

SENATE BILL 1051, Standby Guardianship
Oral Testimony of Karen Engro, Esq., Assistant Clinical Professor of the Family Support
Legal Clinic at the University of Pittsburgh School of Law.
Oral testimony of Heather R. Ercolani, Law Student and Certified Legal Intern of the
Family Support Legal Clinic at the University of Pittsburgh School of Law.
Written Testimony of James King, consumer.

Good afternoon. My name is Karen Engro. I am an Assistant Clinical Professor of Law at the Family Support Legal Clinic at the University of Pittsburgh. The Family Support Legal Clinic provides free legal services to low income individuals in Western Pennsylvania living with disabilities, the elderly, or individuals faced with social security legal issues. As such, our Clinic works with many clients with children who would greatly benefit from a Standby Guardianship law when faced with the physical, mental and emotional problems of living with a terminal illness. I would like to now introduce Heather Ercolani, a third year law student and certified legal intern with the Family Support Legal Clinic.

Thank you, Karen. Good afternoon. Before I begin my testimony, I would like to read the written testimony of James King, a friend of the Clinic, a consumer, a husband and a father of a family living with AIDS. Mr. King could not testify in person today because he is with his son who has been very ill in the past few weeks. [Attached hereto as Exhibit A].

As a student with the Family Support Legal Clinic for the past school year, I have found that many of our clients need more than the legal help that I can provide. Many clients are faced with their own disability or terminal illness, the illnesses of their families and their children, financial problems, as well as psychological and emotional problems. I find it frustrating that I cannot help my clients with all the problems they face, but I find it even more frustrating when I am unable to help them with what should be an easy legal problem such as a naming a guardian

for their children in the event they become incapacitated or die.

A Standby Guardianship law takes some of the legal burden off of a parent who is already dealing with the most difficult time in his or her own life knowing that he or she may die sooner than expected. Pennsylvania should follow in the steps of the other states which have enacted such an important law.

In November, Congress passed the Adoption and Safe Families Act of 1997, (PL 105-89, 1997 HR 867, November 19, 1997, 111 Stat. 2115). Section 403 of this Act is a definitive decree by our federal government supporting the passage of standby guardianship laws. Specifically, it reads: "It is the sense of Congress that the States should have in effect laws and procedures that permit any parent who is chronically ill or near death, without surrendering parental rights, to designate a standby guardian for the Parent's minor children, whose authority would take effect upon (1) the death of a parent; (2) the mental incapacity of the parent; or (3) the physical debilitation and consent of the parent." [Attached hereto as Exhibit B]. This Act clearly encourages all states including Pennsylvania to have standby guardianship laws in place, and it is just one more reason why we are here supporting the passage of Senate Bill 1051.

The purpose behind this Bill is to assist families in crisis. Laws as they exist today only add burdens on families living with the reality of terminal illness. In an effort to ease the burden of custody planing, Senate Bill 1051 allows a custodial parent, without terminating his or her parental rights, to name a guardian and to begin developing lasting relationships between the parent, the guardian, and the child. Additionally, the Bill includes a rebuttable presumption in favor of the nominating parent's choice of guardian. A parent may not name a third party as the standby guardian if the child has another parent or an adoptive parent "(1) whose parental rights

have not been terminated; (2) whose whereabouts are known; and (3) who is willing and able to make and carry out the day-to-day child-care decisions” concerning the child. S.B. 1051, Section 5611(a).

On the other hand, if the parent or adoptive parent has been voluntarily absent from the child’s life, the presumption remains in favor of the nominating parent’s choice, and it will be presumed that the choice is in the best interest of the child. The noncustodial parent who is voluntarily absent from the child’s life will be afforded notice and an opportunity to be heard at the hearing for the designation of the standby guardian. This presumption is appropriate in light of the current law in Pennsylvania regarding custody matters.

