Chronology of the Senate history on child welfare reform

104th Congress

Senators Chafee and Rockefeller opposed the House proposal of a block grant of all child welfare programs including Title IV-B and foster care for various reasons, including the fact that over 20 states were under court order or a consent decree for failing to adequately protect abused and neglected children. This was strong evidence that a block grant to states was not appropriate to ensure protections of vulnerable children.

Finance Committee held a hearing on child welfare on _______, 1995 and even Wade Horn, former Republican head of Children, Youth and Families under President Bush, testified that the foster care entitlement should be retained. At the time, Senators Chafee and Rockefeller agreed that reform of child welfare was needed, but it should not be under the context of welfare reform.

Efforts to develop child welfare reform legislation began in 1996 with Chafee, Rockefeller, and Kassebaum, but plans were delayed due to all consuming action on welfare reform which was not completed until August 1996.

105th Congress

Following through their commitment to propose reform of the child welfare system, Senators Chafee and Rockefeller introduced S.511, the SAFE Act — Safe Adoptions and Family Environments Act on March 20, 1997.

The bipartisan package was cosponsored by Chafee, Rockefeller, Jeffords, DeWine, Dodd, Moseley-Braun, Kerry, Kerrey, Kennedy, Bond, Breaux, Boxer, Dorgan, Durbin, Inouye, Landrieu, Levin, Mikulski, Moynihan, and Torricelli (19 members). Over 300 advocacy groups nationwide endorsed the SAFE Act including a wide range of adoption groups, child advocates and health groups such as the American Academy of Pediatrics, American Psychological Association, the Arc, and the Red Cross.

The SAFE Act never received an official CBO score but key provisions were estimated at almost $1.5 billion per year for about a $7 billion five-year estimate, some spending was phased in over time.

A Finance Subcommittee hearing on the SAFE Act was held on May 21, 1997.

Finance Reconciliation - June 1997: Senators Chafee, Rockefeller and Jeffords filed similar amendments for Finance reconciliation that were modified versions of the SAFE Act that scaled back spending to a total of $3 billion over 5 years. The Chairman objected to offering the SAFE Amendments, stating that the amendment was not germane even though the offset address welfare reform issues (but the Senator Gramm's privatization amendment was allowed to be considered and voted upon, and Finance staff acknowledge at the mark-up that this amendment could affect child welfare services and foster care.)

During the reconciliation mark up, Senator Grassley expressed concerns that there had not be adequate review and consideration of the SAFE Act and child welfare. Senator Lott asked that interested members work together on adoption and child safety issues.

Following reconciliation, Senator Craig, a member of the Republican leadership, offered to help forge consensus on adoption and a working group was formed including: Chafee, Craig, Rockefeller, Jeffords, Bond, DeWine, Coats, Grassley, Nickles, and Finance Committee staff: Dennis Smith and Doug Steiger. CRS analyst, Karen Spar, participated to share technical expertise. The group met extensively in July and August — at least 6 times, with meetings of several hours to go through the House adoption bill, the SAFE act, other pending adoption and child welfare bills, as well as legislative proposals shared by Senator Grassley staff, though not introduced. The House bill was the starting point for discussions, extensive working papers and comprehensive side-by-side legislative analysis was compiled — copies available upon request.

On September 9, 1997, a bipartisan briefing on the issue of adoption was cosponsored by Chafee, Craig, Rockefeller and Dodd to provide non-partisan information on the pending issues of adoption with representatives from Kellogg Foundation, National Association of Juvenile and Family Court Judges, APWA, an adoptive parent, a foster parent, and representative from HHS with expertise in child welfare.

O n September 18, 1997, the new consensus bill was unveiled, S. 1195, the PASS Act, Promotion of Adoption, Safety and Support for Abused and Neglected Children. The bill was cosponsored by Senators Chafee, Craig, Rockefeller, Jeffords, DeWine, Coats, Bond, Landrieu and Levin. Subsequently, Senators Dorgan, Kerrey and Moynihan were added as cosponsors. The PASS Act is endorsed by Voice for Adoption, a coalition of 48 state and national adoption groups from 21 states that serve special needs children, the Child Welfare League, and Catholic Charities.

The PASS Act had a preliminary CBO score of $2.5 billion over 5 years.

The Finance Committee held a hearing on October 8, 1997 as recommended by Finance Committee staff.

During the Finance hearing, Chairman Roth raised several concerns about the PASS Act including the level of spending. The coalition, led by Senators Chafee and Craig offered a compromise version of the PASS Act, that had a CBO preliminary estimate of only $605 million over 5 years, and included policy modifications to address the Chairman's concerns as well — summary of compromise and accommodations attached.

Chronology of Senate Action

The SAFE Act. S.511 — Safe Adoptions and Family Enviroments (March 1997)

19 bipartisan cosponsors
endorsed by 300 national groups, including Red Cross, Am. Academy of Pediatrics, etc.
Spending provisions — over $5 billion over 5 years
- delinkage w/Medicaid
- 12 months of reunification services
- expanded staff training, including the courts
- funded residential substance abuse treatment

Clarification of reasonable efforts
No time frames or automatic initiation of termination of parental rights (TPR)

SAFE Amendments prepared for reconciliation (June 1997)

Chafee, Rockefeller, Jeffords
Spending provisions — $3 billion over 5 years
- delinkage w/Medicaid
- 12 months of reunification services
- funded residential substance abuse treatment
- extension of SACWICs funding

Clarification of reasonable efforts
No time frames or automatic initiation of termination of parental rights

The PASS Act (S.1195) as introduced in September 1997

Chafee, Craig, Rockefeller Jeffords, DeWine, Coats, Bond, Landrieu, Levin, Kerrey, Moynihan, Dorgan
Endorsed by: Voice for Adoption, Catholic Charities, CWLA
Spending provisions — $2.4 billion over 5 years
- delinkage w/Medicaid
- cost-neutral residential substance abuse treatment
- 5 year reauthorization of Family Preservation/Family Support

