

\$ 125 M - 200 M Family Pres.

+ 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.

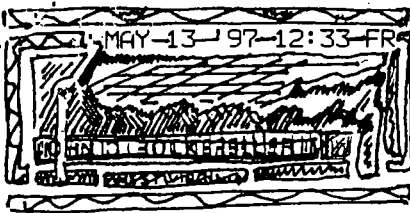
ADMINISTRATION, HOUSE, AND SENATE ADOPTION/CHILD WELFARE PROPOSALS		
Adoption 2002 Report	H.R. 867 (Camp-Kennelly)	S. 511 (Chafee, Rockefeller, et al)
Work with States on numerical goals and targets to double the number of adoptions and other permanent placements by 2002.	No additional legislative authority needed.	No additional legislative authority needed.
Provide technical assistance to State agencies, courts and communities to improve the timeliness of permanency decisions and to increase the number of adoptions and other permanent placements.	Technical assistance authority (Sec. 12)	No provision.
Financial incentives to states to increase the number of adoptions from the public child welfare system (per child bonuses).	Per child bonuses to states (Sec. 4)	No provision.
Continued aggressive implementation of the Multiethnic Placement Act, as amended.	No additional legislative authority needed.	No additional legislative authority needed.
Publish an annual State-by-State report on success in meeting numerical targets for adoption.	Annual report on States' performance (Sec. 10)	No provision.
Recognize successful state efforts.	No additional legislative authority needed.	No additional legislative authority needed.
Provide States with funding to identify and remove barriers to permanency and adoption.	No provision.	Section 401 authorizes 5 year grants to reduce backlogs/barriers regarding adoptions. Authorizes a new funding stream under IV-E (to be section 478) with up to \$50 million for these grants.
Clarify the purpose of dispositional hearings by renaming them permanency planning hearings and shorten the timeframe until such a hearing is required from 18 months to 12 months.	Dispositional hearing renamed as permanency planning hearing. (Sec. 5) Require permanency planning hearing no later than 12 months after a child is in care (rather than 18). (Sec. 5)	Same provision, section 302

ADMINISTRATION, HOUSE, AND SENATE ADOPTION/CHILD WELFARE PROPOSALS

Adoption 2002 Report	H.R. 867 (Camp-Kennelly)	S. 511 (Chafee, Rockefeller, et al)
Clarify "reasonable efforts" requirements and recognize more clearly that in some cases no efforts are reasonable.	Clarify reasonable efforts by requiring each state to define legislatively the categories of aggravated circumstances under which reasonable efforts <i>are not required</i> . In addition to the State's list, the circumstances listed in the CAPTA bill would not require reasonable efforts, nor would efforts be required if parental rights to a sibling had previously been terminated involuntarily. The provision further notes that child safety should be the paramount consideration in determining reasonable efforts. (Sec. 2)	Adds language on safety similar although not identical to H.R. 867. (Sec. 102) Also adds safety language to provisions regarding the contents of case plans and requirements for case reviews. (Sec. 103)
Establish a reasonable efforts requirement to secure an adoptive home when reunification has been ruled out.	Requires reasonable efforts to find an adoptive home or other permanent living arrangement if reunification is not pursued. (Sec. 2) Section 7 requires that reasonable efforts to find an adoptive home must be documented.	Requires reasonable efforts to find an adoptive home or other permanent living arrangement (Sec. 301)
Encourage States to use the Federal Parent Locator Service to locate absent parents and relatives who might provide a permanent home for the child and to terminate parental rights when appropriate.	Use of Parent Locator Service in TPR cases (Sec. 9)	No provision.
Increase the number of child welfare demonstration waivers.	Increase from 10 to 15 the number of child welfare demonstration waivers (Sec. 11). An amendment added on the House floor provides that one of the additional demonstrations must be on the subject of kinship care.	Identical provision, Section 402.

