

## **BACKGROUND ON 9/24/97 ADOPTION MEETING**

The purpose of the meeting is to be briefed by HHS on the recently introduced Senate child welfare bill and explore Administration strategy.

On Thursday, September 18, a bi-partisan group of Senators -- including Senators Rockefeller, Chafee, Craig, Jeffords, Dewine, Bond, Coats, Levin and Landrieu -- announced an agreement on child welfare legislation, called the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS). The PASS Act represents the Senate version of the House adoption legislation which passed this past Spring, which the Administration endorsed. Through the Spring and Summer, Rockefeller had prevented speedy Senate consideration of the House bill, in order to work on more ambitious Senate legislation. The PASS Act incorporates many elements of the Administration's *Adoption 2002* initiative, including the principle of health and safety for children in foster care, financial incentives for states to meet adoption targets, clarification of the "reasonable efforts" standard, and shortened waiting times for children in foster care. The PASS Act also includes other measures, including judicial reforms and health coverage for special needs children who are adopted (effectively de-linking adoption assistance from IV-E eligibility). Unlike the House bill, the Senate Act has budget implications (roughly estimated at \$2.4 billion -- CBO has not yet scored), paid for by savings from "cost-allocation" -- ensuring that states do not shift TANF administrative costs to other federal entitlement programs, such as Medicaid and food stamps.

Attached are: a one-page description of PASS, the Congressional Research Service side-by-side of introduced legislation, and the PASS legislation, as introduced on 9/18/97.

### **Meeting Participants**

The First Lady  
Melanne Verveer  
Bruce Reed  
Elena Kagan  
Gene Sperling  
Janet Murguia  
Jennifer Klein  
Nicole Rabner  
OMB TBD

Donna Shalala  
Olivia Golden  
Rich Tarplan  
Mary Burdette

September 23, 1997

MEMORANDUM

TO: Hillary Rodham Clinton  
FROM: Nicole Rabner, Jennifer Klein  
cc: Melanne Verveer  
RE: Tomorrow's Meeting on Adoption

The purpose of tomorrow's meeting is to be briefed by HHS on the recently introduced Senate child welfare bill and explore Administration strategy. We participated with HHS in a briefing by key staff of Senators Rockefeller and Chafee on the PASS Act, and they expressed an eagerness to work with the Administration. Rockefeller and Chafee plan to hold a one-day Finance Committee hearing on the bill on October 8th, and hope that it goes directly to the floor for speedy passage. They urged our support.

As you know, the other important purpose of this meeting is to speed up what might otherwise be a lengthy Administration review.

Background

As you know, on Thursday, September 18, a bi-partisan group of Senators -- including Senators Rockefeller, Chafee, Craig, Jeffords, Dewine, Bond, Coats, Levin and Landrieu -- announced an agreement on child welfare legislation, called the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS). The PASS Act represents the Senate version of the House adoption legislation which passed this past Spring, which the Administration endorsed. Through the Spring and Summer, Rockefeller had prevented speedy Senate consideration of the House bill, in order to work on more ambitious Senate legislation. The PASS Act incorporates many elements of the Administration's *Adoption 2002* initiative, including the principle of health and safety for children in foster care, financial incentives for states to meet adoption targets, clarification of the "reasonable efforts" standard, and shortened waiting times for children in foster care. The PASS Act also includes other measures, including judicial reforms and health coverage for special needs children who are adopted (effectively de-linking adoption assistance from IV-E eligibility).

Unlike the House bill, the Senate Act, as you know, has budget implications (roughly estimated at \$2.4 billion, although CBO has not yet scored the bill), paid for by savings from "cost-allocation" -- ensuring that states do not shift TANF administrative costs to other federal entitlement programs, such as Medicaid and food stamps. The Administration has been on record as supporting some version of cost allocation. As you might suspect, however, there are many competing causes trying to capture this pot of savings (for instance, Agriculture research spending). Rockefeller's argument is that if we are going use this savings for something, it should be for measures that re-invests in this same population.

Attached please find a one-page description of the PASS Act, the Congressional Research Service side-by-side of the introduced legislation from the House and Senate, and the PASS legislation, as introduced on 9/18/97, as well as the *Adoption 2002* report.

Meeting Participants

The First Lady  
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Bruce Reed  
Elena Kagan  
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## **CALL WITH SENATOR JAY ROCKEFELLER TALKING POINTS**

- We're so pleased that you were able to reach bi-partisan agreement on what looks like a promising and ambitious bill. I know it has taken many months of hard work and is in large measure due to your leadership and commitment.
- From the one-page description that I have seen, I was pleased to see that you have incorporated many of the elements of the Administration's Adoption initiative, as well as taking on some other difficult issues. [e.g. judicial reform]
- We look forward to getting the details, so that we can quickly review the agreement and, I hope, add our endorsement. I plan to ask Donna Shalala to ensure that this analysis gets the priority attention it deserves.
- I can't tell you how strongly I feel that this gets done this year. You and I both know that the adoption community has been waiting for these positive changes for some time. The House passed its adoption bill, which made important progress. We now need speedy Senate consideration, which I know will take your strong and persistent leadership. I believe, with all of us working together, we will have a bill that we can all be proud of this year. [Stress urgency -- reforms are critical].

**\*\*Please note that Sen. Rockefeller is scheduled to participate in a press conference with a bi-partisan group on this agreement at 1:30 pm today.**

**\*\*The agreement includes Senators Chafee, Craig, Rockefeller, Jeffords, Dewine, Bond, Coats and Landrieu.**

JOHN D. ROCKEFELLER IV  
WEST VIRGINIA

## United States Senate

WASHINGTON, DC 20510-4802

October 10, 1997

Dear Madam ~~Secretary~~,  
*Dennis*

It was good to talk to you about adoption and the Senate effort that I am helping to lead in order to forge a grand compromise that could lead to the swift enactment of a strong adoption bill, secure new resources for abused and neglected children, and avoid any administrative caps on the food stamp program.

While I understand that "cost allocation" is a difficult issue for the states and HHS, I believe that we face the stark choice of either using the opportunity provided by cost allocation or accepting a cap on food stamp administrative costs, the latter which poses the likely prospect of a push later for administrative caps on Medicaid, too. Given these the realities we see in Congress, with an intensely supported agricultural bill financed by food stamp administrative funds, I believe that the best strategy is to work together to develop an acceptable approach to cost allocation which would also help us to secure new funding for services for abused and neglected children and preempt current and future efforts to cap food stamps or Medicaid.

Since this is such a complicated process, let me recap our potential compromise and provide detailed papers on cost allocation from the Center on Budget and the Congressional Research Service.

As I explained, Senator Chafee has just proposed to Senator Lugar's favorable reception that the Senate accept a form of cost allocation that would encourage states to keep TANF and Medicaid programs aligned and still capture the potential CBO savings by prohibiting states from shifting administrative costs to avoid the 15% administrative cap imposed under welfare reform. Preliminary CBO scores of our cost allocation option are expected to yield \$1.6 billion in savings over 5 years. The proposal is to split those savings between the Senate adoption bill and the Senate agriculture research bill, providing each legislative initiative with \$800 million in offsets. To tailor the Senate PASS Act to fit this compromise, Chafee and I would agree to phase-in the delinkage of special needs adoptions to only cover future adoptions. This is estimated to cost approximately \$700 million over 5 years and still allow for the \$100 million increase for Family Preservation/Family Support included in the PASS Act.

While complicated, this compromise would address many of the issues that could delay the enactment of adoption legislation this session. First, the agreement resolves the funding conflict between the Finance Committee and the Agriculture Committee in a positive way that avoids the direct cap of administrative costs for food stamps. Next, the legislation provides desperately needed funding for abused and neglected children through the maintenance of effort

The Honorable Donna Shalala

October 10, 1997

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standard requiring states to convert any savings from adoption subsidies into the existing child welfare system. Given the new expectations and demands we impose on states to move children into adoption and safe, permanent homes, additional financial resources will be crucial for real success and systemic change.

Finally, the PASS Act seeks to reauthorize Family Preservation- Family Support, a worthwhile initiative started by President Clinton in 1993. I was proud to work with the President and you to create this program, and want to find a way to continue it despite the new environment in Congress. I believe it is essential to move this reauthorization in tandem with our language to clarify reasonable efforts, so that we can reassure the skeptics that the Family Support dollars will not contribute to further abuse and neglect of children.

Donna, I acknowledge that this is a complicated compromise, but I am convinced that it is our best chance to enact adoption legislation now, to provide financial assistance to the struggling child welfare system, and to avoid the dangerous precedent of administrative caps for food stamps and Medicaid. If we work together, we can achieve all of our goals.

Thank you for all your work and energy on behalf of children and families. Best regards.

Sincerely,



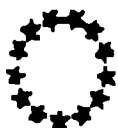
John D. Rockefeller IV

The Honorable Donna Shalala  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

*Donna, please ~~use~~ the underlinings, but I feel so strongly this is the right way to go. We can pass this legislation, and we need you now side!*

*- Jay -*

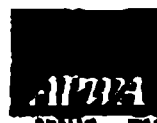
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**NATIONAL  
GOVERNORS  
ASSOCIATION**



National Conference of State Legislatures



AMERICAN PUBLIC WELFARE ASSOCIATION



National Association of Counties  
County Care for America

October 9, 1997

The Honorable Thomas A. Daschle  
Minority Leader  
United States Senate  
U.S. Capitol S-221  
Washington, D.C. 20510

Dear Senator Daschle:

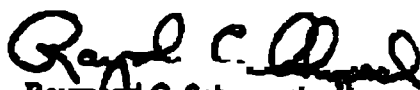
On behalf of the National Governors' Association, the National Conference of State Legislatures, the National Association of Counties, and the American Public Welfare Association, we write to express our strong opposition to the funding mechanism in the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act, S. 1195. We specifically are concerned with Sec. 404 which would require states and counties to allocate to the Temporary Assistance for Needy Families (TANF) block grant those administrative costs shared with other federal means-tested programs such as food stamps and Medicaid.