The noncustodial parent will be notified of the Standby Guardianship petition and the scheduled hearing within 10 days of the filing of the petition. If the non-custodial parent cannot be located, notice will be given according to the notice provisions of the Pennsylvania Rules of Civil Procedure in Custody Matters.

After notification, the non-custodial parent has full opportunity to be heard at the standby guardianship hearing, and to petition the Court to modify the Standby Guardianship designation. Again, this procedure is consistent with the policy in Pennsylvania to protect the best interest of the child as well as balance the parental rights of the surviving or adoptive parent. The Bill also includes language that allows a Court to enter an order approving the designation so long as the entry of the approval order would be in the best interest of the child. This language provides another layer of protection for the child in the event that the standby guardian designation is found not to be in the best interest of the child.

For these reasons, we strongly encourage the Senate to support this extremely important bill. The faster this bill is passed, the faster we can start assisting families in permanency planning as they face the most difficult time in their shortened lives. Thank you for your time and consideration. Either Professor Engro or I would be happy to entertain any questions you may have at this time.

REAL LIFE

I am a 40 year old white male who is HIV infected. I am also a husband and a father. My wife and my son both have full blown AIDS. I was unable to come here today to testify in person because my 8 year old son, Devon, was recently diagnosed with anorexia as a result of AIDS, and he has a gastrointestinal tube in place. This fall, Devon dropped from 62 to 41 pounds.

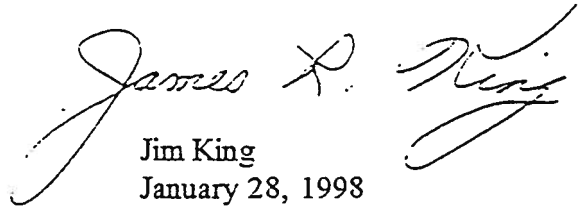
We are in a daily fight for survival. We reside in rural Washington County, Pennsylvania, where there are very limited or no services available, including experienced HIV/AIDS medical professionals. The county AIDS task force and local health departments most often refer out our group of consumers to Pittsburgh or to Allegheny County for health care support groups and other services. In this rural setting we face the fear of hostilities, rejection, and isolation. We have been rejected and ostracized by family members with only the support of each other to rely on.

I am in full support of passage of Senate Bill 1051 because it would greatly aid in the future care and custody planning for my son. My wife and I need options when considering who will care for my son if and when something happens to us. Standby Guardianship will allow my wife and I to choose a responsible and caring guardian for Devon. The guardian will have a chance to become a part of our family while we are still all together. The guardian will know what our wishes are about the medical decisions that need to be made for Devon. As medications change and new ones are put on the market a decision to take or not to take a certain drug therapy could hurt Devon. I want to know that a responsible person will make the right decisions for Devon. We have no family that we know could or would care for Devon if something happens to my wife or me. A great burden would be lifted off our shoulders if we knew there was

a way to definitively designate someone to care for Devon when my wife and I are unable to care for him ourselves.

As a consumer living with the reality of AIDS, as a husband, and as the father of Devon, I strongly urge you to support the Standby Guardianship Bill. Thank you.

A Proud Father and Husband,

A handwritten signature in cursive script that reads "James R. King". The signature is written in dark ink and is positioned to the left of the typed name and date.

Jim King
January 28, 1998

UNITED STATES PUBLIC LAWS
105th Congress - First Session
Convening January 7, 1997

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Additions and Deletions are not identified in this document.

PL 105-89 (HR 867)
November 19, 1997
ADOPTION OF CHILDREN--FOSTER CARE

An Act to promote the adoption of children in foster care.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

< < 42 USCA § 1305 NOTE > >

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

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

Sec. 1. Short title; table of contents.

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

Sec. 101. Clarification of the reasonable efforts requirement.

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

Sec. 103. States required to initiate or join proceedings to terminate parental rights for certain
children in foster care.

Sec. 104. Notice of reviews and hearings; opportunity to be heard.