ADMINISTRATION, HOUSE, AND SENATE ADOPTION/CHILD WELFARE PROPOSALS		
Adoption 2002 Report	H.R. 867 (Camp-Kennelly)	S. 511 (Chafee, Rockefeller, et al)
A variety of steps are proposed to encourage timely decision making, but no specific deadlines for TPRs are proposed.	Require states to file a 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. (Sec. 3)	No provision.
Not addressed.	Foster parents must be provided notice of and an opportunity to be heard in reviews and hearings. (Sec. 6)	No provision.
Suggests this is an issue that needs further study. Commits to establishing kinship demonstration projects as provided for in the reauthorized CAPTA legislation.	Required report and recommendations on kinship care. (Sec. 8)	No provision.
Not addressed.	An amendment added on the House floor provides that states <i>may</i> conduct criminal background checks of prospective foster and adoptive parents and group home staff.	Section 205 requires States to conduct criminal background checks for prospective foster and adoptive parents and for staff of group care homes.
Not addressed.	Report to Congress on coordination of substance abuse and child protection/child welfare services. (Sec. 13)	Section 201 requires HHS to prepare an inventory of federal programs providing substance abuse prevention and treatment to families receiving child welfare services, and requires a Report to Congress on issues in providing such services.
Not addressed.	No provision.	Section 104 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.

ADMINISTRATION, HOUSE, AND SENATE ADOPTION/CHILD WELFARE PROPOSALS		
Adoption 2002 Report	H.R. 867 (Camp-Kennelly)	S. 511 (Chafee, Rockefeller, et al)
Not addressed.	No provision.	Section 202 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.
Not addressed.	No provision.	Section 203 allows foster care payments on behalf of children living in residential treatment programs with their mothers.
HHS will "review and may revise the title IV-E training regulations to assure a comprehensive approach to child welfare training."	No provision.	Section 204 broadens the use of foster care training funds for training collaborating agencies on child protection/child welfare issues.
Not addressed.	No provision.	Section 206 requires States to develop and implement guidelines for out of home care akin to accreditation.
Not addressed.	No provision.	Section 303 revises adoption assistance eligibility so that birth families' low income is not an eligibility requirement. In addition, the bill makes immigrant children in the care of state/tribal child welfare agencies and who otherwise meet IV-E requirements eligible for adoption assistance. (Essentially exempts adoption assistance from the immigrant provisions of the welfare reform bill.)
Not addressed.	No provision.	Section 304 expands the definition of IV-E maintenance payments to include a year's reunification services.
Proposes technical assistance to support the development of collaboratives that encourage placements across geographical boundaries.	No provision.	Section 305 requires HHS to study interjurisdictional adoption issues.

~~United States Senate~~~~WASHINGTON, DC 20510-4802~~

FROM THE OFFICE OF SENATOR JAY ROCKEFELLER

FAX COVER SHEET

TO: Jennifer Klein

OFFICE:

FROM: Barbara Ryan direct
224-2578

DATE: 5-13-97

OF PAGES (INCLUDING COVER):

Problems with transmission call (202) 224-6472

MESSAGE: 1) Let's get a time to talk about the
bonus & SAFE

2) Lengthy but good side by side —
lot's of good ways, to merge bills so that



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Memorandum

May 6, 1997

SUBJECT : Side-by-Side Comparison of H.R. 867, S. 511, and Current Law

FROM : Karen Spar
Specialist in Social Legislation
Education and Public Welfare Division

Legislation is moving through the 105th Congress that is intended to promote adoption for foster children who are unable to return home, and to make general improvements in the nation's child welfare system. The House passed the Adoption Promotion Act, H.R. 867, on April 30, 1997, by a vote of 416-5. In the Senate, the Safe Adoptions and Family Environments Act, S. 511, was introduced on March 20, 1997, with bipartisan sponsorship.

The pending legislation responds to concerns that the number of children in foster care is at record high levels, that children remain in foster care unnecessarily long, and that their adoption rate is low. In addition, there is concern that additional safeguards are needed to protect children who come to the attention of the child welfare system, and especially to ensure that children are not returned to the homes of parents who are known to be unsafe.

Most provisions in the pending bills would amend current law under Titles IV-B and IV-E of the Social Security Act. These titles authorize grants to states for child welfare activities, including foster care, adoption assistance, and independent living services for older foster children. To receive federal funds, states must comply with requirements designed to ensure that services are provided to the families of children who are at risk, to enable the children to remain safely with their families or to return home after they have been placed in foster care. States also must conduct administrative and court hearings on every child's case, and establish a permanent placement goal for each child.

This memo compares the provisions of H.R. 867 and S. 511 with current law. Unless otherwise noted, references to current law are to Titles IV-B and IV-E of the Social Security Act. For a detailed discussion of the issues addressed in the pending legislation, see *Adoption, Foster Care, and Child Welfare: Issues for Congress* (CRS Report 97-256 EPW). For a description of existing federal programs, see *Federal Child Welfare Programs: Description, Funding, History* (CRS Report 96-883).