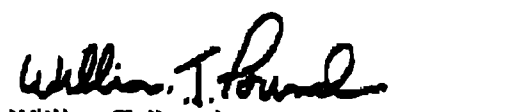
According to preliminary estimates from the Congressional Budget Office, requiring states to designate TANF as the "primary" program would shift \$300 to 400 million annually in food stamp costs from the federal government to states and counties. Additional costs would be shifted to states from the Medicaid program. Clearly, this provision is a violation of the Unfunded Mandates Reform Act of 1995 and would be subject to a point of order.

States are now operating welfare programs under a fixed TANF block grant with a 15 percent administrative cap. Under the proposal in the PASS bill, costs that would have been considered legitimate food stamp and Medicaid administrative costs would now be subject to the TANF cap or shifted to states and localities. For states that have always apportioned some shared costs among the relevant programs, the provision would require states to transfer these costs into the TANF block grant. All states are concerned about the impact of increased administrative costs that may result from new federal requirements or from caseload increases because of natural disasters, economic downturns, or population increases. The PASS proposal does not allow any adjustments for these factors.

Although promotion of the adoption of children in foster care is an important public policy goal, our organizations cannot support legislation that places a financial burden on states and counties by reducing federal spending on other programs for vulnerable children and families. We urge you to look for a different funding mechanism before proceeding with Senate consideration of S. 1195.

Sincerely,

  
Raymond C. Schappach  
Executive Director  
National Governors' Association

  
William T. Pound  
Executive Director  
National Conference of State Legislatures

October 9, 1997  
Page two



Larry E. Naake  
Executive Director  
National Association of Counties



A. Sidney Johnson, III  
Executive Director  
American Public Welfare Association

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, we 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

## **Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS)**

The result of a comprehensive bi-partisan effort on behalf of children and families, the purpose of PASS is to promote adoptions and safety for abused and neglected children by clarifying that a child's health and safety are the paramount considerations when a state makes any decision concerning the well-being of a child in the foster care system.

### **I. PROMOTES ADOPTIONS**

- Rewards States that increase adoptions with bonus of \$2000 for adoptions of foster children and \$4000 for adoptions of children with special needs
- Requires States to use "reasonable efforts" to move eligible foster care children towards safe adoptions
- Promotes adoption of all special needs children and ensures health coverage for special needs children who are adopted
- Breaks down unnecessary geographic barriers facing adoptive families
- Requires States to document and report adoption efforts

### **II. ENSURES SAFETY FOR ABUSED AND NEGLECTED CHILDREN**

- Ensures that health and safety are paramount concerns when a State determines placements for abused and neglected children
- Adds "safety of the child" to every step of the case plan and review process
- Requires criminal records checks for all foster and adoptive parents
- Allows children to be freed for adoption more quickly in extreme cases such as murder or severe abuse by their parents

### **III. ACCELERATES PERMANENT PLACEMENTS**

- Cuts by 1/3 the time a child must wait for a plan to achieve a safe and permanent home
- Requires states to initiate court proceedings to free a child for adoption once that child has been waiting in foster care for one year or more
- Gives judges the discretion not to initiate legal proceedings in special circumstances such as when a child is safely placed with loving relatives
- Shortens a child's wait for adoption by allowing states to develop a standby (or concurrent) permanency plan
- Prevents long, legal delays through the appeals process

### **IV. INCREASES ACCOUNTABILITY AND REFORMS**

- Establishes new outcome measures to monitor and improve state performance
- Requires states, for the first time, to document child-specific efforts to move children into adoptive homes
- Introduces innovation grants to reduce backlogs of children awaiting adoption
- Strengthens and integrates substance abuse treatment with protections for children
- Continues investments in strengthening families at the community level
- Establishes a plan for public oversight of suspicious child deaths

September 18, 1997

CONGRESSIONAL RECORD—SENATE

S9645

would support an expanded harvest level. However, New England's past has taught us that in an unregulated environment, this current healthy condition could rapidly be reversed. Given the present lack of a Federal fishery management plan for herring and questionable scientific information on the status of the stocks, the uncontrolled expansion of this fishery could have devastating consequences.

We need to slow down the increase in fishing power entering the herring fishery, and we need to give the New England Council the time to develop a thoughtful Federal management plan for herring that responds to local interests and needs. While I had hoped that the council and the Secretary of Commerce would be able to accomplish these goals through the process established by the Magnuson-Stevens Act and other fishery laws, it has become clear in recent weeks that we must impose temporary legislative safeguards until that process is complete.

The bill which Senators SNOWE, KENNEDY, and I are introducing today, the North Atlantic Fisheries Resource Conservation Act, provides those safeguards. First, by September 30, 1998, the New England and Mid-Atlantic Councils and the Secretary of Commerce are required to develop and implement both a fishery management plan for herring and a plan amendment for Atlantic mackerel. Second, a fishing vessel that is longer than 165 feet or has engines that exceed 3,000 horsepower is prohibited from harvesting either herring or mackerel until the councils and the Secretary have addressed the potential impact of such vessels in the management plan.

While the provisions of the North Atlantic Fisheries Resource Conservation Act are specific to two Northeast fisheries, the issues which they address should become part of a broader national policy debate about our vision for the American fishing industry in the 21st century. For over two decades, our fishery policies have focused on two goals: conservation and management of U.S. fishery resources and development of the domestic fishing industry. We have succeeded beyond our expectations in achieving the second goal of developing the U.S. fishing industry. I am optimistic that the Sustainable Fisheries Act will move us toward achieving the first goal of improving conservation and management. With the achievement of those goals, however, come new questions. What do we want our fishing industry to look like in the years to come? What should we as a nation do to preserve traditional coastal communities centered on small-boat fishermen? What restrictions if any should be placed on enormous factory trawlers? In New England, these large ships conjure up memories of foreign factory trawlers vacuuming up and destroying U.S. fishery resources in the days before the Magnuson-Stevens Act. Are such ships an appropriate element in other U.S. fisheries?

The legislation before us today focuses on the actions needed to safeguard the Atlantic herring and mackerel fisheries. However, I look forward to the broader debate. By the prompt enactment of this legislation I hope we can contribute to that debate and begin to shift the national example set by New England fisheries from one of overfishing and painful rebuilding toward one of conservative management that is successful in preserving both the fishermen and the fish.

By Mr. CHAFEE (for himself, Mr. CRAIG, Mr. ROCKEFELLER, Mr. JEFFORDS, Mr. DEWINE, Mr. COATS, Mr. BOND, Ms. LANDRIEU, and Mr. LEVIN):

S. 1195. A bill to promote the adoption of children in foster care, and for other purposes; to the Committee on Finance.

THE PROMOTION OF ADOPTION SAFETY AND SUPPORT FOR ABUSED AND NEGLECTED CHILDREN ACT

Mr. CHAFEE. Mr. President, I am pleased to introduce the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act, the so-called PASS Act. This legislation will make critical reforms to the Nation's child welfare and foster care system and will go a long way toward improving the lives of the hundreds of thousands of abused and neglected children across America. These are children without a safe family setting. They are children who face abuse and neglect every day of their lives. They are America's forgotten children. And, all too often, they are children without hope.

This chilling picture has brought the sponsors of this bill together to take immediate action. The goals of the PASS Act are twofold: to ensure that abused and neglected children are in safe settings, and to move children more rapidly out of the foster care system and into permanent placements.

While the goal of reunifying children with their biological families is laudable, we should not be encouraging States to return abused or neglected children to homes that are clearly unsafe. Regrettably, this is occurring under current law.

About 500,000—half a million—abused or neglected children currently live outside their homes, either in foster care or with relatives. In Rhode Island alone, there are nearly 1,500 children who have been removed from their homes and are in foster care. The Rhode Island Department of Children and Families has an active case load of about 7,700 children who have been abused or neglected.

Many of these children will be able to return to their parents, but many will not. Too often, children who cannot return to their parents wait for years in foster care before they are adopted. In today's child welfare system, it has become a lonely and tragic wait with no end. To us, that is an unacceptable way of life for any child to have to endure.

The PASS Act seeks to shorten the time a child must wait to be adopted, all the while ensuring that wherever a child is placed, his or her safety and health will be the first concern.

The PASS Act also contains important new financial incentives to help these children find adoptive homes. State agencies will receive bonuses for each child that is adopted, and families who open their hearts and their homes to these children will be eligible for Federal financial assistance and Medicaid coverage for the child.

I believe the PASS Act is a good bipartisan, compromise package. The sponsors of this bill have worked hard to come together in support of a child welfare reform bill. And we expect this new, revised legislation to move quickly through the Senate, as the Majority Leader has indicated that adoption legislation is one of a select few priorities to be dealt with before expected adjournment in early November.

But the real reason we need to move this bill is not because of legislative haste. It is because each passing day we do not act to bring hope and relief to abused and neglected children is a dark day for Congress and the Nation.

Finally let me thank my friend JAY ROCKEFELLER, who has worked so tirelessly on these issues and whose leadership was key to this bill. I also want to pay special tribute to LARRY CRAIG—without his commitment to these children this agreement would not have been possible. I am proud of this bipartisan effort, and I hope all of my colleagues will support this measure. I ask unanimous consent that the full text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1195

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act".

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

Sec. 1. Short title; table of contents.

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

Sec. 101. Clarification of the reasonable efforts requirement.

Sec. 102. Including safety in case plan and case review system requirements.

Sec. 103. Multidisciplinary/multiagency child death review teams.

Sec. 104. States required to initiate or join proceedings to terminate parental rights for certain children in foster care.

Sec. 105. Notice of reviews and hearings; opportunity to be heard.

Sec. 106. Use of the Federal Parent Locator Service for child welfare services.