Sec. 105. Use of the Federal Parent Locator Service for child welfare services.

Sec. 106. Criminal records checks for prospective foster and adoptive parents.

Sec. 107. Documentation of efforts for adoption or location of a permanent home.

TITLE II--INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

Sec. 201. Adoption incentive payments.

Sec. 202. Adoptions across State and county jurisdictions.

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Exhibit "B"



Sec. 203. Performance of States in protecting children.

TITLE III--ADDITIONAL IMPROVEMENTS AND REFORMS

Sec. 301. Authority to approve more child protection demonstration projects.

Sec. 302. Permanency hearings.

Sec. 303. Kinship care.

Sec. 304. Clarification of eligible population for independent living services.

Sec. 305. Reauthorization and expansion of family preservation and support services.

Sec. 306. Health insurance coverage for children with special needs.

Sec. 307. Continuation of eligibility for adoption assistance payments on behalf of children with special needs whose initial adoption has been dissolved.

Sec. 308. State standards to ensure quality services for children in foster care.

TITLE IV--MISCELLANEOUS

Sec. 401. Preservation of reasonable parenting.

Sec. 402. Reporting requirements.

Sec. 403. Sense of Congress regarding standby guardianship.

Sec. 404. Temporary adjustment of Contingency Fund for State Welfare Programs.

Sec. 405. Coordination of substance abuse and child protection services.

Sec. 406. Purchase of American-made equipment and products.

TITLE V--EFFECTIVE DATE

Sec. 501. Effective date.

*2116 TITLE I--REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE
AND ADOPTION PLACEMENTS

SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

< < 42 USCA § 671 > >

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

"(15) provides that--

"(A) in determining reasonable efforts to be made with respect to a child, as described in this

paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

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

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

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

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

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

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

"(ii) the parent has--

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

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

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

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

*2117 "(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

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

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

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

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

< < 42 USCA § 675 > >

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

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

< < 42 USCA § 672 > >

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

< < 42 USCA § 678 > >

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

"SEC. 478. RULE OF CONSTRUCTION.

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

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

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

< < 42 USCA § 622 > >

(1) in section 422(b)(10)(B)--

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

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

< < 42 USCA § 675 > >

(2) in section 475--

(A) in paragraph (1)--

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

(ii) in subparagraph (B)--

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

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

*2118 (B) in paragraph (5)--

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

(ii) in subparagraph (B)--

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

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

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

< < 42 USCA § 675 > >

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

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

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

(3) by adding at the end the following:

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

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

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

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

(b) DETERMINATION OF BEGINNING OF FOSTER CARE.--Section 475(5) of the Social Security

Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended--

- (1) by striking "and" at the end of subparagraph (D);
- (2) by striking the period at the end of subparagraph (E) and inserting "; and"; and
- (3) by adding at the end the following:

*2119 "(F) a child shall be considered to have entered foster care on the earlier of--

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

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

< < 42 USCA § 675 NOTE > >

(c) TRANSITION RULES.--

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

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

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

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

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than 1/3 of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time;

(B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than 2/3 of such children as the State shall select; and

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

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

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

(d) RULE OF CONSTRUCTION.--Nothing in this section or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of *2120 parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.

< < 42 USCA § 675 > >

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

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

- (1) by striking "and" at the end of subparagraph (E);
- (2) by striking the period at the end of subparagraph (F) and inserting "; and"; and
- (3) by adding at the end the following:

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

< < 42 USCA § 653 > >

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

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

- (1) in subsection (a)(2)--

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

- (B) in subparagraph (A)--

- (i) by striking "or" at the end of clause (ii);
- (ii) by striking the comma at the end of clause (iii) and inserting "; or"; and
- (iii) by inserting after clause (iii) the following:

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

(2) in subsection (c)--

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

(B) by adding at the end the following:

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

< < 42 USCA § 671 > >

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

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

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

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

(3) by adding at the end the following:

"(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures *2121 for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that--

"(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

"(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

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

< < 42 USCA § 675 > >

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

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

(1) in the last sentence--

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

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

(2) by adding at the end the following:

"(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems."