Clarification of reasonable efforts
TPR: all ages, all children in the system within a year
initiation w/in 12 months out of 18, or lifetime total of 24 months
only 2 exemptions: 1) relative, or 2) agency or court defines "compelling reason"

The bipartisan compromise after October 8 Finance hearing on PASS Act

Spending provisions — $600 million* over 5 years (rough CBO estimate)
- delinkage w/Medicaid, prospective only
- cost-neutral residential substance abuse treatment
- 3- year reauthorization of Family Preservation/Family Support

Clarification of reasonable efforts
TPR: all ages, all children in the system within a year
initiation w/in 12 months out of 18, or lifetime total of 24 months
only 2 exemptions: 1) relative, or 2) agency or court defines "compelling reason"

Final bill – Adoption & Safe Family Act

Summary of the bipartisan compromise on the the PASS Act
Promotion of Adoption, Safety and Support for Abused and Neglected Children Act

On September 18, 1997, Senators Chafee, Craig, Rockefeller, Jeffords, DeWine, Coats, Bond, Landrieu, and Levin introduced a bipartisan bill called the PASS Act, Promotion of Adoption, Safety, and Support for Abused and Neglected Children. Since then, Senators Kerrey, Dorgan and Moynihan have also cosponsored.

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. 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 in the future. There will be a maintenance of effort provision so that States are required to invest any savings in child welfare, including substantial investments to promote adoptions.
- 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

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 funds to cover foster children who are placed with their parent in a residential substance abuse treatment center. (Cost neutral)
- Continues investments in strengthening families at the community level by reauthorizing the 1993 budget provision for family preservation and family support for 3 years until the HHS evaluations are available for congressional oversight, continuing a funding level of $885 million over 3 years.
- 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 assumes 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 about 13% for welfare — and that was before the flexibility of the block grant.

Final Rule Executive Summary

Overview and Impact of the Final Rule

On January 25, 2000, HHS published a final rule in the Federal Register that establishes regulations regarding:

- a new approach to monitoring State child welfare programs that focuses on results in the areas of safety, permanency and child and family well-being;
- the penalty and corrective action process for the Multiethnic Placement Act (MEPA), as amended, regarding discrimination in adoptive and foster care placements;
- provisions of the Adoption and Safe Families Act (ASFA) and the Federal foster care program; and
- an updated review process for the Federal foster care program.

The final rule is a response, in part, to a congressional mandate for HHS to reform our approach to monitoring compliance with Federal child welfare requirements and to promulgate regulations for reviews of State child and family service programs.

This new rule will play an important role in improving services to and outcomes for abused and neglected children, children in foster care, and children awaiting adoptive families. The focus on outcomes in the child and family services reviews will allow HHS to promote increased safety for children who are maltreated; quicker movement to permanent homes and families for children in foster care; and enhanced well-being for families who are served by State agencies. Regulating the MEPA enforcement strategy further strengthens the Department's capacity to hold States accountable for removing delays to permanency. Finally, by regulating the provisions of the ASFA, we expect to clarify the requirements for holding children's safety paramount and ensuring that children do not languish in foster care, and thereby strengthen the timeliness and quality of decision-making for children and families served through State child welfare programs.

The Department engaged in extensive consultation prior to developing the regulation. Because the shift to outcomes-focused monitoring represents such an important change in the way child welfare programs are held accountable, HHS conducted numerous pilot tests with States to refine our approach. In addition, we conducted a number of focus groups both on the child and family services reviews and on the implementation of ASFA that shaped our development of the proposed regulation, which was published on September 18, 1998. The final rule represents a balance of the lessons learned from the pilots and consultation and the 176 comment letters that were written in response to the proposed rule. The effective date of the final rule is March 25, 2000.

The following highlights the major areas of the regulation:

Child and Family Services Reviews

The new child and family services reviews represent a significant departure from the former review process. In the past, reviews focused almost entirely on the accuracy and completeness of case files and other records, without regard to the outcomes for children and families. The prior reviews required a State's total compliance with Federal requirements and did not provide opportunities for improvement before significant penalties were imposed.

The child and family services reviews, as detailed in the final rule, offer a more balanced and child and family-centered approach, including:

- a focus on outcomes and results for children and families,
- technical assistance to assist States in improving their child welfare systems in a timely way, as well as accountability for non-compliance,
- the use of multiple qualitative and quantitative information sources to better evaluate child and family outcomes and system performance, and
- engaging the States as partners in identifying strengths and weaknesses, defining program improvements, and crafting technical assistance that will result in better outcomes and systems.

An outcomes and results-focused approach

The child and family services review is a results-focused approach to monitoring Federally-assisted State child welfare programs. The review measures State compliance with the State plan requirements under titles IV-B and IV-E of the Social Security Act. State child welfare programs will be reviewed in two areas: (1) outcomes for children and families served by the child welfare system; and (2) systemic factors that directly affect the State's capacity to deliver services leading to improved outcomes. Outcomes are focused on children's safety, permanency, and child and family well-being. Systemic factors include whether a State has in place and is successfully operating systems for reviewing the cases of children in foster care at required intervals, training child welfare staff, licensing foster care providers, and recruiting prospective adoptive parents. This approach focuses the reviews on the quality of services provided.

A two-tiered review process that uses qualitative and quantitative data

The review is a two-stage process comprised of a statewide assessment and an on-site review. The statewide assessment involves HHS preparing and transmitting to the State data profiles that have aggregate data on the State's foster care and in-home service population. The data profiles include information on whether the State has met a national standard, set by HHS, for certain permanency and safety data indicators, such as length of stay in foster care and rates of repeat maltreatment of children. The data profiles provide an overall picture of how well the State is performing. The statewide assessment is then completed by the State and its external partners primarily to further evaluate the programmatic issues behind the statewide data in the areas of safety, permanency, and well-being for children.