Sec. 107. Criminal records checks for prospective foster and adoptive parents and group care staff.

Sec. 108. Development of State guidelines to ensure safe, quality care to children in out-of-home placements.

Sec. 109. Documentation of efforts for adoption or location of a permanent home.

#### TITLE II—INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

Sec. 201. Adoption incentive payments.

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

Sec. 203. Technical assistance.

Sec. 204. Adoptions across State and county jurisdictions.

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

Sec. 206. Annual report on State performance in protecting children.

#### TITLE III—ADDITIONAL IMPROVEMENTS AND REFORMS

Sec. 301. Expansion of child welfare demonstration projects.

Sec. 302. Permanency planning hearings.

Sec. 303. Kinship care.

Sec. 304. Standby guardianship.

Sec. 305. Clarification of eligible population for independent living services.

Sec. 306. Coordination and collaboration of substance abuse treatment and child protection services.

Sec. 307. Reauthorization and expansion of family preservation and support services.

Sec. 308. Innovation grants to reduce backlogs of children awaiting adoption and for other purposes.

#### TITLE IV—MISCELLANEOUS

Sec. 401. Preservation of reasonable parenting.

Sec. 402. Reporting requirements.

Sec. 403. Report on fiduciary obligations of State agencies receiving SSI payments.

Sec. 404. Allocation of administrative costs of determining eligibility for medicaid and TANF.

#### 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.

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, as described in this section, the child's health and safety shall be the paramount concern;

"(B) reasonable efforts shall be made to preserve and reunify families when possible—

"(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 when the child can be cared for at home without endangering the child's health or safety; or

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

"(C) reasonable efforts shall not be required on behalf of any parent—

"(i) if a court of competent jurisdiction has made a determination that the parent has—

"(I) committed murder of another child of the parent;

"(II) committed voluntary manslaughter of another child of the parent;

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

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

"(ii) if a court of competent jurisdiction determines that returning the child to the home of the parent 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 with respect to a sibling of the child); or

"(iii) if the State, through legislation, has specified cases in which the State is not required to make reasonable efforts because of serious circumstances that endanger a child's health or safety;

"(D) if reasonable efforts to preserve or reunify a family are not made in accordance with subparagraph (C), and placement with either parent would pose a serious risk to the child's health or safety, or in any case in which a State's goal for the child is adoption or placement in another permanent home, reasonable efforts shall be made to place the child in a timely manner with an adoptive family, with a qualified relative or legal guardian, or in another planned permanent living arrangement, and to complete whatever steps are necessary to finalize the adoption or legal guardianship; and

"(E) reasonable efforts of the type described in subparagraph (D) may be made concurrently with reasonable efforts of the type described in subparagraph (B);".

##### 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) (as redesignated by section 5592(a)(1)(A)(iii) of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 644))—

(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. MULTIDISCIPLINARY/MULTIAGENCY CHILD DEATH REVIEW TEAMS.

(a) STATE CHILD DEATH REVIEW TEAMS.—Section 471 of the Social Security Act (42 U.S.C. 671) is amended by adding at the end the following:

"(o)(1) In order to investigate and prevent child death from fatal abuse and neglect, not later than 2 years after the date of the enactment of this subsection, a State, in order to be eligible for payments under this part, shall submit to the Secretary a certification that the State has established and is maintaining, in accordance with applicable confidentiality laws, a State child death review team, and if necessary in order to cover all counties in the State, child death review teams on the regional or local level, that shall review child deaths, including deaths in which—

"(A) there is a record of a prior report of child abuse or neglect or there is reason to

suspect that the child death was caused by, or related to, child abuse or neglect; or

"(B) the child who died was a ward of the State or was otherwise known to the State or local child welfare service agency.

"(2) A child death review team established in accordance with this subsection should have a membership that will present a range of viewpoints that are independent from any specific agency, and shall include representatives from, at a minimum, specific fields of expertise, such as law enforcement, health, mental health, and substance abuse, and from the community.

"(3) A State child death review team shall—

"(A) provide support to a regional or local child death review team;

"(B) make public an annual summary of case findings;

"(C) provide recommendations for system-wide improvements in services to investigate and prevent future fatal abuse and neglect; and

"(D) if the State child death review team covers all counties in the State on its own, carry out the duties of a regional or local child death review team described in paragraph (4).

"(4) A regional or local child death review team shall—

"(A) conduct individual case reviews;

"(B) recommend followup procedures for child death cases; and

"(C) suggest and assist with system improvements in services to investigate and prevent future fatal abuse and neglect."

(b) FEDERAL CHILD DEATH REVIEW TEAM.—Section 471 of the Social Security Act (42 U.S.C. 671), as amended by subsection (a), is amended by adding at the end the following:

"(d)(1) The Secretary shall establish a Federal child death review team that shall consist of at least the following:

"(A) Representatives of the following Federal agencies who have expertise in the prevention or treatment of child abuse and neglect:

"(i) Department of Health and Human Services.

"(ii) Department of Justice.

"(iii) Bureau of Indian Affairs.

"(iv) Department of Defense.

"(v) Bureau of the Census.

"(B) Representatives of national child-serving organizations who have expertise in the prevention or treatment of child abuse and neglect and that, at a minimum, represent the health, child welfare, social services, and law enforcement fields.

"(2) The Federal child death review team established under this subsection shall—

"(A) review reports of child deaths on military installations and other Federal lands, and coordinate with Indian tribal organizations in the review of child deaths on Indian reservations;

"(B) upon request, provide guidance and technical assistance to States and localities seeking to initiate or improve child death review teams and to prevent child fatalities; and

"(C) develop recommendations on related policy and procedural issues for Congress, relevant Federal agencies, and States and localities for the purpose of preventing child fatalities."

##### SEC. 104. 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 12 of the most recent 18 months, or for a lifetime total of 24 months, or, if a court of competent jurisdiction has determined an infant to have been abandoned (as defined under State law), or made a determination that the parent has committed murder of another child of such parent, committed voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter, or committed a felony assault that results in serious bodily injury to the surviving child or to another child of such 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; or

"(ii) a State court or State agency has documented a compelling reason for determining that filing such a petition would not be in the best interests of 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 latter of—

"(i) the first time the child is removed from the home; or

"(ii) the date of the first judicial hearing on removal of the child from the home."

(c) ELIMINATION OF UNNECESSARY COURT DELAYS.—

(1) ONE-YEAR STATUTE OF LIMITATIONS FOR APPEALS OF ORDERS TERMINATING PARENTAL RIGHTS.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 5591(b) of the Balanced Budget Act of 1997, is amended—

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

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

(C) by adding at the end the following:

"(20) provides that an order terminating parental rights shall only be appealable during the 1-year period that begins on the date the order is issued."

(2) ONE-YEAR STATUTE OF LIMITATIONS FOR APPEALS OF ORDERS OF REMOVAL.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by subsection (a), is amended—

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

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

(C) by adding at the end the following:

"(21) provides that a court-ordered removal of a child shall only be appealable during the 1-year period that begins on the date the order is issued."

(d) RULE OF CONSTRUCTION.—Nothing 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 or finalizing 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.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to children entering foster care under the responsibility of the State after the date of enactment of this Act.

(2) TRANSITION RULE FOR CURRENT FOSTER CARE CHILDREN.—Subject to paragraph (3), with respect to any child in foster care under the responsibility of the State on or before the date of enactment of this Act, the amendments made by this section shall not apply to such child until the date that is 1 year after the date of enactment of this Act.

(3) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—The provisions of section 501(b) shall apply to the effective date of the amendments made by this section.

#### SEC. 105. 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 104(b), 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 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 make any foster parent or relative a party to such a review or hearing solely on the basis of such notice and opportunity to be heard."

#### SEC. 106. USE OF THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE SERVICES.

Section 453 of the Social Security Act (42 U.S.C. 653), as amended by section 5534 of the Balanced Budget Act of 1997, 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. 107. CRIMINAL RECORDS CHECKS FOR PROSPECTIVE FOSTER AND ADOPTIVE PARENTS AND GROUP CARE STAFF.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 104(c)(2), is amended—

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

(2) by striking the period at the end of paragraph (21) and inserting "; and"; and

(3) by adding at the end the following:

"(22) provides procedures for criminal records checks and checks of a State's child abuse registry for any prospective foster parent or adoptive parent, and any employee of a residential child-care institution before the foster parent or adoptive parent, or the residential child-care institution 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—

"(A) in any case in which a criminal record check reveals a criminal conviction for child abuse or neglect, or spousal abuse, a criminal conviction for crimes against children, or a criminal conviction for a crime involving violence, including violent drug-related offenses, rape, sexual or other physical assault, battery, or homicide, approval shall not be granted, unless the individual provides substantial evidence to local law enforcement officials and the State child protection agency proving that there are extraordinary circumstances which demonstrate that approval should be granted; and

"(B) in any case in which a criminal record check reveals a criminal conviction for a felony or misdemeanor not involving violence, or a check of any State child abuse registry indicates that a substantiated report of abuse or neglect exists, final approval may be granted only after consideration of the nature of the offense or incident, the length of time that has elapsed since the commission of the offense or the occurrence of the incident, the individual's life experiences during the period since the commission of the offense or the occurrence of the incident, and any risk to the child."

#### SEC. 108. DEVELOPMENT OF STATE GUIDELINES TO ENSURE SAFE, QUALITY CARE TO CHILDREN IN OUT-OF-HOME PLACEMENTS.

Section 471(a)(10) of the Social Security Act (42 U.S.C. 671(a)(10)) is amended—

(1) by inserting "and guidelines" after "standards" each place it appears; and

(2) by inserting "ensuring quality services that protect the safety and health of children in foster care placements with non-profit and for-profit agencies," after "related to."

