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS), as well as to the National Child Abuse and Neglect Data System (NCANDS), to help assess their performance in achieving safety and permanency for children.

POLICY/PRACTICE IMPLICATIONS:

- While the overall purpose and scope of this activity is consistent with current policy and plans, some of the specific data elements in the statute are problematic, either because they are unclear, duplicative of other data reporting requirements, and/or they cannot be obtained from AFCARS. Because AFCARS is now in a capacity building mode of collecting the existing data elements, it would be disruptive to the improvement of foster care and adoption data collection to amend the AFCARS requirements at this time.

- A preferred alternative would be to follow language similar to that in the House bill, H.R. 867, that lays out general categories of information and then calls upon the Secretary to develop the specific measures, in consultation with the States and other stakeholders. The rating system

should also be developed in consultation with the States and other stakeholders.

- The bill's date for the first report, October 8, 1998, does not allow enough time to develop the outcome measures, rating system and complete analysis of data. It should be moved to a later date (possibly May 1999, to be consistent with *Adoption 2002* and the House bill.)

Title III: Additional Improvements and Reforms

Section 301: Expansion of Child Welfare Demonstration Projects

This provision expands the current child welfare waiver authority to five more States.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision would accommodate the Department in evaluating a wider variety of innovations and is consistent with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

ACF would support up to 10 additional waivers.

Section 302: Permanency Planning Hearings

This provision amends section 475 of the Social Security Act to: change the name of the "dispositional" hearing to "permanency planning" hearing; change the date of the permanency planning hearing from 18 months after original placement to 12 months; and, requires 6 month permanency planning reviews thereafter.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

The goal of the proposal, early and active permanency planning for all children, is consistent with current policy and *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

We agree with the 12 month time frame for dispositional hearings but have some reservations regarding the requirement for a dispositional hearing at six month intervals.

Under current law, reviews are required every six months following the dispositional (proposed permanency) hearing, but these reviews may be either administrative or judicial.

Requiring the six month hearing to be a judicial hearing would put considerable burden on the courts and might undermine the ability of the courts to provide a meaningful review of the child's permanent plan. In some jurisdictions, for instance, a judicial review may be a 5 minute, pro forma hearing without substance, while administrative reviews may be much more substantive. ACF believes States should have the flexibility to decide whether the reviews should be judicial or administrative given their own systems and constraints.

ALTERNATIVE:

ACF suggests using the language in HR 867.

FOR SUGGESTED CHANGES IN THE LEGISLATIVE LANGUAGE:

See page 38 of the attached mark-up

Section 303: Kinship Care

This section requires the Secretary to develop a report on the status of and trends in kinship care in every State, to be reviewed by an advisory board.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

Promoting kinship care is consistent with current practice and *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- The Department has a significant amount of information from previous workgroups, providers, and research that will provide a foundation for responding to this provision.

- This provision does not allocate resources to the Department for convening an advisory panel.

- The deadline for completing the report is ambitious given the status of the AFCARS system and the amount of information requested.

Section 304: Standby Guardianship

Provision is a "Sense of Congress" that States should have laws and procedures that permit a parent who is chronically ill or near death to designate a standby guardian for his/her minor child.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision provides Congressional support for good social work practice, i.e., advanced permanency planning. It is basically consistent with *Adoption 2002*.

IMPLICATIONS FOR POLICY/PRACTICE:

Section is a "Sense of Congress" and places no requirements on States.

Section 305: Clarification of Eligible Population for Independent Living Services

This provision amends section 477 of the Social Security Act to require States to provide Independent Living (IL) services to those youth who have become ineligible for title IV-E because their resources are in excess of the limit. However, their resources may not exceed $5,000.

The existing funding formula for the Independent Living Program is based on 1984 foster care caseloads. This formula does not reflect current caseloads and it excludes the Territories from participating in the Independent Living program because none of the Territories was operating title IV-E programs in 1984.

The existing authorization for appropriation is $70 million and has remained at that level since 1984. It is insufficient to meet current caseloads.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This provision expands the pool of children the State is mandated to serve in the IL program.

IMPLICATIONS FOR POLICY/PRACTICE:

- This provision would potentially extend critical services to a larger population.