Following the statewide assessment, an on-site review is conducted by a joint Federal-State team. As we learned through the pilot reviews, the on-site portion of the review provides the most comprehensive information on the quality of a State's child welfare program. The Federal-State team evaluates the outcomes by examining a sample of children receiving in-home services and those in foster care by reviewing the written record and interviewing family members, caretakers, caseworkers, and service providers. Furthermore, interviews are conducted with State and local representatives to evaluate system performance in specific areas, such as the foster home licensing process. The quantitative and qualitative data from the statewide assessment and the on-site portion of the review are used together by HHS to determine the State's compliance on the outcomes and systemic factors.

State Compliance and Accountability

The combination of information from the on-site portion of the review and the statewide data provides HHS and the State with a comprehensive picture of the strengths and weaknesses in the State's program. If a State is not in compliance, HHS and the State will formulate a time-limited plan for making program improvements that addresses the State's need for Federal technical assistance. Although penalties are deferred while the State implements its program improvement plan, the State is held accountable for meeting the milestones detailed in the plan and ultimately completing the plan successfully. If the State does not meet the milestones, or does not complete the plan, HHS will assess penalties commensurate with the extent of the non-compliance. In successive reviews, the amount of the penalty increases for continued non-compliance.

Timetable for Reviews

States determined to be in compliance will be reviewed every five years and will complete a statewide assessment every three years. States determined not to be in compliance will be reviewed two years after the approval of the program improvement plan.

Enforcement of the Multiethnic Placement Act

The regulation outlines the penalty and corrective action process for violations of the Multiethnic Placement Act, as amended. The Multiethnic Placement Act prohibits discrimination based on race, color or national origin in the placement of children for foster care and adoption. Investigation and enforcement of this requirement is a joint procedure between the Department's Office for Civil Rights and the Administration for Children and Families.

The penalty and corrective action process detailed in the regulation follows the statute closely. The potential penalty ranges from two to five percent of all Federal title IV-E funds depending on the number of violations found. States that are determined to have discriminated against an individual will be assessed a penalty immediately consistent with the law. If no individual has been discriminated against, but HHS determines that the State has a policy or practice that violates the law, then the State will have to correct that policy or practice within six months or face penalties.

The regulation also addresses the entities other than State agencies that are subject to financial penalties if they violate the law. Unlike the States, an entity such as a private agency is not afforded a corrective action process and must return all Federal foster care and adoption funds to HHS.

Adoption and Safe Families Act Requirements

The final rule implements certain ASFA requirements that are directed at improving States' efforts to achieve safety and timely permanency for children.

Reasonable Efforts

- Once a child is removed from home, the State must obtain a court order demonstrating that the State provided services to prevent the child's removal from the home and to reunify the family, or where safety considerations took precedence, that reasonable efforts to keep or return the child home were not required.
- The final rule clarifies that ASFA gives States broad flexibility to define circumstances in State law where the State does not have to make reasonable efforts to preserve a family or reunify a family because of child safety concerns.
- For children in foster care, the State is now required to obtain a court order at least every 12 months, showing that the State made reasonable efforts to finalize a permanent plan for the child in a timely manner, whether the plan is to reunify child and parents, or achieve permanency through adoption or legal guardianship.

Termination of Parental Rights

Consistent with ASFA, the regulation requires the State to file a petition to terminate parental rights (TPR) for children who have been in foster care for 15 out the most recent 22 months, abandoned infants, and children of parents who have committed certain felonies. The rule explains that there are no automatic exceptions for groups of children, but that States must make decisions about not pursuing a TPR on a case-by-case basis. The final rule offers States guidance on how to calculate the time frames for when a State must file a petition for TPR for a child in foster care, unless an exception is made. The rule also clarifies that the State can file such a petition at any earlier time if doing so is in the child's best interests.

Criminal Record Checks

Unless a State opts out by way of the Governor or State legislature, the State must conduct criminal record checks for prospective foster and adoptive parents. A State that opts out of this requirement must still document the safety of a child's placement.

Other Foster Care Requirements

- The final rule also requires a State to obtain a court order at the time the child is first removed from home finding that it was contrary to the child's welfare to remain at home. The court orders relating to the contrary to the welfare determination and reasonable efforts requirements must be obtained within the specified time frames in order for the State to claim Federal reimbursement for eligible children under the title IV-E Federal foster care program.
- For the Federal foster care program, States are required to have the same licensing or approval requirements for relative foster homes as they do for non-relative homes, with some exceptions for requirements not related to safety. The State cannot receive Federal reimbursement for foster care expenses for children placed in temporarily licensed foster homes or in foster homes that fail to meet all licensing or approval requirements.
- The regulation requires States to have court hearings on the permanency plan for the child at least every 12 months for all children in foster care, including those children placed in a permanent foster home or preadoptive home.

Title IV-E Reviews

The reviews of the Federal title IV-E foster care program focus on whether a child meets the statutory eligibility requirements for the program. The review team is comprised of Federal and State representatives who examine cases of children for information such as:

- a court order stating that the child welfare agency removed the child only when necessary,
- a court order stating that the agency provided reasonable efforts to preserve the family, if appropriate, and to achieve permanency for the child,
- a completed criminal background check on the foster parent, and
- confirmation that the child met the income test for the program.

Two-Tiered Review Process with a Program Improvement Component

The review of the Federal foster care program is a two-stage process, which is conducted every three years. During the first stage, HHS reviews a number of cases. A disallowance is taken for all cases that fail the requirements. If a State fails more than a specific percentage of cases, the State is out of compliance with the Federal foster care program requirements. As a condition of non-compliance, the State is required to complete a one-year program improvement plan and undergo a second review at the end of the year. After the second review, if the State is still not in compliance, a larger disallowance is assessed based on the total population of children in foster care.