#### SEC. 109. DOCUMENTATION OF EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.

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

(1) in paragraph (1)—

(A) in the last sentence—

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

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

(B) by adding at the end, the following:

"(E) in the case of a child with respect to whom the State's goal is adoption or placement in another permanent home, documentation of the steps taken by the agency to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, 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."; and

(2) in paragraph (5)(B), by inserting "(including the requirement specified in paragraph (1)(E))" after "case plan".

#### TITLE II—INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

##### SEC. 201. ADOPTION INCENTIVE PAYMENTS.

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 may 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 for the fiscal year under this section, 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; and

"(4) 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 year 1997 (or, if later, the fiscal year that precedes the first fiscal year for which the State seeks a grant under this section) and for each succeeding fiscal 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 1997 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 473, as reported by the State in May of the fiscal year and in November of the succeeding fiscal year, and approved by the Secretary by April 1 of the succeeding fiscal year.

"(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEAR 1997.—For purposes of the determination described in subparagraph (A) for fiscal year 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 any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with the requirements.

"(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) \$2,000, multiplied by 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 for that 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 appropriated for that 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, with respect to a fiscal year, the largest number of foster child adoptions in the State in fiscal year 1997 (or, if later, the first fiscal year for which the State has furnished to the Secretary the data described in subsection (c)(2)) or in any succeeding fiscal year preceding the fiscal year.

"(4) BASE NUMBER OF SPECIAL NEEDS ADOPTIONS.—The term 'base number of special needs adoptions for a State' means, with respect to a fiscal year, the largest number of special needs adoptions in the State in fiscal year 1997 (or, if later, the first fiscal year for which the State has furnished to the Secretary the data described in subsection (c)(2)) or in any succeeding fiscal year preceding the 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 \$15,000,000 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."

SEC. 202. PROMOTION OF ADOPTION OF CHILDREN WITH SPECIAL NEEDS.

(a) IN GENERAL.—Section 473(a) of the Social Security Act (42 U.S.C. 673(a)) is amended by striking paragraph (2) and inserting the following:

"(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

"(i) prior to termination of parental rights and the initiation of adoption proceedings was in the care of a public or licensed private child care agency or Indian tribal organization either pursuant to a voluntary placement agreement (provided the child was in care for not more than 180 days) or as a result of a judicial determination to the effect that continuation in the home would be contrary to the safety and welfare of such child, or was residing in a foster family home or child care institution with the child's minor parent (either pursuant to such a voluntary placement agreement or as a result of such a judicial determination); and

"(ii) has been determined by the State pursuant to subsection (c) to be a child with spe-

cial needs, which needs shall be considered by the State, together with the circumstances of the adopting parents, in determining the amount of any payments to be made to the adopting parents.

"(B) Notwithstanding any other provision of law, and except as provided in paragraph (7), a child who is not a citizen or resident of the United States and who meets the requirements of subparagraph (A) and is otherwise determined to be eligible for the receipt of adoption assistance payments, shall be eligible for adoption assistance payments under this part.

"(C) A child who meets the requirements of subparagraph (A) and who is otherwise determined to be eligible for the receipt of adoption assistance payments shall continue to be eligible for such payments in the event that the child's adoptive parent dies or the child's adoption is dissolved, and the child is placed with another family for adoption."

(b) EXCEPTION.—Section 473(a) of the Social Security Act (42 U.S.C. 673(a)) is amended by adding at the end the following:

"(7)(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any child that—

"(i) would be considered a child with special needs under subsection (c);

"(ii) is not a citizen or resident of the United States; and

"(iii) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

"(B) Subparagraph (A) shall not be construed as prohibiting payments under this part for a child described in subparagraph (A) that is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of such child by the parents described in such subparagraph."

(c) REQUIREMENT FOR USE OF STATE SAVINGS.—Section 473(a) of the Social Security Act (42 U.S.C. 673(a)), as amended by subsection (b), is amended by adding at the end the following:

"(8) A State shall spend an amount equal to the amount of savings (if any) in State expenditures under this part resulting from the application of paragraph (2) on and after the effective date of the amendment to such paragraph made by section 202(a) of the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act to provide to children or families any service (including post-adoption services) that may be provided under this part or part B."

SEC. 203. TECHNICAL ASSISTANCE.

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

(b) LIMITATIONS.—The technical assistance provided under subsection (a) shall support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and shall include the following:

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

(2) Models to encourage the use of concurrent planning.

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

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

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

(6) Development of programs that place children in pre-adoptive families without waiting for termination of parental rights.

(7) Development of programs to recruit adoptive parents.

#### 204. ADOPTIONS ACROSS STATE AND COUNTY JURISDICTIONS.

(a) **ELIMINATION OF GEOGRAPHIC BARRIERS TO INTERSTATE ADOPTION.**—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 106, is amended—

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

(2) by striking the period at the end of paragraph (22) and inserting "; and"; and

(3) by adding at the end the following:

"(23) provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

"(A) deny to any person the opportunity to become an applicant for custody of a child, licensure as a foster or adoptive parent, or for foster care maintenance payments or adoption assistance payments under this part on the basis of the geographic residence of the person or of the child involved; or

"(B) delay or deny the placement of a child for adoption, into foster care, or in the child's original home on the basis of the geographic residence of an adoptive or foster parent, or of the child involved."

(b) **STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES.**—

(1) **IN GENERAL.**—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall appoint an advisory panel that 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;

(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 competency full faith and credit provided to adoption 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; and

(c) not later than 12 months after the final appointment to the advisory panel, submit to the Secretary the report described in paragraph (3).

(2) **COMPOSITION OF ADVISORY PANEL.**—In establishing the advisory panel required under paragraph (1), the Secretary shall appoint members from the general public who are individuals knowledgeable on adoption and foster care issues, and with due consideration to representation of ethnic or racial minorities and diverse geographic areas, and who, at a minimum, include the following:

(A) Adoptive and foster parents.

(B) Public and private child welfare agencies that place children in and out of home care.

(C) Family court judges.

(D) Adoption attorneys.

(E) An Administrator of the Interstate Compact on the Placement of Children and an Administrator of the Interstate Compact on Adoption and Medical Assistance.

(F) A representative cross-section of individuals from other organizations and individ-

uals with expertise or advocacy experience in adoption and foster care issues.

(3) **CONTENTS OF REPORT.**—The report required under paragraph (1)(C) shall include the results of the study conducted under subparagraphs (A) and (B) of paragraph (1) and 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.

(4) **CONGRESS.**—The Secretary shall submit a copy of the report required under paragraph (1)(C) to the appropriate committees of Congress, and, if relevant, make recommendations for proposed legislation.

#### SEC. 205. FACILITATION OF VOLUNTARY MUTUAL REUNIONS BETWEEN ADOPTED ADULTS AND BIRTH PARENTS AND SIBLINGS.

The Secretary of Health and Human Services, at no net expense to the Federal Government, may use the facilities of the Department of Health and Human Services to keep confidential the voluntary, mutually requested reunion of an adult adopted child who is 21 years of age or older with—

(1) any birth parent of the adult child; or

(2) any adult adopted sibling who is 21 years of age or older, of the adult child.

If all such persons involved in any such reunion have, on their own initiative, expressed a desire for a reunion and agree to keep confidential the name and location of the other birth parent of the adult adopted child and any other adult adopted sibling of the adult adopted child.

#### SEC. 206. ANNUAL REPORT ON STATE PERFORMANCE IN PROTECTING CHILDREN.

(a) **IN GENERAL.**—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.

"(a) **IN GENERAL.**—The Secretary shall 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. The report shall include ratings on outcome measures for categories related to safety and permanence for children:

"(b) **OUTCOME MEASURES.**—

"(1) **IN GENERAL.**—The Secretary shall develop a set of outcome measures to be used in preparing the report.

"(2) **CATEGORIES.**—In developing the outcome measures, the Secretary shall develop measures that can track performance over time for the following categories:

"(A) The number of children placed annually for adoption, the number of placements of children with special needs, and the number of children placed permanently in a foster family home, with a relative, or with a guardian who is not a relative.

"(B) The number of children, including those with parental rights terminated, that annually leave foster care at the age of majority without having been adopted or placed with a guardian.

"(C) The median and mean length of stay of children in foster care, for children with parental rights terminated, and children for whom parental rights are retained by the biological or adoptive parent.

"(D) The median and mean length of time between a child having a plan of adoption and termination of parental rights, between the availability of a child for adoption and the placement of the child in an adoptive family, and between the placement of the child in such a family and the finalization of the adoption.

"(E) The number of deaths of children in foster care and other out-of-home care, including kinship care, resulting from substantiated child abuse and neglect.

"(F) The specific steps taken by the State to facilitate permanence for children.

"(3) **MEASURES.**—In developing the outcome measures, the Secretary shall use data from the Adoption and Foster Care Analysis and Reporting System established under section 479 to the maximum extent possible.

"(c) **RATING SYSTEM.**—The Secretary shall develop a system (including using State census data and poverty rates) to rate the performance of each State based on the outcome measures.

"(d) **INFORMATION.**—In order to receive funds under this part, a State shall annually provide to the Secretary such adoption, foster care, and guardianship information as the Secretary may determine to be necessary to issue the report for the State.

"(e) **PREPARATION AND ISSUANCE.**—On October 1, 1998, and annually thereafter, the Secretary shall prepare, submit to Congress, and issue to the States the report described in subsection (a). Each report shall rate the performance of a State on each outcome measure developed under subsection (b). Include an explanation of the rating system developed under subsection (c) and the way in which scores are determined under the rating system, analyze high and low performances for the State, and make recommendations to the State for improvement."

(b) **CONFORMING AMENDMENTS.**—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 204(a), is amended—

(1) in paragraph (22), by striking "and" at the end;

(2) in paragraph (23), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(24) provides that the State shall annually provide to the Secretary the information required under section 479A."