Section 306: Coordination and Collaboration of Substance Abuse Treatment and Child Protection Services

Sections 306(a) is not germane to ACF. Section 306(b) amends the Substance Abuse Prevention and Treatment Block Grant (SAPT) to broaden the current preference for services to pregnant women to include caretaker parents with children who have been referred to treatment by child welfare agencies. Section 306(c) provides title IV-E foster care maintenance payments for children placed in residential programs with their parents. This provision is limited to

families with a case plan goal of reunification; the family has never been in a similar residential program before; and, the foster care maintenance payment cannot exceed the amount that would have made if the child was placed in a traditional foster care placement.

CONSISTENT WITH CURRENT POLICY/PRACTICE:

No.

POLICY/PRACTICE IMPLICATIONS:

- The Administration has been working with the States to provide greater flexibility in using the SAPT funds while maintaining accountability through performance measures. Adding an additional population preference would reduce State flexibility to set their own priorities and would be inconsistent with current efforts to increase State flexibility.

- To be eligible for title IV-E, the child must, in part, be physically removed from home/parents and there must be a judicial determination that it is contrary to the child's welfare to remain at home. Additionally, children must be placed in licensed foster family homes or child care institutions. Children placed in residential facilities with their parent(s) would not meet the aforementioned title IV-E eligibility criteria, nor is it likely that these facilities would be licensed as child-care facilities. Therefore, any child placed in a residential facility with his/her parent would not be eligible for title IV-E.

- Section 306(c) provides an expansive list of issues upon which the parent's placement in the residential facility may be based. Parents may be addressing issues such as substance abuse, homelessness, post-partum depression, domestic violence, teen pregnancy, etc. Overwhelmingly, the parent's need to participate in in-patient substance abuse treatment is the issue which brings children to the foster care system.

- The provision provides little guidance or requirements regarding services the child is to receive while in residential care with his/her parent(s).

ALTERNATIVES:

SAMHSA recommends deleting the section which provides preferential treatment to caretaker relatives and instead, recommends that SAMHSA and ACF collaborate on a letter to the States from both agencies stressing the importance of providing substance abuse services to caretaker parents and

the need for their priority treatment, while still providing States with the flexibility to make the final decision.

ACF would prefer to test the efficacy of section 306(c) prior to making it national policy. There are a variety of options for testing this provision. ACF will work with the committee to identify the most appropriate.

ACF also suggests limiting section 306(c) to participation in residential substance abuse programs.

Section 307: Reauthorization and Expansion of Family Preservation and Support Services

CONSISTENT WITH CURRENT POLICY/PRACTICE:

- For the most part this is a straight-line reauthorization consistent with current policy and practice. The explicit addition of time limited reunification services to the program is new, but these services were always allowable and are efforts whose value we recognize.

POLICY/PRACTICE IMPLICATIONS:

- The bill requires that States allocate a minimum of 25% of funds to each of family support, family preservation and time-limited family reunification services. Currently, the statutory requirement is that "significant portions" of the State's allotment be spent on both family support and family preservation (which can include family reunification services). In practice, most States have spent at least 25% of their funds in each of these areas, but have had great flexibility in how they allocated the remaining 50% of funds. Nationally, about 60% of funds have been allocated to community-based family support services.

- The proposal to require that at least 25% of funds be allocated in each of the three areas, family support, family preservation and family reunification, significantly restricts State flexibility (leaving, in effect, only 25% of funds open to State discretion.) The relatively rigid funding allocation among the three types of services may undermine the State planning processes that have guided the development of new community-based and in-home services and jeopardize commitments put in place for community-based services over the past five years.

- This provision provides for time-limited reunification services to be available for 12 months from when a child is removed from his home; which is consistent with the "clock" notion in Section 104. To retain this consistency, ACF recommends the "clock" for time-limited reunification

services also begin at the time there is a court finding of abuse or neglect.

- The definition of reunification services should be amended to include only outpatient/community based services. The cost of inpatient and residential substance abuse treatment would severely limit the number of families that could be served using these funds.

- The elimination of the Court Improvement grants is not consistent with the additional burden this bill places on the courts. In addition, the courts need to continue their efforts to improve the quality and timeliness of permanency decisions for children.

- Technical changes in the reauthorization of the program are needed, including: additional language on 'safety' in description of FPS services, 5 year cycles for State plans, definitions of Indian tribes and Indian Tribal Organizations, timing of the submission of annual reports, elimination of the special rule, and elimination of unnecessary conforming amendments and effective date.