This memorandum was prepared by the Education and Public Welfare Division to enable distribution to more than one congressional client.

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Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
"Reasonable Efforts" to Preserve and Reunify Families	In every case, states must make "reasonable efforts" to avoid the need to remove a child from home, and to make it possible for a child to return home after placement in foster care — Sections 471(a)(15), 472(a)(1).	States would continue to be required to make reasonable efforts to preserve and reunify families; however, this requirement would not apply in cases in which a court has found that: • a child has been subjected to "aggravated circumstances" as defined in state law (examples would be abandonment, torture, chronic abuse, sexual abuse); • a parent has killed or assaulted another of their children; or • a parent's rights to a sibling have been involuntarily terminated. In these cases, states would not be required to make reasonable efforts on behalf of any parent who has been involved in subjecting the child to these circumstances — Section 2.	States would be required to make reasonable efforts to preserve families when possible without endangering the child's health or safety; and to reunify families unless a court determines that reunification would endanger the child's health or safety, or in cases specified in state law: • cases in which a court has found that a parent has killed or assaulted another of their children; or • cases in which a court has found that a parent has abandoned, tortured, chronically abused, or sexually abused the child. By Oct. 3, 1999, states must enact and enforce laws that specify cases (such as those listed above) in which reunification efforts would not be required, and in which grounds exist for expedited termination of parental rights without efforts to reunify the family — Section 102.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
"Reasonable Efforts" to Place Children for Adoption or Other Permanent Arrangement	No provision.	If reasonable efforts to preserve or reunify a family are not made because of the reasons cited above (or are no longer consistent with the child's permanency goal), then states would be required to make reasonable efforts to place the child for adoption, with a guardian, or in another planned, permanent arrangement. Reasonable efforts to preserve or reunify families could be made concurrently with efforts to place the child for adoption or guardianship — Section 2.	When a child's permanency goal is adoption or another permanent placement, states would be required to make reasonable efforts to place the child in a timely manner for adoption, guardianship, or in another planned, permanent arrangement, and to take necessary steps to finalize the adoption or guardianship — Section 301(a).
Consideration of Child Health and Safety	No provision.	In determining and making reasonable efforts on behalf of a child, the child's health and safety must be of paramount concern — Section 2.	In determining reasonable efforts, the child's health and safety must be the paramount concern — Section 102. In addition, S. 511 would add references to child safety to several provisions in current law dealing with child welfare services, case plan and case review procedures — Sections 101(a) and 103.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Termination of Parental Rights	No provision.	In the case of children who are younger than 10 and have been in foster care for 18 of the most recent 24 months, states would be required to initiate proceedings (or join any existing proceedings) to terminate parental rights, unless: • at the option of the state, the child is being cared for by a relative; • a state court or agency has documented a compelling reason for determining that such a petition would not be in the best interests of the child; or • the state has not provided the family with services deemed appropriate by the state (in cases where reasonable efforts to preserve or reunify the family have been required). This provision would only apply to children who enter foster care on or after Oct. 1, 1997— Section 3.	No directly comparable provision. (However, as described above, states would be required to enact and enforce laws specifying cases where grounds exist for expedited termination of parental rights without first requiring family reunification efforts.)