Race and Ethnicity Data Collection

The final rule also includes a technical change to the race and ethnicity data elements in the Adoption and Foster Care Analysis and Reporting System (AFCARS). The rule codifies existing HHS and Office of Management and Budget policy with regard to allowing individuals to report that they identify with more than one race.

Internal Child Welfare Final Rule Topline Qs and As
January 24, 2000

Q: What are you announcing today?

A: Today we are announcing new regulations that will improve outcomes for children in the child welfare system. These regulations provide a single, comprehensive framework for states to run their foster care and adoption programs. The federal government, through a new monitoring process, will now be able to hold states accountable for the safety, permanency and well-being of at-risk children. The monitoring process focuses on a new partnership with states in assessing the performance of programs for vulnerable children, including corrective action plans and tough penalties when states do not achieve compliance. The regulations also integrate fully the recent major changes to foster care and adoption from the Adoption and Safe Families Act and the Interethnic Adoption provisions into the child welfare program ensuring that states act timely to achieve permanent homes for children and that all families have the opportunity to adopt.

There was consensus among the Congress, Clinton administration, states and stakeholders that the previous monitoring process by the federal government of states focused too narrowly on paperwork. After an extensive consultation process, including pilot reviews with states, HHS developed a new monitoring process that holds states accountable for the safety of children, specific positive results for children's well-being, timely placement in permanent homes, quality services, and incorporates insight from children, parents, foster parents and service providers into the assessment of state performance.

Q: Why did it take you so long to issue these regulations?

A: There was broad consensus that the former federal review process for state foster care and adoption programs focused too narrowly on paperwork and didn't assess the quality of services or the outcomes for children. HHS consulted extensively with states, local communities, and other stakeholders to obtain the best advice on a new review process that would achieve accountability for states and safety and permanency for children. In addition, HHS tested several pilot reviews with states to determine in practice what worked best. While this effort was underway, major legislation was enacted that made significant changes in the child welfare system, namely the Adoption and Safe Families Act of 1997 (ASFA) and the two anti-discrimination laws in 1994 and 1996 that barred the denial or delay in the placement of children because of race, color or national origin. ASFA, signed into law in November 1997, made the most significant changes in foster care and adoption since the original law was passed in 1980. The new law ensured the safety of children as the paramount interest of states, quickened the timeframes for the placement of children, reduced barriers to adoption and provided for the first-ever financial incentives for states to increase adoption. To ensure that states could be held accountable for specific provisions, HHS integrated the new laws into this single, comprehensive regulation for states.

Q: What did the ASFA do?

A: The Act helped to ensure that foster care is a short term solution, not a long term situation, by making clear that the child's safety and well-being must be the paramount concern when decisions are made about the removal of children from their homes or the reunification with their families. It also set swifter time frames for making permanent placement decisions and terminating parental rights for children. And, for the first time, states have financial incentives to increase adoptions. They must provide health insurance coverage for all special needs children in subsidized adoptions. The new law also eliminates obstacles to adoptions and develops new measures to track the success of states and good results for children.

Q: What does our nation's child welfare system look like today? How many children are in it and how long do they stay in foster care on average?

A: Today, approximately 520,000 of America's children live in our nation's foster care system. More than 100,000 of those children cannot return safely to their homes and need adoptive families. Our most recent data indicates that nearly half had been in care 24 months or longer. Of the children in care, the average age is 9 years old; 35 percent are white; 45 percent are black; and 14 percent are Hispanic; and five percent of children turn 18 and leave the foster care system without having a permanent home.

Q: Will you meet your goal of doubling the number of children adopted from foster care by 2002? How close are you?

A: We have seen a very positive response by states to meeting the goals of doubling the number of children adopted from foster care by the year 2002. States are investing resources, training staff, expanding outreach and recruitment efforts and setting tough year by year goals. HHS is collecting better statistics from states that show states are making progress. From 1996 to 1998, states increased adoptions by 29 percent -- from 28,000 to more than 36,000 -- the first significant increase in the history of the program.

Q: How much funding does the federal government invest in foster care and adoption services?

A: The federal government provides over $6.3 billion to states to run their foster care, adoption and child welfare programs. The funding provides a variety of supports to states which include: preventive services, investigations of child abuse and neglect, caseworkers and administrators, foster care adoption benefits to families, training, recruitment of foster and adoptive families, demonstration grants to test innovative programs, services for youth who are leaving foster care to be on their own, and supports for children with special needs. States must provide matching funds in order to access a majority of these funds.

Briefing Material on the Child Welfare Final Rule: Qs and As

Background and Chronology

REVIEWS: The review structures for the Federally-funded child welfare programs have been in place since the early 1980s. They were authorized by the Adoption Assistance and Child Welfare Act (Pub. L. 96-272), passed by Congress in 1980, which amended sections of title IV-B and provided for mandatory Federal reviews of State foster care services under section 427 of the Act. Later, through the Social Security Amendments of 1994 (Pub. L. 103-432), Congress repealed section 427 of the Act. As a result, ACF is no longer conducting "427" reviews. Public Law 103-432 also directed the Department, in consultation with State agencies, to promulgate regulations for child and family service programs that will:

- determine whether these programs are in substantial conformity with applicable State plan requirements and Federal regulations;
- develop a timetable for conformity reviews;
- specify the State plan requirements subject to review, and the criteria to be used in determining a State's substantial conformity with these requirements; and,
- make technical assistance available to the States, and afford them the opportunity to develop and implement corrective action plans designed to ameliorate areas of nonconformity before Federal funds are withheld due to the nonconformity.

