

THE WHITE HOUSE AT WORK

Wednesday, November 19, 1997

"We have put in place...the building blocks of giving all of our children what should be their fundamental right, a chance at a decent safe home; an honorable, orderly, positive upbringing; a chance to live out their dreams and their God-given capacities." -- President Clinton, Nov. 19, 1997

PRESIDENT CLINTON SIGNS THE ADOPTION AND SAFE FAMILIES ACT OF 1997

Today, President Clinton signed into law the landmark Adoption and Safe Families Act of 1997 to help thousands of children waiting in foster care move more quickly into safe and permanent homes. This overwhelmingly bipartisan legislation was based in large part on the recommendations of the President's "Adoption 2002" report. The report takes its name from one of the President's central goals -- to at least double the number of children adopted or permanently placed to 54,000 by the year 2002. The Act makes sweeping changes in federal law on adoption and foster care enacted in 1980. The new law makes clear that the health and safety of children must be the paramount concerns of state child welfare services. The Adoption and Safe Families Act also includes the following:

Ensuring that Children are Safe

- Clarifies Reasonable Reunification Efforts: As the President proposed, the new law ensures that children's health and safety are the paramount concerns of the public child welfare system. The law clarifies that there are instances when states are not required to make "reasonable efforts" to keep children with their parents, such as when a parent has been convicted of murdering another child or a child has been abandoned, tortured, or chronically abused.

Doubling the Number of Children Adopted or Permanently Placed by 2002

- Creates Financial Incentives to Increase Adoptions: The new law contains the President's plan to offer a financial bonus to states that increase the number of children who are adopted from the public foster care system. These incentives will help double the number of children adopted. For every additional child adopted, a state will receive \$4,000, with an additional \$2,000 paid for each child with special needs.
- Establishes Tighter Time Limits -- Setting Swifter Time Frames for Making Permanent Placement Decisions: Under the new law, permanency hearings will now be held no later than 12 months after a child enters foster care, 6 months earlier than under previous law, and states must initiate termination of parental rights proceedings, except in specified circumstances, for any child who has been in foster care for 15 of the previous 22 months.

Promoting Safe and Stable Families

- Ensuring Health Care for Children with Special Needs and Providing Supportive Services: The new law ensures that children with special needs keep health insurance coverage when they are adopted, either through Medicaid or through the new children's health program included in the Balanced Budget. In addition, the new law reauthorizes the Family Preservation and Family Support Services Program, renamed Promoting Safe and Stable Families, which provides services to strengthen families before crises occur and to ensure safe, stable homes for children who return to their families.

Building on the President's Record

Since taking office in 1993, President Clinton has taken important steps to encourage and increase adoptions and to support families who choose to adopt. The President has committed his Administration to breaking down barriers, including high adoption costs and complex regulations. Among these efforts, last year, the President signed into law a \$5,000 tax credit to families adopting children, and a \$6,000 tax credit for families adopting children with special needs. The President also ensured that the adoption process is free from discrimination and delays on the basis of race, culture and ethnicity by strengthening the Multi-Ethnic Placement Act. And the very first piece of legislation the President signed into law, the Family and Medical Leave Act, allows parents to take time off to adopt a child without losing their jobs or health insurance.

JOHN D. ROCKEFELLER IV
WEST VIRGINIA

United States Senate
WASHINGTON, DC 20510-4802

FROM THE OFFICE OF SENATOR JAY ROCKEFELLER

FAX COVER SHEET

TO: *Cynthia Rice*

FROM: *Barbara Pryor*

DATE: *9-29-97*

OF PAGES (INCLUDING COVER): *14 page*

Problems with transmission call (202) 224-6472

Message: *FYI we have adoption suggestions appreciated!*

Background and talking points on cost allocation:

"Cost allocation" is the 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.

Counterpoints to 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.**

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S.L.C.

pending preferred

1 SEC. 404. ALLOCATION OF COMMON ADMINISTRATIVE
2 COSTS.

3 (a) IN GENERAL.—Section 408(a) of the Social Secu-
4 rity Act (42 U.S.C. 608(a)) is amended by adding at the
5 end the following:

6 “(12) RULES FOR ALLOCATION OF COMMON AD-
7 MINISTRATIVE COSTS.—

8 “(A) DESIGNATION OF TANF AS PRIMARY
9 PROGRAM.—Except as provided in subpara-
10 graph (B), for the purpose of allocating com-
11 mon administrative costs incurred in serving
12 households, families, and individuals eligible or
13 applying for benefits under the program funded
14 under this part and any other Federal means-
15 tested public benefit program administered by
16 the State or the program funded under part D
17 of this title, the program under this part shall
18 be treated as the primary program in the same
19 manner as the program under this part prior to
20 August 22, 1996, was treated as the primary
21 program for such purpose.