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Adoption Incentive Payments	No provision.	The Secretary of Health and Human Services (HHS) would be authorized to make adoption incentive payments to eligible states for any adoptions of foster children in a given fiscal year that exceed the number of such adoptions in FY1997, or in a subsequent base year. Adoption incentive payments would equal \$4,000 for each adoption of a foster child above the base number, plus an additional \$2,000 for each adoption of a foster child with special needs. For these incentive payments, \$15 million would be authorized for each of fiscal years 1999-2003 — Section 4.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Foster Care Case Review System	The status of every child in foster care under state responsibility must be reviewed by a court or administrative review at least every 6 months. In addition, no later than 18 months after the child enters care (and at least every 12 months thereafter), the court or a court-appointed body must hold a "dispositional" hearing to determine the child's future status, which can include returning home, continuing in foster care for a specified period, adoption, or, if warranted by the child's special needs or circumstances, long-term or permanent foster care — Section 475(5).	States would be required to hold a first dispositional hearing within 12 months of a child's placement, instead of the current 18, and the name of the proceeding would be changed to "permanency" hearing. The purpose of the hearing would be to determine the child's permanency goal, which could include returning home, referral for adoption and termination of parental rights, guardianship, or another planned, permanent arrangement, which could include the custody of a fit and willing relative — Section 5.	States would be required to hold a first dispositional hearing within 12 months of a child's placement, instead of the current 18, and at least every 6 months thereafter, instead of the current 12. In addition, the name of the proceeding would be changed to "permanency planning" hearing. The purpose of the hearing would be to determine the child's permanency goal, which could include returning home, referral for adoption and termination of parental rights, guardianship, or another planned, permanent arrangement — Section 302.
Participation in Case Reviews and Hearings	Administrative reviews are open to the participation of a child's parents — Section 475(5).	Foster parents and relatives providing care for a child would be given notice and an opportunity to be heard at any review or hearing held with regard to the child — Section 6.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Documentation of Efforts to Adopt	No provision.	For every child whose permanency goal is adoption or another permanent placement, states would be required to document the steps taken to find an adoptive family or permanent home; to place the child with the adoptive family, legal guardian, or other permanent home (including the custody of a fit and willing relative); and to finalize the adoption or guardianship. The documentation must include child-specific recruitment efforts such as use of adoption information exchanges, including electronic exchange systems — Section 7.	Virtually identical to H.R. 867, except S. 511 contains no reference to the custody of a fit and willing relative — Section 301(b).

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Kinship Care	No provision.	The Secretary of HHS would be required to convene an advisory panel on kinship care no later than March 1, 1998. By the same date, the Secretary would submit an initial report to the advisory panel on the extent to which foster children are placed with relatives. The advisory panel would review the Secretary's initial report and submit comments by July 1, 1998. Based on these comments and other information, the Secretary would submit a final report, by Nov. 1, 1998, to the Committees on Ways and Means and Finance, containing recommendations — Section 8.	No provision.
Federal Parent Locator Service	The Federal Parent Locator Service is authorized under the Child Support Enforcement program to assist in locating absent parents for purposes of collecting child support — Section 453 of the Social Security Act.	Child welfare agencies would be authorized to use the Federal Parent Locator Service to assist in locating absent parents — Section 9.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Performance Measures for State Child Welfare Programs	No provision.	The Secretary of HHS (in conjunction with the American Public Welfare Association, National Governors Association, and child advocates) would be required to develop outcome measures to assess state child welfare programs, and to rate state performance according to these measures. HHS would submit an annual report to Congress, with recommendations for improving state performance; the first report would be due on May 1, 1999 — Section 10.	No provision.
Child Welfare Demonstrations	HHS is authorized to approve child welfare demonstrations in up to 10 states, in which states may request waivers of provisions under Titles IV-B and IV-E — Section 1130 of the Social Security Act.	The number of child welfare demonstrations would be increased to 15 states. At least one of the additional demonstrations would have to address the issue of kinship care — Section 11.	The number of child welfare demonstrations would be increased to 15 states — Section 402. (In addition, funding would be authorized for innovation grants to states — see below.)