The revised review processes, including the instruments used in the reviews, grew out of extensive consultation with interested groups, individuals and experts in the field of child welfare and related areas. A series of focus groups related to the child and family service reviews was conducted with representatives of State programs and national organizations, as well as with family and child advocates. ACF also conducted a number of pilot reviews as we developed and refined the review process.

Since ACF was already revising its approach to monitoring eligibility requirements for title IV-E foster care maintenance payments at the time Public Law 103-432 was enacted, we included the title IV-E eligibility review process in the same regulation.

History of monitoring in the Children's Bureau:

1978-1980: Effort to revitalize joint planning requirements of title IV-B

Led to development of first program reviews

!980 --1993: Pub. L. 96-272 `Established title IV-E with Foster Care and Adoption Assistance. Revised title IV-B and added section 427 --incentive funds for providing special protections to all children in FC.

1982: Development of section 427 review system

1983: Inception of title IV-E foster care eligibility reviews

1985: Inception of adoption assistance eligibility reviews

1986: Developed administrative costs reviews

1987—1993: Congress imposes various moratoria on collection of section 427 review disallowances through annual appropriations process

1993: Passage of FPS
Imposition of 1 year moratorium on 427 and IV-E review disallowances

1994: Passage of section 1123A of SSA repealed section 427

1994-95: Decision to cease all monitoring activities and
develop dramatically different monitoring procedures

1995-1996: Consultation on new procedures/system

1996: Developed new system, including procedures for
both IV-E foster care eligibility and CFS reviews
Begin field-testing and revision of monitoring procedures

9/96: Regs combined and cleared by ACF
Regs pulled back to include MEPA enforcement strategy

1997: Regs sent forward for clearance with MEPA enforcement included.
Reg pulled back to include ASFA, which was passed in November

1998: ASFA Focus Groups
NPRM published 9/18

2000: Final rule published January 25

MEPA: In 1994, Congress passed the Multiethnic Placement Act, Public Law No. 103-382, (MEPA) to address excessive lengths of stay in foster care experienced by children of minority heritage. One factor contributing to these excessive lengths of stay in foster care was State agencies' attempts to place children of minority heritage in foster and adoptive homes of similar racial or ethnic background. The MEPA forbids the delay or denial of a foster or adoptive placement solely on the basis of the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. The MEPA, in section 553, permitted States to consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parent to meet the needs of a child of such background as one of a number of factors in making foster and adoptive placements. In 1996, through section 1808, "Removal of Barriers to Interethnic Adoptions" (Section 1808), of the Small Business Job Protection Act(Public Law 104-188), Congress repealed section 553 of MEPA, believing that the "permissible consideration" language therein was being used to obfuscate the intent of MEPA. Section 1808 also amended title IV-E by adding a State plan requirement, section 471(a)(18), which prohibits the delay or denial of a foster or adoptive placement based on the race, color, or national origin of the prospective foster parent, adoptive parent, or child involved. Section 1808 also dictates a penalty structure and corrective action planning for any State that violates section 471(a)(18) of the Act.

ASFA: On November 19, 1997, President Clinton signed the most significant child welfare reform legislation since Public Law 96-272 in 1980. The Adoption and Safe Families Act (ASFA) seeks to provide States the necessary tools and incentives to achieve the original goals of Public Law 96-272: safety; permanency; and child and family well-being. The impetus for the ASFA was a general dissatisfaction with the performance of the child welfare system in achieving these goals for children and families. This dissatisfaction came as a result of:

- Broad concerns about safety. The number of statutory requirements for high profile child deaths across the country, as well as confusion and misinterpretation of reasonable efforts for when family reunification prompted clearer language on child safety. The new law requires that child safety be the paramount concern when making service provision, placement and permanency planning decisions.

- Length of stay in foster care. We are now slightly in excess of a half-million children in foster care on any one day. This number has almost doubled since the mid-eighties. More children are coming into foster care each year than are exiting. These numbers prompted concern about moving children to permanent placements in a timely manner. The new law makes clear that foster care is a temporary setting and includes provisions that shorten the timeframe for making permanency planning decisions, and establish a timeframe for initiating proceedings to terminate parental rights.

The ASFA seeks to strengthen the child welfare system's ability to place the safety of children as paramount and ensure timely permanency for children.

General Questions

***Question*:** **Which program areas does this final rule address?**

Answer: This final rule addresses Federal regulations in four program areas:

Child and Family Services Reviews. We are implementing a new process for reviewing State child and family services programs. We will review States' compliance with Federal requirements for child protective services, foster care, adoption, and family preservation and support services, included in titles IV-B and IV-E of the Social Security Act.

Enforcement of Section 471(a)(18) of the Act. We are implementing procedures for enforcing the Multiethnic Placement Act, as amended by Public Law 104-188, which prohibits discriminatory practices in placing children in foster care and adoptive homes on the basis of race, color, or national origin.

Imnplentation of ASFA and Federal Foster Care Plan. We are codifying the eligibility criteria and procedural requirements for the title IV-E foster care program. This section of the regulation includes amendments to the Act that are included in the Adoption and Safe Families Act (ASFA) of 1997 (Public Law 105-89).

Title IV-E Eligibility Review. We are implementing a new Federal review process for the title IV-E foster care maintenance payments program, which will review for eligibility criteria and payment accuracy.

Question: **What will be the most significant impacts of this regulation?**

Answer: The major impacts of the regulation include the following:

- By reviewing State child and family services programs on the basis of the *outcomes* experienced by children and families, we expect to promote increased *safety* for children who are maltreated; more expedient *permanency* for children in foster care; and increased *well-being* for families who are served by State agencies.
- By putting into regulation the enforcement provisions of the Multi-Ethnic Placement Act, which States began implementing in 1996, we expect to increase the movement of children into permanent adoptive families.
- By regulating the provisions of the Adoption and Safe Families Act, we expect to clarify the requirements and strengthen the timeliness and quality of decision-making for children and families served through State child welfare programs.