#### TITLE III—ADDITIONAL IMPROVEMENTS AND REFORMS

##### SEC. 301. EXPANSION OF CHILD WELFARE DEMONSTRATION PROJECTS.

Section 1130(a) of the Social Security Act (42 U.S.C. 1320a-9(a)) is amended by striking "10" and inserting "15".

##### SEC. 302. PERMANENCY PLANNING 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 planning";

(2) by striking "no later than" and all that follows through "12 months" and inserting "not later than 12 months after the original placement (and not less frequently than every 6 months"; and

(3) by striking "future status of" and all that follows through "long term basis" and inserting "permanency plans for the child (including whether and, if applicable, when, the child will be returned to the parent, referred for termination of parental rights, placed for adoption, or referred for legal guardianship, or other 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 March 1, 1998, convene the advisory panel provided for in subsection (b)(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 November 1, 1998, 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

(1) 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);

(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 medical and cash assistance);

(vi) the goal for a permanent living arrangement for the child and the actions being taken by the State to achieve the goal;

(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 REVIEW.—**

(1) IN GENERAL.—The advisory board on child abuse and neglect established under section 102 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102), or, if on the date of enactment of this Act such advisory board does not exist, the advisory panel authorized under paragraph (2), shall review the report prepared pursuant to subsection (a) and submit to the Secretary comments on the report not later than July 1, 1998.

(2) AUTHORIZATION FOR APPOINTMENTS.—Subject to paragraph (1), 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, may appoint an advisory board for the purpose of reviewing and commenting on the report prepared pursuant to subsection (a). Such advisory board shall include parents, foster parents, 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.

**SEC. 304. 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. 305. 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. 306. COORDINATION AND COLLABORATION OF SUBSTANCE ABUSE TREATMENT AND CHILD PROTECTION SERVICES.**

(a) STUDY AND REPORT ON SOURCES OF SUPPORT FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT FOR PARENTS AND CHILDREN AND COLLABORATION AMONG STATE AGENCIES.—

(1) STUDY.—Not later than 12 months after the date of the enactment of this Act, the Comptroller General of the United States shall—

(A) prepare an inventory of all Federal and State programs that may provide funds for substance abuse prevention and treatment services for families receiving services directly or through grants or contracts from public child welfare agencies; and

(B) examine—

(i) the availability and results of joint prevention and treatment activities conducted by State substance abuse prevention and treatment agencies and State child welfare agencies; and

(ii) how such agencies (jointly or separately) are responding to and addressing the needs of infants who are exposed to substance abuse.

(2) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report on the study conducted under paragraph (1). Such report shall include—

(A) a description of the extent to which clients of child welfare agencies have substance abuse treatment needs, the nature of those needs, and the extent to which those needs are being met;

(B) a description of the barriers that prevent the substance abuse treatment needs of clients of child welfare agencies from being treated appropriately;

(C) a description of the collaborative activities of State child welfare and substance abuse prevention and treatment agencies to jointly assess clients' needs, fund substance abuse prevention and treatment, train and consult with staff, and evaluate the effectiveness of programs serving clients in both agencies' caseloads;

(D) a summary of the available data on the treatment and cost-effectiveness of substance abuse treatment services for clients of child welfare agencies; and

(E) recommendations, including recommendations for Federal legislation, for addressing the needs and barriers, as described in subparagraphs (A) and (B), and for promoting further collaboration of the State child welfare and substance abuse prevention and treatment agencies in meeting the substance abuse treatment needs of families.

(b) PRIORITY IN PROVIDING SUBSTANCE ABUSE TREATMENT.—Section 1927 of the Public Health Service Act (42 U.S.C. 300x-27) is amended—

(1) in the heading, by inserting "AND CARETAKER PARENTS" after "WOMEN"; and

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting "all caretaker parents who are referred for treatment by the State or local child welfare agency and who" after "referred for and"; and

(ii) by striking "is given" and inserting "are given"; and

(B) in paragraph (2)—

(i) by striking "such women" and inserting "such pregnant women and caretaker parents"; and

(ii) by striking "the women" and inserting "the pregnant women and caretaker parents".

(c) FOSTER CARE PAYMENTS FOR CHILDREN WITH PARENTS IN RESIDENTIAL FACILITIES.—

Section 472(b) of the Social Security Act (42 U.S.C. 672(b)) is amended—

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

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

(3) by adding at the end the following:

"(3) placed with the child's parent in a residential program that provides treatment and other necessary services for parents and children, including parenting services, when—

"(A) the parent is attempting to overcome—

"(i) a substance abuse problem and is complying with an approved treatment plan;

"(ii) being a victim of domestic violence;

"(iii) homelessness;

"(iv) special needs resulting from being a teenage parent; or

"(v) post-partum depression;

"(B) the safety of the child can be assured;

"(C) the range of services provided by the program is designed to appropriately address the needs of the parent and child;

"(D) the goal of the case plan for the child is to try to reunify the child with the family within a specified period of time;

"(E) the parent described in subparagraph (A)(i) has not previously been treated in a residential program serving parents and their children together; and

"(F) the amount of foster care maintenance payments made to the residential program on behalf of such child do not exceed the amount of such payments that would otherwise be made on behalf of the child."

**SEC. 307. 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;

"(8) for fiscal year 2001, \$315,000,000;

"(9) for fiscal year 2002, \$335,000,000; and

"(10) for fiscal year 2003, \$355,000,000."

(2) CONFORMING AMENDMENT.—Section 430(d)(1) of the Social Security Act (42 U.S.C. 630(d)(1)) is amended by striking "and 1998" and inserting "1998, 1999, 2000, 2001, 2002, and 2003".

(b) EXPANSION FOR TIME-LIMITED FAMILY REUNIFICATION SERVICES.—

(1) ADDITION TO STATE PLAN; MINIMUM SPENDING REQUIREMENT.—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 with significant portions" and inserting "community-based family support services, and time-limited family reunification services, with not less than 25 percent"; and

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

(B) in subsection (b)(1), by striking "and family support" and inserting "family support, and family reunification services".

(2) DEFINITION OF TIME-LIMITED FAMILY REUNIFICATION SERVICES.—Section 431(a) of the Social Security Act (42 U.S.C. 631(a)) is amended—

(A) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively; and

(B) by inserting after paragraph (4) the following:

**"(5) 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 1-year 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) Transportation to or from any of the services and activities described in this subparagraph."**

**(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, and time-limited family reunification services".

**(B) EVALUATIONS.—**Subparagraphs (B) and (C) of section 435(a)(2) of the Social Security Act (42 U.S.C. 629(a)(2)) are each amended by striking "and family support" each place it appears and inserting "family support, family reunification".

**308. INNOVATION GRANTS TO REDUCE BACKLOGS OF CHILDREN AWAITING ADOPTION AND FOR OTHER PURPOSES.**

Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by inserting after section 477, the following:

**"SEC. 478. INNOVATION GRANTS.**

**"(a) AUTHORITY TO MAKE GRANTS.—**The Secretary may make grants, in amounts determined by the Secretary, to States with approved applications described in subsection (c), for the purpose of carrying out the innovation projects described in subsection (b).

**"(b) INNOVATION PROJECTS DESCRIBED.—**The innovation projects described in this subsection are projects that are designed to achieve 1 or more of the following goals:

**"(1) Reducing a backlog of children in long-term foster care or awaiting adoption placement.**

**"(2) Ensuring, not later than 1 year after a child enters foster care, a permanent placement for the child.**

**"(3) Identifying and addressing barriers that result in delays to permanent placements for children in foster care, including inadequate representation of child welfare agencies in termination of parental rights and adoption proceedings, and other barriers to termination of parental rights.**

**"(4) Implementing or expanding community-based permanency initiatives, particularly in communities where families reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.**

**"(5) Developing and implementing community-based child protection activities that involve partnerships among State and local governments, multiple child-serving agencies, the schools, and community leaders in an attempt to keep children free from abuse neglect.**

**"(6) Establishing new partnerships with businesses and religious organizations to promote safety and permanence for children.**

**"(7) Assisting in the development and implementation of the State guidelines described in section 471(a)(10).**

**"(8) Developing new staffing approaches to allow the resources of several States to be used to conduct recruitment, placement, adoption, and post-adoption services on a regional basis.**

**"(9) Any other goal that the Secretary specifies by regulation.**

**"(c) APPLICATION.—**An application for a grant under this section may be submitted for fiscal year 1998 or 1999 and shall contain—

**"(1) a plan, in such form and manner as the Secretary may prescribe, for an innovation project described in subsection (b) that will be implemented by the State for a period of not more than 5 consecutive fiscal years, beginning with fiscal year 1998 or 1999, as applicable;**

**"(2) an assurance that no waivers from provisions in law, as in effect at the time of the submission of the application, are required to implement the innovation project; and**

**"(3) such other information as the Secretary may require by regulation.**

**"(d) DURATION.—**An innovation project approved under this section shall be conducted for not more than 5 consecutive fiscal years, except that the Secretary may terminate a project before the end of the period originally approved if the Secretary determines that the State conducting the project is not in compliance with the terms of the plan and application approved by the Secretary under this section.

**"(e) MATCHING REQUIREMENT.—**A State shall not receive a grant under this section unless, for each year for which a grant is awarded, the State agrees to match the grant with \$1 for every \$3 received.

**"(f) NONSUPPLANTING.—**Any funds received by a State under a grant made under this section shall supplement but not replace any other funds that may be available for the same purpose in the localities involved.

**"(g) EVALUATIONS AND REPORTS.—**

**"(1) STATE EVALUATIONS.—**Each State administering an innovation project under this section shall—

**"(A) provide for ongoing and retrospective evaluation of the project, meeting such conditions and standards as the Secretary may require; and**

**"(B) submit to the Secretary such reports, at such times, in such format, and containing such information as the Secretary may require.**

**"(2) REPORTS TO CONGRESS.—**The Secretary shall, on the basis of reports received from States administering projects under this section, submit interim reports, and, not later than 6 months after the conclusion of all projects administered under this section, a final report to Congress. A report submitted under this subparagraph shall contain an assessment of the effectiveness of the State projects administered under this section and any recommendations for legislative action that the Secretary considers appropriate.