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Technical Assistance to Promote Adoption	No provision.	HHS is authorized to provide technical assistance to states and localities to promote adoption for foster children, including: • guidelines for expediting termination of parental rights; • encouraged use of concurrent planning; • specialized units and expertise in moving children toward adoption; • risk assessment tools for early identification of children who would be at risk of harm if returned home; • encouraged use of fast tracking for children under age 1 into pre-adoptive placements; • programs to place children into pre-adoptive placements prior to termination of parental rights. For technical assistance, \$10 million would be authorized for each of fiscal years 1998-2000 — Section 12.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Reports on Substance Abuse and Child Protection	No provision.	The Secretary of HHS would be required to submit a report to the Committees on Ways and Means and Finance on the problem of substance abuse in the child welfare population, services provided, and the outcomes of such services. This report would be based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families within HHS, and would be due within 1 year of enactment. The report would include recommendations for legislation — Section 13.	The Secretary of HHS would be required to provide to state substance abuse and child welfare agencies an inventory of federal programs that could be used to provide substance abuse services to families in the child welfare system. The Secretary would develop the report through the Administration for Children, Youth and Families, the Center for Substance Abuse Prevention, and the Center for Substance Abuse Treatment. The report would be due within 12 months of enactment, and would be updated biennially. State substance abuse and child welfare agencies would be required to jointly prepare a report on joint activities, due to HHS within 12 months of enactment. Within 18 months of enactment HHS would report to Congress on substance abuse and child welfare issues, including recommendations for legislation — Section 201.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Priority for Substance Abuse Treatment	Pregnant women are given priority for substance abuse treatment under a federal substance abuse block grant — Section 1927 of the Public Health Service Act.	No provision.	All caretaker parents who are referred for substance abuse treatment by a state or local child welfare agency would also be given priority for such services — Section 202.
Eligibility for Independent Living Services	Federal grants for independent living services are authorized to assist: children 16 and older who are eligible for foster care subsidies under Title IV-E; at the option of the state, all other foster children age 16 and older; and at the option of the state, former foster children who are not yet 21 years old — Section 477.	The primary target population for independent living services would be revised to include children who are no longer eligible for foster care subsidies under Title IV-E, because they have accumulated assets of up to \$5,000 — Section 14.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Criminal Record Checks	No provision.	At state option, states could provide (as a component of their Title IV-E plan) procedures for criminal records checks and checks of a state's child abuse registry for any prospective foster parents or adoptive parents, and employees of child care institutions, before the parents or institutions are finally approved for a placement of a child eligible for federal subsidies under Title IV-E — Section number not yet assigned.	Identical to H.R. 867, except the provision would be mandatory for states, rather than optional — Section 205.
Standby Guardianship	No provision.	It would be the sense of Congress that states should have laws and procedures that would permit a parent who is chronically ill or near death to designate a standby guardian for their minor child, without surrendering their own parental rights. The standby guardian's authority would take effect upon the parent's death, mental incapacity, or physical debilitation and consent — Section 16.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Purchase of American-Made Equipment and Products	No provision.	It would be the sense of Congress that, to the greatest extent possible, all equipment and products purchased with funds provided under the Adoption Promotion Act should be American-made — Section number not yet assigned.	No provision.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Child Death Review Teams	No provision.	No provision.	No later than 5 years after enactment, states would be required to certify that they have established and are maintaining a multidisciplinary state child death review team (and, if necessary, regional and local teams) to investigate child deaths, including those where there has been a prior report of abuse or neglect or there is reason to suspect that the death was related to abuse or neglect, or the child was a ward of the state or otherwise known to the child welfare agency, or the death was a suicide, or the cause of death was unexplained or unexpected. In addition, HHS would be required to establish a federal child death review team to investigate deaths on federal lands, review the status of state and local teams, and make recommendations to reduce the number of child deaths — Section 104.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Foster Care Payments for Children with Parents in Residential Institutions	Federally subsidized foster care maintenance payments may be made on behalf of eligible children who are placed in a licensed foster family home, or a licensed child care institution — Section 472(b).	No provision.	Federally subsidized foster care payments could also be made on behalf of eligible children who are placed with their parent in a residential program that provides services for parents and children, including parenting services, in cases where: • the parent is trying to overcome substance abuse, domestic violence, homelessness, or has special needs due to teenage parenthood; • the child's safety can be assured; • the program provides appropriate services for parent and child; • the child's permanency plan is family reunification within a specified period; and • the parent has not previously been treated in a residential program serving children and parents together — Section 203.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Staff Training	Federal reimbursement is available to states for 75% of expenditures for training state and local child welfare personnel, individuals preparing for employment as state and local child welfare personnel, current or prospective foster or adoptive parents, and staff of child care institutions serving children eligible for Title IV-E subsidies — Section 474(a)(3)(A) and (B).	No provision.	Federal reimbursement could also include training directed at staff maintenance and retention, and training provided to personnel employed by courts, law enforcement agencies, substance abuse agencies, mental health providers, domestic violence agencies, health agencies, child care agencies, schools, and other agencies that are working with state or local child welfare agencies. Training expenditures could be reimbursed regardless of the primary provider and regardless of the proportion of Title IV-E-eligible children in the state. HHS would be required to issue guidelines for such training; states would document that their expenditures conform to these guidelines; and states could not reduce their own spending on training below FY1996 levels — Section 204.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Guidelines for Out-of-Home Care	States are required to have an agency responsible for establishing and maintaining standards for foster homes and child care institutions, in accord with recommended standards of national organizations, including standards related to safety and sanitation. States must periodically review these standards, and federal funds may only be provided on behalf of children placed in licensed or approved homes and institutions — Sections 471(a)(10) and (11) and 472(b).	No provision.	States would also be required to develop and implement guidelines to ensure safe, quality care for children in out-of-home settings, such as guidelines issued by a nationally recognized accrediting body; to assist providers in meeting these guidelines; to articulate the guidelines against which agency performance will be judged; monitor progress made toward meeting the guidelines; and judge agency compliance with the guidelines by measuring improvements in child and family outcomes and other appropriate measures — Section 206.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Eligibility for Adoption Assistance	Federally subsidized adoption assistance payments are made on behalf of children with special needs as defined by the state. Eligible children must have been eligible for Aid to Families with Dependent Children (AFDC) at the time adoption proceedings began (except that they had been removed from their family as a result of a voluntary agreement or judicial determination that remaining with the family would be contrary to their welfare), or must be eligible for Supplemental Security Income (SSI), or must be living in foster care with a minor parent who is eligible for foster care subsidies under Title IV-E — Section 473(a)(2).	No provision.	Federally subsidized payments would continue to be made on behalf of children with special needs as defined by the state. AFDC and SSI eligibility provisions would be deleted. Eligible children would be those who, prior to termination of parental rights and initiation of adoption proceedings, were in the care of a public or nonprofit agency or Indian tribe as a result of a voluntary agreement or judicial determination that remaining in the home would be contrary to their welfare, or were living in foster care with their minor parent. An otherwise eligible child who is not a U.S. citizen or resident would be eligible for assistance, except for children who were adopted outside the U.S. or brought to the U.S. to be adopted. An otherwise eligible child whose adoptive parent dies or whose adoption is disrupted would remain eligible for assistance — Section 303.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Payment for Reunification Services	Foster care maintenance payments that are eligible for federal reimbursement are defined as payments for the costs of food, clothing, shelter, supervision, school supplies, personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation — Section 475(4).	No provision.	Foster care maintenance payments would also include costs of reunification services for up to 1 year after a child is removed from home. Reunification services would include services and activities provided to a child who has been removed from home, and the child's parents or primary caregiver to make family reunification possible, and would be limited to individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment, mental health services, assistance to address domestic violence, and transportation to and from such services — Section 304.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Interstate Adoption	No provision.	No provision.	The Secretary of HHS would be required to appoint an advisory panel to study interjurisdictional adoption issues. The panel would submit a report to the Secretary within 12 months of their appointment, including recommendations for improvements. The Secretary would forward the report to Congress, and, if relevant, make recommendations for legislation — Section 305.