22 “(B) OPTIONAL USE OF GENERAL ALLOCA-
23 TION RULES.—

24 “(i) IN GENERAL.—For the purpose
25 of allocating common administrative costs
26 incurred in serving households, families,

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1 and individuals eligible or applying for ben-
2 efits under the program funded under this
3 part and the State plan under title XIX
4 (including any waiver of such plan), effec-
5 tive for such costs incurred on and after
6 October 1, 1997, a State that meets the
7 requirements of clause (ii) may elect to al-
8 locate such costs based upon generally ap-
9 plicable rules for allocating costs among
10 Federally funded programs, grants, and
11 contracts.

12 “(ii) REQUIREMENTS.—A State meets
13 the requirements of this clause if, with re-
14 spect to determining the eligibility of indi-
15 viduals described in clause (iii) for assist-
16 ance under the program funded under this
17 part and for medical assistance under title
18 XIX—

19 “(I) the State applies the same
20 income and resource standards and
21 methodologies;

22 “(II) the State integrates the ad-
23 ministration of the eligibility proce-
24 dures; and

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1 “(III) the State uses the same
2 application form.

3 “(iii) INDIVIDUALS DESCRIBED.—In-
4 dividuals described in this clause are indi-
5 viduals whose eligibility for medical assist-
6 ance under title XIX is based upon the ap-
7 plication of section 1931.

8 “(iv) CONSTRUCTION.—Nothing in
9 this subparagraph shall be construed as af-
10 fecting the application of section 1931.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to allocation of costs incurred
13 on or after October 1, 1996.

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DISCUSSION DRAFT

S.D.C.

2nd Option

1 (a) TRANSITIONAL FEDERAL ASSISTANCE FOR CER-
2 TAIN ADMINISTRATIVE COSTS.—Section 1903 of the So-
3 cial Security Act (42 U.S.C. 1396b) is amended by adding
4 at the end the following:

5 “(x)(1) Subject to the succeeding provisions of this
6 subsection, with respect to each of fiscal years 1998
7 through 2002, in the case of a State described in para-
8 graph (2), the Secretary shall provide that with respect
9 to administrative expenditures that the State dem-
10 onstrates to the satisfaction of the Secretary are attrib-
11 utable to the implementation of the eligibility and adminis-
12 trative procedures described in subparagraphs (A), (B),
13 and (C) of paragraph (2), the per centum specified in sub-
14 section (a)(7) shall be increased to such percentage as the
15 Secretary determines, for each such fiscal year—

16 “(A) ensures the equitable distribution of addi-
17 tional Federal funds among the States that the Sec-
18 retary determines implement the eligibility and ad-
19 ministrative procedures described in such subpara-
20 graphs of paragraph (2); and

21 “(B) does not result in total Federal outlays
22 that exceed the limitation described in paragraph
23 (3).

24 “(2) A State is described in this paragraph if the Sec-
25 retary determines that, with respect to determining the eli-

1 gibility of individuals whose eligibility for medical assist-
2 ance under this title is based upon the application of sec-
3 tion 1931—

4 “(A) the State applies the same income and re-
5 source standards and methodologies;

6 “(B) the State integrates the administration of
7 the eligibility procedures; and

8 “(C) the State uses the same application form.

9 “(3) The total amount of additional Federal outlays
10 resulting from the application of this subsection for each
11 of fiscal years 1998 through 2002, shall not exceed
12 [\$150,000,000/ note: modify amount to be amount that
13 results in a net total savings of \$2,500,000,000 as a result
14 of this amendment] in any such fiscal year.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall apply to the allocation of administra-
17 tive costs incurred on or after October 1, 1996.

The logo for the American Public Welfare Association (APWA) features the letters "APWA" in a bold, white, serif font, centered within a solid black rectangular background.

AMERICAN PUBLIC WELFARE ASSOCIATION

Cornelius D. Hogan, President

A. Sidney Johnson III, Executive Director

September 23, 1997

To: Laurie Rubiner
Barbara Pryor

Fr: Elaine Ryan and Betsey Rosenbaum

Re: Definition of Administrative Costs

Thank you for taking the time to discuss the financing mechanism of the new child welfare bill PASS. As promised, attached you will find the proposed child care regulations related to state administrative costs. Under Subpart F, Section 98.52 you will note that while the 5 percent cap on child care administrative costs applies to the federal funds, no such cap is imposed on the state maintenance of effort dollars. The proposed regulation states, "(c) Non-Federal expenditures required by S98.53(c) (i.e., the maintenance of effort amount) are not subject to the five percent limitation at paragraph (a) of this section."