**"(h) REGULATIONS.—**Not later than 60 days after the date of enactment of this section, the Secretary shall promulgate final regulations for implementing this section.

**"(i) AUTHORIZATION OF APPROPRIATIONS.—**There is authorized to be appropriated to make grants under this section not more than \$50,000,000 for each of fiscal years 1998 through 2003."

**TITLE IV—MISCELLANEOUS**

**SEC. 401. PRESERVATION OF REASONABLE PARENTING.**

Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inap-

propriately 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. REPORT ON FIDUCIARY OBLIGATIONS OF STATE AGENCIES RECEIVING SSI PAYMENTS.**

Not later than 12 months after the date of enactment of this Act, the Commissioner of Social Security shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning State or local child welfare service agencies that act as representative payees on behalf of children under the care of such agencies for purposes of receiving supplemental security income payments under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) (including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66) for the benefit of such children. Such report shall include an examination of the extent to which such agencies—

(1) have complied with the fiduciary responsibilities attendant to acting as a representative payee under title XVI of such Act; and

(2) have received supplemental security income payments on behalf of children that the agencies cannot identify or locate, and if so, the disposition of such payments.

**SEC. 404. ALLOCATION OF ADMINISTRATIVE COSTS OF DETERMINING ELIGIBILITY FOR MEDICAID AND TANF.**

**(a) MEDICAID.—**Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended—

(1) in subsection (a)(7), by striking "section 1919(g)(3)(B)" and inserting "subsection (x) and section 1919(g)(3)(C)"; and

(2) by adding at the end the following:

**"(x)(1) Notwithstanding any other provision of law, for purposes of determining the amount to be paid to a State under subsection (a)(7) for quarters in any fiscal year, beginning with fiscal year 1997, amounts expended for the proper and efficient administration of the State plan under this title (including under any waiver of such plan) shall not include common costs related to determining the eligibility under such State plan (or waiver) of individuals in a household applying for or receiving benefits under the State program under part A of title IV unless the State elects the option described in paragraph (2).**

**"(2) A State that meets the requirements of paragraph (3) may elect to allocate equally between the State program under part A of title IV and the State plan under this title (including any waiver of such plan) the administrative costs associated with such programs that are incurred in serving households and individuals eligible or applying for benefits under the State program under part A of title IV and under the State plan (or under a waiver of such plan) under this title.**

"(3) A State meets the requirements of this paragraph if the Secretary determines that—

"(A) the State conforms the eligibility rules and procedures of, and integrates the administration of the eligibility procedures of, the State program funded under part A of title IV and the State plan under this title (including any waiver of such plan); and

"(B) the State uses the same application form for assistance described in section 1931(e)."

(b) TANF.—

(1) IN GENERAL.—Section 408(a) of the Social Security Act (42 U.S.C. 608(a)) is amended by adding at the end the following:

"(12) DESIGNATION OF GRANTS UNDER THIS PART IN ALLOCATING ADMINISTRATIVE COSTS.—Subject to section 1903(x), a State to which a grant is made under section 403 shall designate the program funded under this part as the primary program for the purpose of allocating common administrative costs incurred in serving households eligible or applying for benefits under such program and any other Federal means-tested public benefit program administered by the State."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) to section 408 of the Social Security Act (42 U.S.C. 608) shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193; 110 Stat. 2112).

**TITLE V—EFFECTIVE DATE**

**501. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act shall take effect on October 1, 1997.

(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 the 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.

Mr. CRAIG. Mr. President, I am pleased to join my distinguished colleagues in introducing PASS, the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act.

Foster care was never intended to be anything more than a temporary refuge for children from troubled families. Yet all too often, "temporary" becomes "permanent," and decisions made for children in the system are driven by considerations other than the child's own well-being. Tragically, it's the children who ultimately pay for the flaws in the system—sometimes with their very lives.

The problem does not lie with the vast majority of foster parents, relatives, and caseworkers who work valiantly to provide the care needed by these children. Rather, the problem is the system itself, and incentives built into it, that frustrate the goal of mov-

ing children to permanent, safe, loving homes.

PASS will fundamentally shift the foster care paradigm, without destroying what is good and necessary in the system. For the first time, a child's health and safety will have to be the paramount concerns in any decisions made by the State. For the first time, efforts to find an adoptive or other permanent home will not only be required but documented and rewarded. For the first time, steps will have to be taken to free a child for adoption or other permanent placement if the child has been languishing in foster care for a year or more.

These are only some of the many critical reforms in Pass, designed to promote adoption, ensure the safety of abused and neglected children, accelerate permanent placement, and fix flaws in the system. The package, taken as a whole, will make an enormous difference in the lives of thousands of children.

This comprehensive bill is the product of extensive discussion and negotiation among Senators representing a veritable universe of viewpoints on adoption and foster care reform. Although we may have come to the table from different perspectives, we agreed on a fundamental principle: that reforms are needed to ensure that a child's health, safety and permanency are paramount concerns of the foster care system. In the end, on behalf of the children, we came together and resolved our differences. PASS is the result, and I commend it to all our colleagues.

Change is needed now; every day of delay is an eternity to a child unfairly bearing the burdens of the current system. I hope every Senator will take a careful look at PASS, and work with us to achieve true reforms in this area.

Mr. ROCKEFELLER. Mr. President, abused and neglected children are among the most vulnerable and poorly protected members of American society. Too many of these children are left to wander aimlessly through the foster care system—a system which, from the outset, was never designed or intended to be a permanent home. We can no longer continue to sentence these foster children to endless waits—a legal limbo in which they no longer feel welcome in their biological families but are unable to be adopted into new and loving homes. Despite the thousands of dedicated foster parents and child welfare workers who strive daily to effectively address the many needs of abused and neglected children in an overloaded system, we know that nothing can replace a permanent and loving home made by adults who can be counted on without condition or limitation.

Acknowledging our collective obligation to allow no child to fall between the cracks, I am proud to join together with Senator JOHN CHAFEE and my other colleagues in a truly extraordinary bipartisan effort to introduce

the Promotion of Adoption Safety and Support for Abused and Neglected Children Act [PASS]. Under Senator CHAFEE's committed leadership on children's issues, this bipartisan group has worked extremely hard to forge an effective compromise—a compromise which offers concrete, practical strategies to provide permanency in lives of foster children and to ensure that health and safety are built into every level of America's abuse and neglect system. Central to this entire effort was also Senator LARRY CRAIG, who brought focus and determination to the sometimes difficult bipartisan negotiations. I would like to take this opportunity to extend my most sincere thanks to my other colleagues, Senators JEFFORDS, DEWINE, COATS, BOND, LANDRIEU, and LEVIN for making possible this outstanding example of bipartisan teamwork.

The Promotion of Adoption Safety and Support for Abused and Neglected Children Act will fundamentally shift the focus of the foster care system by insisting that a child's health, safety, and opportunity to find a permanent home should be the paramount concern when a State makes any decision concerning the well-being of abused and neglected children. As a comprehensive package based on bipartisan consensus, PASS will accelerate and improve the response to these concerns, promote safe adoptions, and restore safety and permanency to the lives of abused and neglected children.

The main objective of this bill is to move abused and neglected children into adoptive or other permanent homes and to do so more quickly and more safely than ever before. Right now, many foster care children are forced to wait years before being adopted—even in cases where loving families are ready and willing to adopt them. Some children lose their chance for adoption altogether. While PASS preserves the requirement to reunify families where appropriate, it does not require States to use reasonable efforts to reunify families that have been irreparably broken by abandonment, torture, physical abuse, sexual abuse, murder, manslaughter, and sexual assault. The PASS Act maintains the delicate balance in protecting the rights of parents and families while placing primary focus where it should be: on the health and safety of child.

PASS encourages adoptions by rewarding States financial incentives for facilitating adoption for all foster children—especially those with special needs which, sadly, make them more difficult to place. For those situations where children cannot go home again, PASS requires States to use reasonable efforts to place them into safe adoptive homes or into the permanent care of loving relatives. In addition, PASS cuts by one-third the time that an abused and neglected child must wait in order to be placed in such adoptive homes. In response to a candid and focused look at today's foster care crisis,

the bill also seeks to rescue children from the legal limbo of the current system by requiring States to take the necessary legal steps to free for adoption those children who have been forced to linger in the system for a year or more. PASS also prevents further abuse of children in the foster care system by requiring criminal records checks for all foster and adoptive parents. PASS is about helping the individual child but, equally as importantly, fixing the system.

It is always the right time to focus on the needs of children—especially those unfortunate enough to find themselves in the sometimes dysfunctional labyrinth of the abuse and neglect system. Unfortunately, however, reform has never been more necessary. President Clinton's "Adoption 2002 Report" found that there are currently half a million children in temporary foster care placements. One hundred thousand of those children should be adopted, but less than half of that number are legally eligible to become part of an adoptive family. In my home State of West Virginia alone, referrals to Child Protective Services are expected to rise to an all-time high of 17,000 this year. Foster care placements have jumped from 2,900 children in January 1996 to 3,113 children in January 1997. These staggering figures reveal a foster care crisis of unprecedented proportions.

PASS is the first step in a vital, ongoing effort to put children at the very top of our national agenda. It is time that we provide all children with their most profound wish: to live in a safe and loving home with caretakers who treat them with respect and dignity. If we are unable to address this most fundamental need, these children will not be able to grow, learn, and provide a secure place for their own families. It is unthinkable to deny abused and neglected children such vital opportunities.