Provision	Current Law	H.R. 867 (House-Passed)	S. 511 (Introduced)
Innovation Grants	No provision.	No provision.	Up to \$50 million in entitlement funding would be available in each of fiscal years 1998 and 1999 for grants to states for innovation projects. Projects would last for 5 years, could not require waivers from federal law, would include evaluations, and would address the following goals: • reduce backlogs of children awaiting adoption; • ensure permanent placements within 1 year of foster care; • identify and address barriers to permanent placements; • implement community-based permanency initiatives and child protection activities that involve partnerships; • assist with state safety guidelines; • develop new staffing approaches — Section 401.

Cost Allocation Background

Prior to Welfare Reform, common administrative costs for AFDC, Food Stamps, and Medicaid, such as those for determining eligibility, were all charged to the AFDC program (this cost allocation methodology has been called the "primary program" approach). This was an artifact of legislative history and NOT standard accounting procedure. Under standard accounting procedure, activities are charged to programs in the proportion that the program benefits from the activities (this is called "benefitting program" approach).

Funding levels for the TANF block grant were based on the AFDC program, including the common administrative costs, some of which could rightly have been charged to Medicaid and Food Stamps. In March, the Congressional Budget Office (CBO) adjusted its baseline to show that states will charge a portion of these common costs to Medicaid and Food Stamps, as they can under current law and standard accounting procedures. The CBO baseline increased by over \$5 billion 1997-2002, assuming states would move to this benefitting program approach.

The Office of Management and Budget (OMB) did not adjust its baseline to show that states would move to a benefitting program. Instead, they assumed that TANF would replace AFDC as the primary program for the purpose of allocating common costs. This is not consistent with current law and OMB Circular A-87. The OMB baseline, therefore, does not reflect increasing administrative costs in the Medicaid and Food Stamp programs.