No similar distinction is made in the TANF section of the law. There is a 15 percent cap on the federal dollars and the state maintenance of effort dollars. Perhaps, the TANF administrative cap language could be amended to reflect the child care policy described above.

If you have any questions, please feel free to give us a call.

discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider.

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

Subpart F—Use of Child Care and Development Funds

§ 98.50 Child care services.

(a) Of the funds remaining after applying the provisions of § 98.50 (c), (d) and (e) the Lead Agency shall spend a substantial portion to provide child care services to low-income working families.

(b) Child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share

of Matching Funds), no less than four percent shall be used for activities to improve the quality of child care as described at § 98.51.

(d) Of the aggregate amount of funds awarded (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.52.

(e) Not less than 70 percent of the Mandatory and Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act.

(2) Are attempting through work activities to transition off such assistance program, and

(3) Are at risk of becoming dependent on such assistance program.

(f) Pursuant to § 98.16(g)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

§ 98.51 Activities to improve the quality of child care.

(a) No less than four percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

(1) These activities may include but are not limited to:

(i) Activities designed to provide comprehensive consumer education to parents and the public;

(ii) Activities that increase parental choice; and

(iii) Activities designed to improve the quality and availability of child care, including, but not limited to those described in paragraph (a)(2) of this section.

(2) Activities to improve the quality of child care services may include, but are not limited to:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government...) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of,

applicable State, local, and tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part; and

(vi) Any other activities that are consistent with the intent of this section.

(b) Pursuant to § 98.16(h), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

§ 98.52 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and
(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(b) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

§ 98.55 Matching Fund requirements

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched:

(1) At the Federal medical assistance rate for the fiscal year 1995 irrespective of the fiscal year in which the funds are available; and

(2) If they are for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402 (g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10; or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use; and

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the donor and by the Lead Agency as available and representing expenditures eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to an entity designated by the State to receive donated funds pursuant to § 98.16(c)(2).

(g) The following are not counted as an eligible State expenditure under this Part:

(1) In-kind contributions; and
(2) Family contributions to the cost of care as required by § 98.42.

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(q), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In any fiscal year,

a State may use other public pre-K funds for up to 20% of the expenditures serving as the State's matching funds under this subsection.

(4) If applicable, the CCDF plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20%, of either its maintenance-of-effort or State matching funds in a fiscal year. Also, the plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(3).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

Summary of the Promotion of Adoption, Safety and Support for Abused and Neglected Children Act (PASS)

The product of a comprehensive bi-partisan effort on behalf of children and families, PASS will fundamentally shift the focus of the foster care system by insisting that a child's health, safety and permanency are the paramount concerns when a state makes any decision concerning the well-being of a child in the system. As a package, PASS will accelerate and improve the response to these concerns, promote adoptions and ensure the safety of abused and neglected children

I. PROMOTES ADOPTIONS

- Rewards States that increase adoptions with bonus of \$2000 for adoption of foster children and \$4000 for adoptions of children with special needs
- Requires States, for the first time, to use "reasonable efforts" to move eligible foster care children into safe adoptions
- Promotes adoption of all special needs children and ensures health coverage for special needs children who are adopted. There will be a maintenance of effort provision so that States are required to take the savings from this provision and reinvest their savings in their child welfare or foster care systems. The reinvestment should be approximately \$2.4 billion.
- Breaks down unnecessary geographic barriers facing adoptive families
- Requires States to document and report adoption efforts

II. ENSURES SAFETY FOR ABUSED AND NEGLECTED CHILDREN

- Ensures health and safety are paramount concerns when a State determines placements for abused and neglected children, and allows States to waive "reasonable efforts in extreme cases including abandonment, torture, physical abuse, sexual abuse and the CAPTA standards of cases of a parent involved in murder, manslaughter, or felony assault on their child
- Adds "safety of the child" to every step of the case plan and review process
- Requires criminal records checks for all foster and adoptive parents
- Allows children to be freed for adoption more quickly in cases of murder or severe abuse by their parents