Mr. BOND. Mr. President, there may not be many things in life on which there is a consensus but I think we all can agree on the vital importance of ensuring the safety of abused and neglected children and moving them out of the foster care system more rapidly and into permanent homes. I am proud to join with my colleagues in this bipartisan effort to develop the new, consensus legislation called the Promotion of Adoption, Safety, and Support for Abused and Neglected Children [PASS] Act.

The reality is that all too often children simply languish in the foster care system. Nationwide, there are more than 500,000 children in foster care. In Missouri, there are 10,361 children in the foster care system. Since 1975, the number of reported incidents of abuse and neglect has increased from less than 10,000 to 52,964 in 1995, an all-time high and frightening statistic.

Federal law has hindered State child welfare agencies from moving more quickly to place children who are in

foster care because of abuse and neglect into permanent homes.

The PASS Act will provide incentives to increase adoptions and reduce by one third the amount of time a child lingers in foster care waiting for a permanency plan, with a review required every six months so that foster care is truly viewed as a temporary care system for our most vulnerable children.

The bill clarifies "reasonable efforts" and establishes a federal standard so that the health and safety of the child is the primary concern, above family reunification interest. There are some parents for whom reunification with their children is not reasonable—certainly sustained abuse or neglect or danger of physical harm would fit that category. In those cases, we need to move swiftly to get the children out of harm's way and then quickly to get them into permanent homes.

Just count the number of cases of child abuse and neglect that has been reported over the past few months. One too many! A little, five-year old Kansas City girl named Angel Hart was beaten and drowned to death by her mother's boyfriend because she could not recite the alphabet.

Under the PASS Act, States are encouraged to enact laws that would make it easier to terminate parental rights in abusive cases and prevent abused and neglected children from returning to homes in which their health and safety are at risk. In addition, this legislation promotes adoption of all special needs children and ensures health coverage for special needs children who are adopted.

I am very optimistic that Congress will move this bill forward this year. There are far too many innocent lives at stake and no child should be denied a loving home. Unfortunately, for thousands of kids now caught in permanent limbo in the foster care system, that is exactly what is happening. The PASS Act will improve child safety and permanency, enabling some children to return home safely and others to move to adoptive families more quickly.

By Mr. MCCAIN (for himself, Mr. GORTON, Mr. HOLLINGS, and Mr. FORD):

S. 1196. A bill to amend title 49, United States Code, to require the National Transportation Safety Board and individual foreign air carriers to address the needs of families of passengers involved in aircraft accidents involving foreign air carriers; to the Committee on Commerce, Science, and Transportation.

#### THE FOREIGN AIR CARRIER FAMILY SUPPORT ACT

Mr. MCCAIN. Mr. President, I am pleased to join with my colleagues, Senator GORTON, Senator HOLLINGS and Senator FORD, to introduce the Foreign Air Carrier Family Support Act. This bill would require foreign air carriers to implement disaster family assistance plans should an accident involv-

ing their carriers occur on American soil. I would like to recognize my colleagues in the House, especially Representative UNDERWOOD from Guam, who introduced the companion bill in the House of Representatives earlier this week.

The legislation, if enacted, would build on the family assistance provisions that we enacted last year as part of the Federal Aviation Reauthorization Act of 1996. Let me be clear about one point. Domestic air carriers are already operating under the same legislative requirements set out in the legislation before us today.

The need for extending the requirements to foreign air carriers came into a clear focus with the tragic crash of Korean Air Flight 801 in Guam. I do not intend to single out Korean Air for blame. An accident of this magnitude, involving the loss of more than 200 lives, in rough and isolated terrain, is bound to create mass confusion and hysteria. Even so, coverage of the accident made us all acutely aware of the criticisms made by the family members, and the pain they suffered in relation to the search and rescue efforts, as well as the media involvement following the accident.

The U.S. civil, military and Federal personnel at the scene should be commended for their contributions toward the search and rescue efforts. I also praise their attempts to console and assist family members on Guam, as well as those who traveled to the accident site from South Korea and the continental United States. Without a doubt, though, their efforts would have been more productive had there been a prearranged plan in effect. Greater coordination would have made things easier not only for the victims' family members, but also for the National Transportation Safety Board [NTSB] officials and military personnel who were on-site and who had to respond immediately in an emotional and potentially hazardous situation.

The Foreign Air Carrier Family Support Act would require a foreign air carrier to provide the Secretary of Transportation and the Chairman of the NTSB with a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of that foreign air carrier, and that involves a significant loss of life. The Secretary of Transportation could not grant permission for the foreign air carrier to operate in the United States unless the Secretary had received a sufficient family assistance plan.

The family assistance plan required of the foreign air carrier would include a reliable, staffed toll-free number for the passengers' families, and a process for expedient family notification prior to public notice of the passengers' identities. An NTSB employee would serve as director of family support services, with the assistance of an independent nonprofit organization with experience in disasters and post-trauma communication with families. The foreign air

### Talking Points for Conversation with Majority Leader Lott

- ▶ The Administration shares with Senator Lott the strong desire to move adoption legislation through Congress this year. The enactment of bipartisan adoption legislation is a key Administration priority.
- ▶ While there has been significant delay on this legislation in the Senate, we are pleased that Senator Roth met with Senators Chafee and Craig last week. After an initial impasse, we understand that Senator Roth offered a possible compromise.
- ▶ We understand the Roth compromise includes some of the provisions supported by the Administration as well as some of the provisions supported by the Chafee/Craig coalition.
  - ▶ It certainly does not go as far as the Chafee/Craig group had hoped, but it cuts down on the cost significantly by removing the delinking provisions.
  - ▶ It also does not include several provisions sought by other Democrats.
- ▶ The Administration could support this compromise as long as it included, at a minimum, several other small but important items, including:
  - ▶ Small increase in funding for Family Preservation (approximately \$60 million over three years).
  - ▶ Medicaid coverage for all "special needs" adopted children (approximately \$40 million over five years)
  - ▶ House provisions prohibiting the termination of parental rights if services have not been provided and other changes to move the termination provisions closer to House bill.
  - ▶ Provisions removing geographic barriers to adoption.
- ▶ We would offset the approximate \$100 million cost of the bill over five years with funds from the Title XX program. (Need to do some checking before making this public.) This would take the controversial cost allocation issue off the table with respect to the adoption legislation.
- ▶ If Senator Roth could be persuaded to support these provisions, we will work with you to develop a quick bipartisan consensus on the bill. If you can do so, we believe we can persuade other Democratic Senators to drop their concerns and gain the support of the House sponsors as well.

### Adoption Legislation

**Background:** The Administration as well as the House and Senate Leadership are anxious to get adoption bipartisan legislation passed and signed this year. Unfortunately, the legislation has been held up for many months because various parties (including the Administration and Senator Roth) have had problems with the costly delinking provisions in the package put together by Senators Chafee, Rockefeller, Craig and others as well as the cost allocation issue used to offset the \$800 million to \$2.3 billion costs of the bill.

Last week, Senators Chafee and Craig met with Senator Roth. While the meeting initially led to an impasse (with Chafee insisting that the final bill include his delinking item and Roth insisting that delinking be dropped), the Roth staff have now floated a compromise. We have not seen the compromise language as yet, but understand it does include several items the Administration strongly supports (including our Adoption 2002 recommendations and the very important reauthorization of the family preservation program). However, we understand that it does not include several other items that we feel are very important to final legislation. These include Medicaid coverage for all "special needs" children (at a cost of approximately \$35 million over five years) and several other changes in provisions dealing with the termination of parental rights (TPR).

The total cost of legislation that includes these Administration supported items will be approximately \$100 million over five years. After thorough discussions between OMB and HHS, we agreed to propose that these costs be offset with Title XX funds. Some may not like this offset (Senator Chafee doesn't like it for example) and we need to check with Representative Obey before proceeding further with it. At the same time, we will check again with Jack Lew to see if other offsets may be available.)

We believe that we can sell the Roth compromise with the Medicaid and TPR provisions (plus some other more technical changes) to the House Republicans and therefore achieve final legislation that can pass both houses by an overwhelming vote. To do so, however, will require that the Administration and the Senate Leadership press Senator Roth to move a little further toward the Chafee/Rockefeller/Craig camp.

## CONGRESSIONAL UPDATE -- ADOPTION 2002

The Adoption 2002 Report recommended several changes in federal law designed to improve and expedite adoption or other permanent placements for children in the nation's foster care system.

### Congressional Status

In April, the House of Representatives overwhelmingly approved bipartisan legislation (H.R. 867) sponsored by Representatives Camp (R-MI) and Kennelly (D-CT) that incorporated most of the legislative recommendations from the Adoption 2002 report. The Administration communicated its strong support of this important legislation to the House. Press stories hailed the House action.

After the House approved H.R. 867, it was sent it over to the Senate for further action. Rather than refer the bill to the Finance Committee for consideration, the Senate Leadership "held the bill at the desk" to allow the full Senate to act quickly on H.R. 867. Subsequently, Majority Leader Lott (R-MS) attempted on several occasions to schedule floor action H.R. 867.

In the meantime, a number of adoption bills had been introduced in the Senate. Senators Rockefeller (D-WV) and Chafee (R-RI) introduced S. 511, the comprehensive Safe Adoption and Family Environments (SAFE) Act, while Senator DeWine (R-IN) introduced S. 742 and Senator Craig (R-ID) introduced S. 827 -- bills that contain provisions similar to the House-passed measure and the Adoption 2002 recommendations. (see attached)

Senators Chafee and Rockefeller and their supporters raised objections to immediate Senate consideration of the House bill, because they wanted an opportunity to move their own more comprehensive legislation in this area. During Finance Committee consideration of the omnibus reconciliation bill, Rockefeller and Chafee offered their legislation as an amendment to the larger package. However, the amendment was ruled non-germane and thus not included in the reconciliation bill.