Question: **How do you intend to accomplish these objectives?**

Answer: This regulation makes clear that the Federal government intends to work with States to improve social services for children and families by:

- reviewing States on the basis of the outcomes of service delivery, not just the procedures that are in place;
- providing technical assistance, where needed, to help States make improvements;

- holding States accountable when program improvements are not made; and
- withholding Federal funding to States that do not take advantage of the opportunities in the regulation for making needed improvements.

Question: **When was the last time that States were penalized for failure to comply with Federal child welfare laws?**

Answer: As a result of reviews of State programs funded under titles IV-B and IV-E of the Social Security Act, the Department in 1994 disallowed approximately $79 million in Federal funds previously paid to States. Disallowances were taken for reviews conducted from 1983-1992. ACF had been operating under a number of moratoria on taking disallowances for a State's failure to comply with the Federal child welfare laws until 1994, when legislation was passed requiring a new monitoring system. When this rule becomes effective, we will resume reviews of compliance with Federal child welfare requirements, possibly leading to penalties for noncompliance.

ACF has continued to regularly review State expenditure reports for the foster care and adoption assistance programs on a quarterly basis. As a result of these reviews, approximately $1 billion in title IV-E funds was either disallowed or deferred for fiscal years 1993-1997. An additional $17 million was disallowed on the basis of audit findings made by the Departments Office of Inspector General in 1993.

Question: **Why are you implementing these new regulations at this particular time?**

Answer: Congress directed us to reform Federal monitoring of State child welfare systems in 1994. We choose to use this direction to implement an outcomes-focused monitoring process that was already under development. Because the shift to outcomes-focused monitoring represents such an important change in the way child welfare programs are held accountable, HHS conducted extensive consultation and numerous pilot tests with States to refine our approach. While we were developing the regulation, the Multi-Ethnic Placement Act, and its subsequent amendments, were enacted, followed by the Adoption and Safe Families Act, both of which have extremely important implications for the review processes. We took advantage of this critically important opportunity to implement selected provisions of MEPA and ASFA and incorporated them into the regulation prior to releasing it. What we have now is a comprehensive regulation that not only provides States with the requirements for their child and family services programs that they must implement, but the review processes on which they will be evaluated, as well.

Question: **How are the child and family services reviews described in this regulation different from previous Federal reviews?**

Answer : The new child and family services reviews represent a significant departure from the former review process. In the past, reviews focused almost entirely on the accuracy and completeness of case files and other records, without regard to the outcomes for children and families.

The child and family services reviews, as detailed in the final rule, offer a more balanced and child and family-centered approach, including:

- a focus on outcomes and results for children and families,
- technical assistance to assist States in improving their child welfare systems in a timely way, as well as accountability for non-compliance,
- the use of multiple qualitative and quantitative information sources to better evaluate child and family outcomes and system performance, and
- engaging the States as partners in identifying strengths and weaknesses, defining program improvements, and crafting technical assistance that will result in better outcomes and systems.

Question: **How will you know that the outcomes for children and families are improved?**

Answer:

- First, we will know whether outcomes are improving by examining statewide data indicators, such as the length of time it takes for children in foster care to achieve adoption or reunification with their families, the maltreatment of children in foster care, multiple entries into foster care, and the degree to which children in their own homes suffer repeat maltreatment.
- In addition, in each child and family services review, we will review very intensely a sample of cases of children served by the States to determine how those children and their families are being served. This gives us further information about whether the quality of services and outcomes is improving.
- Where States are determined to be non-compliant, we will require them to develop and implement program improvement plans that we will approve and monitor closely. The plans must include measurable steps and outcomes that can be monitored for expected improvements.
- We will impose penalties if the goals in the program improvement plans are not achieved by specified deadlines.

Question: **How did you develop the process for reviewing child and family services that is included in this regulation?**

Answer: We engaged in extensive consultation with the child welfare field in developing the conceptual framework for the reviews. We held national focus groups that included child welfare experts, consumer representatives, State and Federal partners, Tribal representatives, advocates, and others who helped to inform the development of the process. We subsequently field-tested the reviews in 13 States and used the information from those pilot reviews to revise and strengthen the process. Finally, we issued a Notice of Proposed Rulemaking on September

18, 1998, containing the proposed regulation and inviting nationwide comment. We used those comments to develop the final regulation that we are now releasing.

Question: **What kind of response did you get to the NPRM?**

Answer: We received 176 letters from Members of Congress, State and local child welfare agencies, national and local advocacy groups for children, educational institutions, and individual social workers. Other commenters on the NPRM included: providers of child welfare services, State and local courts, national and State associations representing groups of practitioners, Indian tribes, and local community organizations.

Question: **What were the major comments you received about the new reviews?**

Answer: We received many positive comments, including:

- Strong support for an *outcome-based approach* to reviewing child and family services, with a focus on the quality of services.
- Support for the child and family services review emphasis on *program improvements* and opportunities for the States to have penalties suspended and rescinded if they make required improvements.
- Support for the proposed *State and Federal partnerships* involved in jointly reviewing programs and developing program improvement plans.

We also received comments that raised a number of concerns, including:

- Concerns that determining a State's compliance based on a *small sample* of cases in the child and family services reviews would not accurately depict the States' performance.
- Concerns that the proposed *penalty structure* for the child and family services reviews would not be sufficient to achieve our goals of program improvement in the States, although a number of comments also thought the proposed penalties were, in fact, substantial.
- Concerns that, in reviewing for quality of services vs. procedural requirements, we would be overly *subjective* in making decisions about a State's compliance.
- Concerns, in the IV-E foster care reviews, that our requirement for foster homes to be fully licensed to care for children as an eligibility requirement for Federal foster care benefits would have financial impacts on the use of kinship homes or other foster homes that do not meet all of a State's licensing standards.