***2122 TITLE II--INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN**

SEC. 201. ADOPTION INCENTIVE PAYMENTS.

< < 42 USCA § 673b > >

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

"SEC. 473A. ADOPTION INCENTIVE PAYMENTS.

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

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

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

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

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

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

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

"(c) DATA REQUIREMENTS.--

"(1) IN GENERAL.--A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)--

"(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a

grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

"(B) for each succeeding fiscal year that precedes the fiscal year.

"(2) DETERMINATION OF NUMBERS OF ADOPTIONS.--

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

"(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.--For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source *2123 or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by November 30, 1997, and approved by the Secretary by March 1, 1998.

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

"(d) ADOPTION INCENTIVE PAYMENT.--

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

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

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

"(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.--For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be--

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

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

"(e) 2-YEAR AVAILABILITY OF INCENTIVE PAYMENTS.--Payments to a State under this

section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

"(f) LIMITATIONS ON USE OF INCENTIVE PAYMENTS.--A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B or E. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 423, 434, and 474.

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

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

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

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

*2124 "(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

"(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.

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

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

"(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.

"(h) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.--

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

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

"(i) TECHNICAL ASSISTANCE.--

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

"(2) DESCRIPTION OF THE CHARACTER OF THE TECHNICAL ASSISTANCE.--The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

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

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

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

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

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

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

"(3) TARGETING OF TECHNICAL ASSISTANCE TO THE COURTS.--Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

*2125 "(4) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.--To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed \$10,000,000 for each of fiscal years 1998 through 2000."

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

< < 2 USCA § 901 > >

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

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

"(i) the adjustments for new budget authority shall be the amounts of new budget authority provided in that measure for adoption incentive payments, but not to exceed \$20,000,000; and

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

< < 2 USCA § 645 > >

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

- (A) by striking "or" at the end of paragraph (4);
- (B) by striking the period at the end of paragraph (5) and inserting "; or"; and
- (C) by adding at the end the following:

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

SEC. 202. ADOPTIONS ACROSS STATE AND COUNTY JURISDICTIONS.

< < 42 USCA § 622 > >

(a) STATE PLAN FOR CHILD WELFARE SERVICES REQUIREMENT.--Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended--

- (1) in paragraph (10), by striking "and" at the end;
- (2) in paragraph (11), by striking the period and inserting "; and"; and
- (3) by adding at the end the following:

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

< < 42 USCA § 674 > >

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

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

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

*2126 "(2) failed to grant an opportunity for a fair hearing, as described in section 471(a)(12), to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the State or not acted upon by the State with reasonable promptness."

< < 42 USCA § 5111 NOTE > >

(c) STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES.--

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

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

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

- (i) concerning the recruitment of prospective adoptive families from other States and counties;
- (ii) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties;
- (iii) arising from a review of the comity and full faith and credit provided to adoption decrees and termination of parental rights orders from other States; and
- (iv) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children.

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

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

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

SEC. 203. PERFORMANCE OF STATES IN PROTECTING CHILDREN.

< < 42 USCA § 679b > >

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

"SEC. 479A. ANNUAL REPORT.

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

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

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

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

*2127 "(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part; and

"(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the

performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved."

< < 42 USCA § 679 NOTE > >

(b) DEVELOPMENT OF PERFORMANCE-BASED INCENTIVE SYSTEM.--The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall study, develop, and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State's performance under such a system. Such a system shall, to the extent the Secretary determines feasible and appropriate, be based on the annual report required by section 479A of the Social Security Act (as added by subsection (a) of this section) or on any proposed modifications of the annual report. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a progress report on the feasibility, timetable, and consultation process for conducting such a study. Not later than 15 months after such date of enactment, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the final report on a performance-based incentive system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.