In an effort to move adoption legislation forward, Majority Leader Lott then asked a small bipartisan group of Senate staff to try to resolve the impasse between those favoring the House passed bill and those favoring the Chafee-Rockefeller legislation. Discussions are being held and it is our understanding that the Majority Leader remains anxious to schedule floor action on adoption legislation very soon.

On a separate track, neither the House nor the Senate Labor/HHS appropriations bills have included the Administration's \$21 million funding request for the Adoption 2002 initiative. Unless this is reversed, the only new funding stemming from the Adoption 2002 recommendations may be the mandatory bonus funds provided in H.R. 867.

### Advocacy Efforts

While children's advocacy groups endorsed the House adoption bill, they have been pushing very hard for the substantial new funding provided for a range of adoption and foster care services in the Chafee-Rockefeller bill. Some have suggested that without new funds, the House bill will do little to expedite adoptions. On the other hand, conservative family groups are beginning to question the direction taken by the House bill and working with other Senate staff to make changes to it concerning reasonable efforts and the termination of parental rights.

### Administration Position

The Administration is on record strongly supporting the bipartisan House bill and it does incorporate most of the legislative changes recommended in Adoption 2002.

While the Administration has not indicated its support for the Chafee-Rockefeller bill, we are sympathetic to the need for additional resources in this area and have been working closely with the sponsors. However, we have been reluctant to offer direct support for S. 511 for several reasons.

- (1) The bill's cost of more than \$3 billion over five years was not included in the President's Budget, nor was it included in the bipartisan balanced budget agreement.
- (2) HHS does not support some of the policies in S. 511.
- (3) S. 511 does not contain the adoption bonus recommended by our Adoption 2002 report.

We have, however, explored alternative funding options (tobacco tax) for some of the key spending provisions in the Chafee-Rockefeller bill. Further, we've had some very low-key discussion about a compromise that would add a simple reauthorization of the Family Preservation and Family Support program to the House adoption legislation. This would ensure that the mandatory family preservation/family support funds (which Senator Rockefeller strongly supports) would continue to be available for preventive services.

At this point, we believe it is important for the Administration to gain Congressional closure on our key Adoption 2002 legislative recommendations. We are concerned that further delay may diminish the solid bipartisan support that had been generated for our Adoption 2002 recommendations included in H.R. 867.

Therefore, we recommend that the Administration begin to work more closely with bipartisan House and Senate staff to gain Senate support for the provisions of H.R. 867, while continuing to explore options for additional funding for adoption and foster care services.

# House Adoption Bill

(H.R. 867 - Primary Sponsors: Representatives Camp and Kennelly)

## Major Provisions

- Clarifies reasonable efforts by requiring each state to define legislatively the categories of aggravated circumstances under which reasonable efforts *are not required*. In addition to the State's list, the bill provides several specific egregious circumstances in which no reasonable efforts would be required, such as if a parent had murdered or tortured a child, or if parental rights to a sibling had previously been terminated involuntarily. The provision further notes that child health and safety should be the paramount consideration in determining whether or not reasonable efforts should be made to prevent a removal or reunify a child.
- Provides financial incentives to states to increase the number of adoptions from the public child welfare system (per child bonuses).
- Clarifies the purpose of dispositional hearings by renaming them permanency hearings and shortens the timeframe until such a hearing is required from 18 months to 12 months.
- Require states to file a Termination of Parental Rights (TPR) petition or join TPR proceedings after a child under 10 years old has been in foster care 18 of the past 24 months unless (1) at the state's option, if the child is in relative care; (2) a State court or State agency has determined there are compelling reasons why TPR is not in the child's best interests; or (3) the State has not provided the services the State deems appropriate.
- Requires reasonable efforts to find an adoptive home or other permanent living arrangement if reunification is not pursued.
- Requires an annual report on states' performance regarding adoption and permanency for children.
- Increases from 10 to 15 the number of child welfare demonstration waivers authorized.
- Provides that foster parents must be given notice of and an opportunity to be heard in reviews and hearings, although they would not become parties to the case.

## Relation to the Adoption 2002 Report

With the exception of the requirement to initiate proceedings to terminate parental rights after a child has been in foster care for 18 months and the foster parent notification, the other major provisions of the bill were all elements of *Adoption 2002*. The one major item from *Adoption*

2002 which was not included in the House measure is funding to identify and remove barriers to permanency and adoption.

**Costs**

This bill is cost neutral. No additional money would be spent.

**Current Status**

The bill passed in the House on April 30, 1997 by a vote of 416 to 5. The Administration sent a letter strongly supporting the bill.

## Senate Adoption Bills

(Several related proposals are active, the primary of which is S. 511, the Safe Adoptions and Family Environments Act, nicknamed SAFE, sponsored by Senators Chafee and Rockefeller.)

### Major Provisions of the Chafee-Rockefeller Proposal

- Clarifies the reasonable efforts requirement by emphasizing child safety and providing for some circumstances under which reasonable efforts are not required. The language in the bill is similar to that in the House bill, although not identical.
- Accelerates the schedule of permanency hearings so that one must be held by the time a child is in foster care 12 months (rather than the current 18). The Senate provision also requires that after the initial permanency hearing, subsequent hearings shall be held every 6 months while the child remains in care. (The House bill does not require these additional hearings.)
- Revises adoption assistance eligibility to remove income of the birth family as a key eligibility criteria.
- Expands the definition of IV-E maintenance payments to include a year's reunification services, including substance abuse and mental health services, etc.
- Authorizes a new series of grants to reduce backlogs/barriers regarding adoptions, authorized at \$50 million per year.
- Amends the Substance Abuse Prevention and Treatment Block Grant to broaden the current preference for services to pregnant women to include also parents with children who have been referred to treatment by child welfare agencies.
- Allows foster care payments on behalf of children living in residential treatment programs with their mothers.
- Broadens the use of foster care training funds for training collaborating agencies on child protection/child welfare issues.
- Requires reasonable efforts to find an adoptive home or other permanent living arrangement if reunification is not pursued.
- Increases from 10 to 15 the number of authorized child welfare demonstration waivers
- Requires each state to implement a child death review team, and requires a federal child death review team to investigate deaths on military bases and Indian Reservations.

- Requires States to develop and implement guidelines for out of home care akin to accreditation.

### Other Senate Proposals

While S. 511 has received primary consideration in the Senate, there are several additional child welfare/adoption proposals being considered as well. Senator DeWine has introduced a measure that includes items from the House passed bill that are not included in the Chafee-Rockefeller proposal. Senator Craig has introduced in the Senate a bill nearly identical to the House-passed measure (as S. 827). In addition, Senator Grassley has also expressed an intention to put forward a competing bill, but no such bill has yet been introduced.

### Relation to the Adoption 2002 Report

The Senate bill contains many of the elements from *Adoption 2002*, but goes well beyond it with respect to providing additional funding to address barriers to sound child welfare practice. The Senate bill does not include the concept of financial incentives (bonuses) to states for increasing the number of adoptions beyond current levels.

### Costs

No official cost estimates for S. 511 have been released, but it is expected that the current version of the bill will be scored by CBO with a cost of approximately \$3 billion, most of that in the provision which would remove Adoption Assistance eligibility restrictions based on birth family income.

### Current Status

Senators Chafee and Rockefeller tried to have their bill considered as part of budget reconciliation, but the proposal was ruled non-germane. Senator Lott has attempted to have the Senate vote on the House bill as passed, but that effort was blocked as well. It is not clear at this time what strategy Senators Chafee and Rockefeller, and others, will next take.



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

APR 23 1997

The Honorable Bill Archer  
Chairman, Committee on Ways and Means  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

We take this opportunity to inform you of the views of the Department of Health and Human Services on H.R. 867, the "Adoption Promotion Act of 1997". This legislation would further the President's efforts to ensure the safety, permanency and well-being of children in the child welfare system and we strongly support its enactment.

We would like to thank the Committee for its efforts to develop a bipartisan bill on adoption that incorporates many of the critical actions addressed in our Adoption 2002 report, which we submitted to the President at his request in February. As you know, Adoption 2002 responds to the President's December Executive Memorandum and takes its name from one of its central goals--to double by the year 2002 the number of children adopted or permanently placed each year. We strongly support H.R. 867's goal of providing greater clarity about what is meant by "reasonable efforts". In addition we applaud the inclusion of language requiring States to make "reasonable efforts" to secure a permanent home for children in foster care when adoption or another permanent placement, rather than reunification, is established as a goal.

Further, we strongly support the goal of ensuring that timely permanency decisions are made for children who cannot return home. We would like to work with the Committee on language that would meet our shared goal of expeditious action to terminate parental rights when adoption is the determined goal for a child.

We are especially pleased that H.R. 867 incorporates the President's proposal to provide States with a financial bonus when they succeed in increasing the number of children who are adopted from the foster care system each year. We believe that this provides a concrete incentive to States for increasing the number of adoptions, but also pays for itself, with the cost of the bonuses offset by savings in foster care costs.

Statement on Adoption Promotion Act of 1997:

I congratulate the House of Representatives on the passage of H.R. 867, the Adoption Promotion Act of 1997. This bipartisan legislation will further our efforts to give the children waiting in the foster care system what every child in America deserves -- loving parents and a healthy, stable home.

The First Lady and I have had a continuing commitment to uniting these waiting children with families to teach, guide and care for them. In December, I directed the Department of Health and Human Services to come up with a strategy to simplify the adoption process and move more children more quickly from foster care into permanent homes. In response to this directive, HHS submitted *Adoption 2002*, a report which takes its name from one of its central goals -- to double by the year 2002 the number of children adopted or permanently placed each year.

The Adoption Promotion Act of 1997 incorporates many of the recommendations made in the Administration's report. I urge Congress to keep this important legislation moving forward.

\$ 125 M - 200 M Family Re

+ Medicaid

\$ 159 M

+ \$ 100 M more  
for  
other  
adoption  
activities

## 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.

### 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**

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.

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 is 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.