Question: **What was your approach in responding to comments and making changes to the proposed regulations in the construct of this final rule?**

Answer: We took all comments on the regulation very seriously in our deliberations. In analyzing the comments received on the NPRM and making changes in the final rule, we adhered to the following principles:

- Focusing on achieving the goals of safety, permanency and well-being in State child welfare systems;

- Moving child welfare systems toward achieving positive child and family outcomes while maintaining accountability;
- Maintaining our stewardship role over the use of Federal funds;
- Enforcing statutory requirements in ways that encourage strong State/Federal partnerships and program improvements; and
- Using the lessons learned in the pilot reviews and information gathered in the consultation.

For example, we received a number of comments that indicated concern about subjectivity in the review process and requested that we strengthen the rule to assure objectivity in making determinations of compliance. We have added more objective measures by strengthening the use of the quantitative data in the statewide assessment and adding a process for resolving discrepancies. In this way we have retained the focus on results while being responsive to comments.

Question: Specifically, how did you address the major concerns about the reviews that you received?

Answer:

- To address concerns raised about the small sample of cases we strengthened the use of quantitative data in the statewide assessment to ensure that the intensive local sample was seen in a bigger context and added a process to resolve discrepancies between the two sources of data. We did not change the intensive review of a small number of cases because we learned from the pilots that this information was critical to gaining a comprehensive picture of the outcomes and experience of children and families who have contact with the child welfare system.

- In regard to the *penalty structure*, we retained our proposal to withhold one percent of a pool of title IV-B and IV-E funds for every area in which a State is determined to be in non-compliance in the child and family services reviews, up to a maximum of 14 percent of the pool. This conforms to the statutory requirement that the penalty be commensurate with the level of non-compliance. However, to make clear that we are serious about enforcing the need to make program improvements, we added provisions to increase the penalties to two percent per area of non-compliance in the second review if the same areas remain uncorrected, and to three percent in the third review. The maximum withholding increases to 28 percent and 42 percent respectively. If States do not engage in program improvement planning, they will receive the maximum penalty of 42 percent.

- In regard to concerns about *subjectivity* in the child and family services reviews, we have strengthened the role of the Statewide Assessment to provide for more uniformity in its completion and in the data indicators included; we have strengthened the criteria for determining substantial conformity by adding a uniform rating scale to examine certain State plan requirements subject to review; we have added a quality assurance function to the on-site review process to assure consistency and uniformity in the way cases are reviewed; we have added the statewide data indicators as elements in making the determinations of compliance; and we will provide training to reviewers who are responsible for reviewing cases and making decisions about compliance.

- In regard to concerns about requiring *full licensure for foster homes* as a title IV-E foster care eligibility requirement, we did not change this requirement and do not believe we have the statutory authority to do so. Section 472 (c) of the Act requires that foster families be licensed for the care of children under title IV-E, or approved as meeting the standards established for such licensing. Further, the Adoption and Safe Families Act (ASFA) requires that the health and safety of children be the primary concern in decisions about removing children from their homes and reunifying them with their families. The ASFA also requires criminal background clearances on foster and adoptive homes prior to the placement of children, which is a part of the full licensure process. The statute does not differentiate between related and non-related foster homes in making these requirements, and we do not believe we can do so in regulation either.

REVIEWS

***Question*:** **Describe the child and family review process.**

***Answer*:**

- The *Child and Family Services Review* examines State compliance with child and family service requirements under titles IV-B and IV-E of the Act by a review of seven outcomes in the areas of safety, permanency, and well-being, and State plan requirements associated with seven "systemic" factors that have a direct bearing on the State's ability to serve children and families effectively.

- The first phase of the review is a *statewide assessment* prepared by the State and representatives of various community and agency entities in the State. Using statewide data profiles prepared by ACF from two national databases, the State analyzes its data on indicators such as repeat maltreatment of children, length of stay in foster care, and length of time to achieve adoption or reunification, to identify areas where the State is performing well and where a more detailed on-site review might be warranted. This analysis provides a statewide perspective of the State's child and family service system.

- The second phase of the review, an *on-site review,* is conducted in at least three sites across the State, including the State's largest metropolitan area, by a team of State and Federal representatives. The team reviews for *outcomes* through a random sample of cases that includes examining case documentation as well as interviewing the child, parents, foster parents, caseworker and service providers in each case. The team reviews for *systemic* *factors* through interviews with community stakeholders, both within and external to the child welfare agency, to assist in making determinations regarding the level at which the child welfare system is functioning.

- The regulations also provide for partial reviews, as needed, when there are compliance issues that do not fall within the child and family services review protocol.

Question: **Describe the title IV-E eligibility review process.**

Answer:

- The *title IV-E foster care eligibility reviews* determine the eligibility and payment accuracy for children receiving Federal foster care payments under title IV-E.
- The review includes two phases, a primary review and a secondary review. During the *primary review*, the review team, comprised of State and Federal representatives, reads a random sample of 80 cases to determine the eligibility of the child and the foster care provider. If the number of ineligible cases is eight or fewer, the State is in compliance, is assessed a disallowance for the ineligible cases, and is re-reviewed in three years. If the number of ineligible cases is nine or more, the State is not in compliance, is assessed a disallowance for the ineligible cases, must implement a program improvement plan, and undergoes a secondary review.
- During the *secondary review*, following the completion of the program improvement plan, the review team reads a random sample of 150 cases. If the number of ineligible cases *and* the dollar amounts in error exceed the acceptable error rate, a larger penalty is assessed based on a statistical formula. Otherwise, disallowances are taken only on the ineligible cases.