III. ACCELERATES PERMANENT PLACEMENTS

- Cuts by 1/3 the time a child must wait to find a safe and permanent home
- Requires states to initiate court proceedings to free a child for adoption once that child has been waiting in foster care for one year or more.
Therefore, states would be required to move toward termination of parental rights if a child was in foster care for 12 out of 18 months, or a total of 24 months, unless:
 - (1) the child is cared for by a relative
 - (2) a State court or the State agency has documented compelling reasons that this is not in the best interest of the child.
- Shortens a child's wait for adoption by allowing states to develop a standby (or concurrent) permanency plan
- Prevents long legal delays through the appeals process

IV. INCREASES ACCOUNTABILITY AND REFORMS

- Establishes new outcome measures to monitor and improve state performance
- Requires states, for the first time, to document child-specific efforts to move children into adoptive homes
- Introduces innovation grants to reduce backlogs of children awaiting adoption
- Strengthens and integrates substance abuse treatment with protections for children:
 - (1) provides priority for families at-risk, and parents who need substance abuse treatment to end abuse and neglect;
 - (2) requires a GAO study of collaboration of substance abuse treatment and CPS with a report on barriers to treatment and recommendation for further action;
 - (3) allows IV-E funding to cover foster children who are placed with their parent in a residential treatment center for substance abuse. (Cost neutral)
- Continues investments in strengthening families at the community level by reauthorizing the 1993 provision of the budget agreement for family preservation and family support, which assures \$1.2 billion over 5 years for prevention and family services.
- Establishes a plan public oversight of suspicious child deaths

Funding Source: This legislation includes "cost allocation" provision based on the welfare reform block grant, which included a 15% cap on administrative costs for states. CBO and OMB assume that states will shift administrative costs from welfare --which is now a block grant-- into open-ended entitlements like Medicaid and Food Stamps. This cost allocation amendment would prohibit states from shifting administrative costs to these entitlement programs.

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

Change and Explanation: This provision adds language to ensure the states do not shift TANF administrative costs to other open-ended federal entitlement programs, such as Medicaid and Food Stamps. This provision would not limit administrative costs for Food Stamp-only cases or Medicaid-only cases.

NOTE: Most Governors requested a block grant under welfare reform because they said that they could be more efficient with flexibility. Administrative costs within the TANF block grant were raised from 10% to 15% during the welfare reform debates. In 1995, average administrative costs were 13.7% for welfare — and that was before the flexibility of the block grant.



May Boudette

proposed agenda

Wants to see
10/21/94

~~Money~~

- ① Are we going to support the spending
- ② How are we going to pay for it

Should we
are we
of money
to

Chafee force only adoption
 sent not ~~to~~ support them
 ③ Should we testify on Oct 8th
 →

THE WHITE HOUSE
WASHINGTON

Ed L.

Want to do/side in

No ~~admin~~ ^{food stamp} ~~market~~ ^{is}

change cost allocation
rules

- not 15% cap

- Sub commttee submt - last wk
working

- Crop coverage → make

→ Fund for Rural ^{market} ~~America~~ ^{aggr}

→ FS Re-Grant

→ \$ TFAP "Emergency Food Assistance"

CBO

MEMORANDUM

FEDERAL BUDGETARY IMPLICATIONS
OF THE PERSONAL RESPONSIBILITY
AND WORK OPPORTUNITY
RECONCILIATION ACT OF 1996

December 1996



CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

Effect of the Block Grant on Other Programs

Replacing AFDC with a block grant may affect receipt of other federal benefits, including food stamps, foster care, and Medicaid.

Food Stamp Program. CBO estimates that enacting the block grant for family support will result in families receiving lower average cash payments and, consequently, higher Food Stamp benefits. Each dollar a participating family loses in cash increases its Food Stamp benefits by about 30 cents. CBO estimates that the new law will reduce the income of AFDC families by \$2.3 billion in 2002, generating a cost in the Food Stamp program in that year of nearly \$700 million. By 2002, the block grant amount will be 10 percent lower than projected federal spending on AFDC and related programs. Therefore, for purposes of determining the costs of the Food Stamp program, CBO assumes that by 2002, cash benefits funded by the block grant will be 10 percent lower than under prior law. CBO also assumes that by 2002, states will spend, on average, 15 percent less of their own funds on cash benefits than they would have spent under prior law. Should states decide to spend more or less than that amount, the costs of the Food Stamp program will be smaller or greater than the estimate.