- A number of other substantive changes not addressed in the bill would also be desirable, including: expanded purpose of the program, added principles for developing and operating family preservation and support, raising tribal funding to 2 percent, reversed order of family support and preservation definitions, State plan requirement to coordinate with TANF and CAPTA, and raising the approval minimum for tribal plans to $15,000.

ALTERNATIVES:

- Delete the reference to in-patient and/or residential substance abuse treatment in the definition of "time-limited" reunification services.

- Amend the minimum 25 percent allocation of funding to require a "significant portion" of funds to be spent on each service.

- Amend the provision which begins the "clock" for time-limited reunification services to be consistent with ACF's recommendation for the TPR "clock" in Section 104. The "clock" for both would begin when there is a court finding of maltreatment.

- Add the reauthorization of the Court Improvement Program.

- Make technical corrections to the FPS and State Court Assessment and Improvement program as necessary.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See page 51 of the attached mark-up

Section 308: Innovation Grants to Reduce Backlogs of Children Awaiting Adoption and for Other Purposes

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This grant program is consistent with and expands existing programs of the same nature. It is consistent with *Adoption 2002*.

POLICY/PRACTICE IMPLICATIONS:

- The provision, which requires the Secretary to promulgate regulations for implementing this section within 60 days of enactment, is unrealistic and unnecessary. This section provides Secretarial authority to use ACF's existing protocol which is already sufficient for implementing grant programs.

- The interim and final reports to Congress required in Section 478(g)(2) could place a significant administrative burden on ACF and will require additional resources to carry them out.

ALTERNATIVE:

Strike references to regulations in sections 478(b)(9), 478(c)(3) and 478(h) for the reasons stated above.

FOR SUGGESTED CHANGES TO THE LEGISLATIVE LANGUAGE:

See pages 53, 54, and 56 of the attached mark-up

Title IV: Miscellaneous

Section 401: Preservation of Reasonable Parenting

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This statement is consistent with current policy and practice.

POLICY/PRACTICE IMPLICATIONS:

- The language is unnecessary, since the law only applies to procedures involving cases of child abuse and neglect (as defined under State laws) in which children are removed from their homes following appropriate agency and court determinations. The law

does not address parenting or disciplinary practices. While probably neutral in its effect, the language could raise concerns about providing avenues in Federal law for individuals to challenge State child abuse laws as interfering with family life and parental disciplinary practices.

Section 402: Reporting Requirements

CONSISTENT WITH CURRENT POLICY/PRACTICE:

This section is basically consistent with current policy and practice in that it affirms AFCARS as the major system for collecting data on children in foster care and children who are adopted from the foster care system. The section also reaffirms the ability of the Secretary to modify the AFCARS regulations, when necessary, to obtain needed information from the States.

POLICY/PRACTICE IMPLICATIONS:

- As noted above, because AFCARS is now in a capacity building mode of collecting the existing data elements, it would be disruptive to the improvement of foster care and adoption data collection to amend the AFCARS requirements at this time.

Section 403: Report on Fiduciary Obligations of State Agencies Receiving SSI Payments

CONSISTENT WITH CURRENT POLICY/PRACTICE

Not applicable.

POLICY/PRACTICE IMPLICATIONS

None.

Section 404: Allocation of Administrative Costs of Determining Eligibility for Medicaid and TANF

CONSISTENT WITH CURRENT POLICY/PRACTICE

Prior to welfare reform, States allocated or charged common administrative costs from public assistance programs, such as those for determining eligibility, to AFDC (the "primary program"). The TANF block grant funding levels included these costs. After the welfare reform law and in accordance with current law and common accounting practice, States are now free to propose new cost allocation plans that shift these administrative costs to Medicaid and Food Stamps in the proportion that they benefit from the activities ("benefitting program"). While some 20 States have proposed new plans that move to the benefitting approach, the Department has, at OMB's request, delayed acting on them while various legislative

proposals have been pending.

HHS's task force on cost allocation had recommended States move from a "primary program" cost allocation method toward a "benefitting program" concept whereby costs are allocated across the programs benefitting from the activities. (OMB has not acted upon our request to approve this approach.) This provision would move back toward a primary program model.