TITLE III--ADDITIONAL IMPROVEMENTS AND REFORMS

SEC. 301. EXPANSION OF CHILD WELFARE DEMONSTRATION PROJECTS.

< < 42 USCA § 1320a-9 > >

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

"(a) AUTHORITY TO APPROVE DEMONSTRATION PROJECTS.--

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

"(2) LIMITATION.--The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2002.

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

"(A) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address barriers *2128 that result in delays to adoptive placements for children in foster care.

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

designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements.

"(C) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to address kinship care.

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

"(5) REQUIREMENT TO CONSIDER EFFECT OF PROJECT ON TERMS AND CONDITIONS OF CERTAIN COURT ORDERS.--In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State's child welfare program has failed to comply with the provisions of part B or E of title IV, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply."

< < 42 USCA § 1320a-9 NOTE > >

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

< < 42 USCA § 1320a-9 > >

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

< < 42 USCA § 675 > >

SEC. 302. PERMANENCY HEARINGS.

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

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

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

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

(4) by striking "future status of" and all that follows through "long term basis)" and inserting "permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where *2129 the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement".

<< 42 USCA § 5113 NOTE >>

SEC. 303. KINSHIP CARE.

(a) REPORT.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) ADVISORY PANEL.--

(1) ESTABLISHMENT.--The Secretary of Health and Human Services, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives and the

Chairman of the Committee on Finance of the Senate, shall convene an advisory panel which shall include parents, foster *2130 parents, relative caregivers, former foster children, State and local public officials responsible for administering child welfare programs, private persons involved in the delivery of child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts.

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

< < 42 USCA § 677 > >

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

Section 477(a)(2)(A) of the Social Security Act (42 U.S.C. 677(a)(2)(A)) is amended by inserting "(including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed \$5,000, which are otherwise regarded as resources for purposes of determining eligibility for benefits under this part)" before the comma.

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

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

< < 42 USCA § 629 > >

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

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

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

(C) by adding at the end the following:

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

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

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

(2) CONTINUATION OF RESERVATION OF CERTAIN AMOUNTS.--Paragraphs (1) and (2) of section 430(d) of the Social Security Act (42 U.S.C. 629(d)(1) and (2)) are each amended by striking "and 1998" and inserting "1998, 1999, 2000, and 2001".

< < 42 USCA § 670 NOTE > >

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

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

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

(b) EXPANSION FOR TIME-LIMITED FAMILY REUNIFICATION SERVICES AND ADOPTION PROMOTION AND SUPPORT SERVICES.--

< < 42 USCA § 629b > >

(1) ADDITIONS TO STATE PLAN.--Section 432 of the Social Security Act (42 U.S.C. 629b) is amended--

(A) in subsection (a)--

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

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

*2131 (B) in subsection (b)(1), by striking "and family support" and inserting ", family support, time-limited family reunification, and adoption promotion and support".

< < 42 USCA § 629a > >

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

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

"(A) IN GENERAL.--The term 'time-limited family reunification services' means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 475(5)(F), is considered to have entered foster care.

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

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

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

"(iii) Mental health services.

"(iv) Assistance to address domestic violence.

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

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

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

(3) ADDITIONAL CONFORMING AMENDMENTS.--

< < 42 USCA § 629 > >

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

< < 42 USCA Ch. 7 > >

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

"Subpart 2--Promoting Safe and Stable Families".