Foster Care Program. Although the act does not directly amend foster care maintenance payments, which will remain an open-ended entitlement with state expenditures matched by the federal government, the act could affect the amount of spending on the foster care program. By retaining the foster care benefits as a matched entitlement, the act creates an incentive for states to shift AFDC children who are also eligible for foster care benefits into the foster care program. AFDC administrative data for 1993 suggest that roughly 500,000 children, or 5 percent of all children on AFDC, fall into that category because they live in a household without a parent. CBO assumes that a number of legal and financial barriers will prevent states from transferring a large share of such children and estimates that states will collect an additional \$10 million in foster care payments in 1999, rising to \$45 million in 2002.

Medicaid Program. Under the act, categorical eligibility for Medicaid families that meet the eligibility criteria for AFDC is generally the same as under prior law with some modifications. States must use AFDC income and resource standards and methodologies in effect on July 16, 1996, to determine Medicaid eligibility. As under prior law, states have the option to lower income standards to the May 1, 1988, levels or to increase income standards; however, those increases are limited to the annual increase in the consumer price index (CPI). In a departure from prior law, states may increase resource standards (by no more than the annual increase in the

Adoption Bonuses

8wcs-10mi

10/9

Family Pres.

125m CBO

200m - OMB

→ omvOMB fix baseline

①

Mexico ^{for Special Needs} ~~Study~~ \$30 mi

\$159 mi

AA for U-E ~~Program~~ \$4.4
disrupted

②

De-Link Prospectively

\$377 mi in Sys

→ large outlays

\$2 bi in 10 yrs

③

De link but Reduce Fed Match
(formula tight)

④

Strengthen
Develop MOE

ERs must be in adoption asset

→ this costs \$2.3
but better from

policy
prospective

Shaw

Offered it - withdrew
Tried to talk about it + solicit
Admin opinion

Rozzel

- said can't unless call for
vote + can't be a point for

Levin

was what you good
thing

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 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 cost 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 3, 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 as 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 Child
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 Ad 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. T

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.

ADOPTION ASSISTANCE OFFSET OPTIONS

1. Reduce Epoprotein (EPO) Payments by 5 Percent: EPO is a drug used to treat anemia related to chronic renal failure. EPO is a sole source drug, its manufacturer is competitively protected under the Orphan Drug Act. Medicare reimbursement for EPO totals nearly \$1 billion per year. Prior to 1993, Medicare payment was \$11.00 dose. OBRA 93 reduced Medicare's payment by \$1.00 per dose based on an HHS IG report concluding that facility costs for EPO -- before manufacturer rebates -- were approximately \$10.00 per dose, \$1.00 less than Medicare's \$11.00 reimbursement rate. The HHS IG report also concluded that some facilities received a 2 to 8 percent manufacturers rebate and that Medicare had no way to capture the savings from this rebate.

This policy would reduce Medicare's reimbursement for EPO by a 5 percent per dose, or \$0.50, to capture savings from manufacturers rebates. ESRD-related beneficiary groups and the manufacturer of EPO are likely to object to this change.

Savings: \$100 million over five years. (Staff estimate)

2. Reduce double payment for enteral nutrients: Enteral nutrients provide nourishment directly to the digestive tract of a patient who cannot ingest an appropriate amount of calories to maintain an acceptable nutritional status. For nursing home residents, enteral nutrients effectively represent a beneficiary's food or meal and could conceptually be included as part of Medicare's routine Part A payment to the nursing home. However, the HHS IG found that most nursing homes do not directly purchase enteral nutrients for residents, even though they report that they can purchase nutrients below Medicare reimbursement levels. Instead, nursing homes allow outside suppliers to provide the nutrients and bill Medicare under the Part B prosthetic and orthotic benefit. If Medicare recognized the nutrients as "food," payments for enteral nutrients would be made as part of the facility payment, rather than separately billed under Part B.

This proposal would exclude enteral nutrients from Part B reimbursement when the patient resides in a nursing home. Instead, these costs would be included in a nursing home's routine costs and reimbursed under Part A.

Savings: \$50 million over five years (all of the savings occur in the first year, since SNF PPS begins in July 1998). (Staff estimate)

3. Reduce the Social Services Block Grant (SSBG) by \$20-40 million annually. SSBG is an appropriated entitlement used to support a variety of social service programs designed to reduce or eliminate dependency, achieve or maintain self-sufficiency, help prevent neglect, abuse or exploitation of children and adults. The Senate Labor/HHS appropriations bill

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- bad policy
- pay twice

reduces SSBG by \$135 million in FY 1998. The House bill had a similar provision that was dropped.

Savings: \$100-200 million over 5 years.

10/9/97