In this legislative session, several proposals have sought to stop the shifting of common administrative costs to Medicaid and Food Stamps, and to capture the savings from the CBO baseline for use as an offset for other provisions that have costs. During budget reconciliation the CBO score was most important because the Administration had agreed to use the CBO baseline to balance the budget. However, the Balanced Budget Agreement re-set the Pay-Go scorecard to zero. Legislation post-BBA must be scored by OMB against the Administration baseline. Legislation that is not cost neutral runs the risk of triggering a sequester under the Budget Enforcement Act. OMB's baseline assumes TANF as primary program; the costs of moving to benefitting program have never been incorporated into the baseline. Therefore, no savings would result from the cost allocation provision, and it is not available as an offset. Savings from cost allocation methodology may be available as an offset for legislation proposed with the FY 1999 President's Budget, as OMB could adjust its baseline to include increasing administrative costs.

While CBO included over \$5 billion in additional costs from shifting common costs to Medicaid and Food Stamps, making TANF primary will likely produce lower savings. Since Welfare Reform granted states the flexibility to set different eligibility criteria, fewer of the costs will remain truly common to all three programs. Therefore, states will be able to organize in various ways to legitimately shift costs to these programs.

Background and talking points on cost allocation:

"Cost allocation" was the suggested offset for the SAFE Act in reconciliation and is the current offset for S. 1195 Promotion of Adoption, Safety and Support for Abused and Neglected Children (PASS).

The general policy: Under the welfare reform block grant, there is a 15% cap on administrative costs for states. CBO assumes that states will shift administrative costs from welfare which is now a block grant into open ended entitlements like Medicaid and food stamps. The cost allocation amendment would prohibit states from shifting administrative costs to these entitlement programs. Stopping the cost shift would save about \$3.4 billion, per CBO. We are carefully working with CRS and advocates to draft a fair cost allocation to pay for the \$2.5 billion in spending for PASS. PASS does not include any caps; therefore food stamp only cases and Medicaid-only cases would not be put in jeopardy as they might under alternative proposals on cost allocations that do include caps for food stamps or Medicaid.

Current law: TANF limits States' administrative costs to 15% of block grant. But Medicaid and food stamps are entitlements with a 50-50 match for administrative costs.

Change and Explanation: Add language to ensure the states do not shift TANF administrative costs to other open ended federal entitlement programs, such as Medicaid, and food stamps.

All the state organizations — NGA, NCSL, and APWA oppose any cost allocation provisions. Food stamp advocates (and Agriculture Committee members) will probably argue that they should get some of the savings from such a provision.

Counterpoints to state opposition:

States say this is an unfunded mandate, and unfair to vulnerable families.

FACT: Governors asked for a block grant of welfare reform, and said that they could be more efficient with flexibility.

Administrative costs were raised from 10% to 15% in the block grant. In 1995, average administrative costs were 13.7% for welfare — and that was before the flexibility of the block grant.

We are not harming families. We are just ensuring that State don't shift administrative costs from welfare programs to Medicaid and food stamps. To be clear, this offset does not touch Medicaid only and food stamp only cases. If Medicaid claims go up, states can still get administrative matching funds at the same

50-50 level.

States will claim that our cost allocation offset, hurts food stamps and Medicaid.

FACT: The offset requires States to "live" under the 15% administrative cap of the welfare block grant.

FACT: The offset will not change the 50-50 Administrative match for Medicaid only and food stamp only cases.

FACT: The offset is *not* the same as the Stenholm amendment, it does *not* have a cap of administrative costs for food stamps, like Stenholm.

History: Congressman Stenholm had a similar provision in the House, except his was harsher than yours because it included a "hard cap" on food stamps administrative costs. This would be a huge problem during a recession, when the number of families collecting food stamps would rise but the administrative money to process all new claims for food stamps.

State claim that we are "taking" money from vulnerable families.

- **This offset is designed to ensure that States don't circumvent the 15% cap of administrative costs in the welfare reform block grant and shift those costs to Medicaid and food stamps. Congress talks a lot about gaming the system. Imposing a cost allocation provision would prevent gaming before it starts.**
- **Governors and the States don't like our offset. I was a Governor so I understand the interest States have in maximizing federal dollars — but that does not make it right or acceptable.**
- **The offset just prevents States from circumventing the 15% administrative costs under the welfare block grant and shifting the costs to other federal programs like Medicaid and food stamps.**