It is possible that CBO will consider this provision an unfunded mandate on State governments as they have done for similar provisions appearing in other bills. In addition, the Agriculture Committee may be concerned over the inclusion of the Food Stamps program in the provision because that is not under the Finance Committee's jurisdiction and because the provision overlaps with an offset the Agriculture Committee intended to use for other purposes.

POLICY/PRACTICE IMPLICATIONS:

- The bill seeks to force States to define administrative costs in the same manner as they did prior to the enactment of welfare reform. However, such a definition conflicts with the intention of the PRWORA to grant States the flexibility to operate programs in various and innovative ways. In addition, our proposed TANF regulations would allow States to define administrative costs to meet the needs of their unique programs. Passage of this bill will constrain State program flexibility by defining administrative costs according to outdated methods.

- In response to welfare reform, many States adopted new program cultures and restructured their organizations accordingly. In addition to eligibility determinations, programs are also focusing on moving recipients to work. Such shifts in programmatic goals and organization will require States to adopt new methods for cost allocation.

- There are several problematic issues regarding the enforceability of this provision. (1) The term "primary program" is not a commonly used term, nor has it been defined in law. The bill requires that we generate a definition and determine if States are using this primary program approach. (2) Statistics from 1995 point-in-time studies will be difficult to apply to 1997 activities. States have a strong case against this practice and they are likely to challenge us in court. (3) A single audit would not cover the actions specified in the proposed legislation. HHS would have to spend much time to ensure State compliance and we simply lack the resources to do this.

DATE: 10/16/97

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REMARKS: Here's talking points for the Chafee/Rockefeller meeting at 5:15 in Room 505 Dirksen. I'm giving to Rich too. We need to figure out a little more what we say about NO on cost allocation. Maybe we can send hand signals about our speaking roles... Anyway, I'll be here until the meeting.

Adoption - Talking Pts - re Chafee/Rockefeller

Praise their leadership/expertise/hard work

We're extremely grateful to Laurie and Barbara for all their hard work on this.

The President, First Lady and Secretary strongly committed to our Adoption 2002 goals; aware of key role L/B and bosses played in bringing the bipartisan group of Senators together, and keeping their eye on the important issues...

Strong desire to continue working together to get legislation passed and signed this year -- goal we all share - know the downsides of waiting till next year

Many aspects of initial C/R bill and new PASS bill that we support - especially those elements of Adoption 2002.
i.e. bonuses, expedited permanency planning, reasonable efforts clarification, strengthening TPR, innovation grants

Plus, strongly support the reauthorization of family pres.

Also support the steps PASS take to address the specific problems that have been identified with the current IVE adoption assistance program -- ensuring Medicaid for all special needs children and maintaining eligibility for special needs children from disrupted adoptions.

Thus, in addition to the bonuses and procedural changes regarding reasonable efforts, TPR, permanency that we've discussed with you before, we're prepared to offer our support for the following spending elements in PASS:

1. Medicaid for all special needs children
   approximately $30 million over 5

2. Continued IVE eligibility for disrupted adoptions
   approximately $5 million over 5

3. Reauthorization of family preservation at increased level in your bill
   approx $100 million over 5

While we do not support the use of cost allocation as an offset for these measures, we're prepared to recommend alternatives offset for the approximately $150 m cost of these items.

Know the overall delinking proposal is important to you, but we cannot support it for several reasons:
(1) we do not believe that the policy will lead to more children being adopted -- instead, we view it as a cost shift from the states to the feds.
(2) we believe the cost is prohibitive in a time of very

limited resources and (as you know, we have been unable to get the $21 million we requested for adoption in the Labor/HHS bill).
(3) we do not agree that we should take over what has been a state responsibility
(4) on balance and in light of other children's and domestic needs, this is not a priority we can support.

We think our offer is a very strong package, politically and policy-wise and one we can sell to the House as well.

We have not discussed this package with anyone else at this stage. Wanted first to discuss it with you and figure out the most useful strategies for getting this done quickly. Given where we are, se see two strategic options.

(1) A Conference Strategy
This is the package we would fight for in conference - and would be as supportive as possible for Senate approval of your larger package

We'd be prepared to send very positive letter to Senate on PASS, outlining key areas we support and some general expression of concern about cost issues.

We'd help you round up votes for your bill among Democrats and Republicans if possible.

(2) Senate strategy
Make these changes so we could fully support on Senate floor.

Hope we can come to some resolution to next steps and work cooperatively to get to signing ceremony