(c) EMPHASIZING THE SAFETY OF THE CHILD.--

< < 42 USCA § 629b > >

(1) REQUIRING ASSURANCES THAT THE SAFETY OF CHILDREN SHALL BE OF PARAMOUNT CONCERN.--Section 432(a) of the Social Security Act (42 U.S.C. 629b(a)) is amended--

(A) by striking "and" at the end of paragraph (7);

*2132 (B) by striking the period at the end of paragraph (8); and

(C) by adding at the end the following:

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

< < 42 USCA § 629a > >

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

(A) in paragraph (1)--

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

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

(B) in paragraph (2)--

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

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

(d) CLARIFICATION OF MAINTENANCE OF EFFORT REQUIREMENT.--

< < 42 USCA § 629a > >

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

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

< < 42 USCA § 629a NOTE > >

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

< < 42 USCA § 671 > >

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

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

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

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

(3) by adding at the end the following:

"(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under title XIX) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage--

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

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

*2133 "(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX, and the State exceeds its funding for

services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1902(a)(10)(A)(i)(D); and

"(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program."

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

< < 42 USCA § 673 > >

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

< < 42 USCA § 673 NOTE > >

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

< < 42 USCA § 671 > >

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

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

- (1) in paragraph (20), by striking "and" at the end;
- (2) in paragraph (21), by striking the period and inserting "; and"; and
- (3) by adding at the end the following:

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

TITLE IV--MISCELLANEOUS
< < 42 USCA § 671 NOTE > >

SEC. 401. PRESERVATION OF REASONABLE PARENTING.

Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit *2134 the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.

<< 42 USCA § 671 NOTE >>

SEC. 402. REPORTING REQUIREMENTS.

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

SEC. 403. SENSE OF CONGRESS REGARDING STANDBY GUARDIANSHIP.

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

- (1) the death of the parent;
- (2) the mental incapacity of the parent; or
- (3) the physical debilitation and consent of the parent.

SEC. 404. TEMPORARY ADJUSTMENT OF CONTINGENCY FUND FOR STATE WELFARE PROGRAMS.

<< 42 USCA § 603 >>

(a) REDUCTION OF APPROPRIATION.--Section 403(b)(2) of the Social Security Act (42 U.S.C. 603(b)(2)) is amended by inserting ", reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)" before the period.

(b) INCREASE IN STATE REMITTANCES.--Section 403(b)(6) of such Act (42 U.S.C. 603(b)(6)) is amended by adding at the end the following:

"(C) ADJUSTMENT OF STATE REMITTANCES.--

"(i) IN GENERAL.--The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of--

"(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or

"(II) the unadjusted net payment to the State for the fiscal year.

"(ii) TOTAL ADJUSTMENT.--As used in clause (i), the term 'total adjustment' means--

"(I) in the case of fiscal year 1998, \$2,000,000;

"(II) in the case of fiscal year 1999, \$9,000,000;

"(III) in the case of fiscal year 2000, \$16,000,000; and

"(IV) in the case of fiscal year 2001, \$13,000,000.

"(iii) ADJUSTMENT PERCENTAGE.--As used in clause (i), the term 'adjustment percentage' means, with respect to a State and a fiscal year--

"(I) the unadjusted net payment to the State for the fiscal year; divided by

*2135 "(II) the sum of the unadjusted net payments to all States for the fiscal year.

"(iv) UNADJUSTED NET PAYMENT.--As used in this subparagraph, the term, 'unadjusted net payment' means with respect to a State and a fiscal year--

"(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus

"(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 409(a)(10) to be remitted by the State in respect of the payment."

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

< < 42 USCA § 613 NOTE > >

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

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

< < 42 USCA § 671 NOTE > >

SEC. 406. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.

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

(b) NOTICE REQUIREMENT.--In providing financial assistance to, or entering into any contract

with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

*2136 TITLE V--EFFECTIVE DATE

< < 42 USCA § 622 NOTE > >

SEC. 501. EFFECTIVE DATE.

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

(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.--In the case of a State plan under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

< < 2 USCA §§ 645 nt, 901 nt > >

< < 42 USCA §§ 603 nt, 622 nt, 629 nt, 629a nt, 629b nt, 653 nt, 671 nt, 672 nt,
673 nt, 673b nt, 674 nt, 675 nt, 677 nt, 678 nt, 679 nt, 1320a-9 nt > >

Approved November 19, 1997.

PL 105-89, 1997 HR 867

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