Question: **What outcomes are being measured in the child and family services review?**

Answer:

- In the area of *safety*, the outcomes are: *children are, first and foremost, protected from abuse and neglect,* and *children are safely maintained in their homes whenever possible and appropriate.*
- In the area of *permanency,* the outcomes are: *children have permanency and stability in their living situations*, and *the continuity of family relationships and connections is preserved for children.*
- In the area of *well-being,* the outcomes are *families have enhanced capacity to provide for their children's needs, children receive appropriate services to meet their educational needs,* and *children receive adequate services to meet their physical and mental health needs.*

Question: **How is accountability addressed in the CFS review process, in view of the State completing its own statewide assessment?**

Answer: While the State is responsible for completing the **statewide assessment**, it includes the following accountability provisions:

- It is based on data from two federally maintained national data bases, NCANDS and AFCARS, or an alternate source approved by ACF. The AFCARS data include multiple checks for accuracy and thoroughness.
- It is completed by the State in collaboration with representatives from outside the State agency, in order to increase objectivity.
- It must be submitted to ACF for review and approval prior to the on-site review.

The **on-site review** includes the following accountability provisions:

- It is based on a random sample of cases, including cases drawn from AFCARS.
- The review team includes Federal and State staff and external representatives.
- A quality assurance function is used to assure that case reviews and ratings are accurate, and that the criteria used to evaluate outcomes are applied consistently.

Information is gathered from community and inter-agency representatives, providing a more complete and objective assessment than relying solely on the State agency for the information.

Question: ***What are the time frames for conducting the reviews?***

Answer:

- Every State will have a child and family services review and a title IV-E eligibility review within the first four years following the effective date of the regulation.
- In FY 2000 we will conduct the first ten title IV-E foster care eligibility reviews and begin preparing the first 17 States for on-site child and family services reviews in FY 2001.
- Subsequent child and family services reviews will be conducted every five years for States in compliance, and every two years for States not in compliance.
- Subsequent title IV-E foster care eligibility reviews will be conducted every three years.

Question: ***How long will States have to develop and complete program improvement plans?***

Answer:

- Following the *child and family services reviews*, States must develop and submit program improvement plans within 90 days of being notified they are not in compliance. The outside limit for completing the plans is two years, with a possible extension of one year from the Secretary in those rare situations where the problems are so complex that the plans cannot be completed in two years.
- Following the *title IV-E foster care eligibility reviews*, States must develop and submit program improvement plans within 90 days of being notified they are not in compliance. The outside time limit for completing the plans is one year.
- ACF will monitor the progress of the State in implementing program improvement plans and will

require quarterly status reports and updates.

Question: **How will States receive technical assistance to make needed improvements and come into compliance?**

Answer: ACF funds a network of National Resource Centers (NRC), that will be an important source of training and technical assistance for States determined not to be in substantial conformity on the basis of a child and family services review. The NRCs provide assistance in the areas of child maltreatment, foster care and permanency planning, special needs adoption, information and technology, organizational improvement, family-centered practice, youth development, and legal and judicial issues. While we anticipate that many States will identify their preferred sources of technical assistance, the Federal government will use the NRCs as a primary source of assistance to the States for the child and family service reviews. For the title IV-E foster care reviews, the ACF Regional Offices will be the primary source of technical assistance.

Question: **What types of penalties are assessed in each review?**

Answer:

- In the *Child and Family Services Reviews,* States are rated against seven outcome areas and seven systemic factors. A one-percent penalty is assessed for every outcome that has not been substantially achieved and for every systemic factor that does not meet State plan requirements. Penalties are taken from a pool of funds that includes the State's title IV-B allotment (subparts 1 and 2) for the year under review and 10% of the title IV-E administrative costs (foster care only) for the year under review. The maximum penalty is 14 percent of this pool of funds. Outcomes and systemic factors that remain uncorrected in subsequent reviews are assessed graduated penalties of two percent on the second review and three percent on the third and subsequent reviews. Accordingly, the maximum penalties increase to 28 percent and 42 percent, respectively. States that do not implement program improvement plans to correct areas of non-conformity are assessed the maximum 42 percent penalty.

- Penalties are suspended while the State is completing its program improvement plan and are rescinded if the State successfully completes the plan. If a State fails to complete portions of the plan according to schedule, penalties can be assessed on those portions at that point, rather than waiting until the end of the entire program improvement plan.

- In the *title IV-E foster care eligibility reviews,* the State is assessed a disallowance for the ineligible cases reviewed in the primary review. If a secondary review is required and both the number of ineligible cases *and* the dollar amounts in error exceed the acceptable error rate, a much larger penalty is assessed based on a statistical formula. Otherwise, disallowances are taken only on the ineligible cases in the sample.

- The pool of funds against which penalties are assessed in the title IV-E eligibility reviews includes the States' title IV-E foster care maintenance payments and the associated administrative costs.

***Question*:** **When will you begin assessing penalties against States?**

***Answer*:** We have not yet formalized a schedule, for the FY2000 - 2001 reviews. We plan to complete 17 child and family services reviews between October 2000 and September 2001. A State has up to two years to complete a program improvement plan and could conceivably receive a penalty at any point during that time depending on the scheduled completion dates for the action steps identified in the plan.

We plan to conduct 10 title IV-E foster care eligibility reviews between April and September 2000. Disallowances for ineligible cases will be assessed at the completion of each review.

Penalties for violations of the Multiethnic Placement Act, as amended, are not reliant on a specific review, and will be assessed whenever ACF determines that a violation has occurred.

Question: **What provisions in this final rule will present the greatest challenges to the States?**

Answer: Although the new reviews will present important challenges to States in several areas, we believe the challenges will promote the goals of the new reviews by helping States become more self-evaluating, more collaborative, and more effective in administering the programs we are reviewing. Some of the major challenges include the following:

- Requiring States to examine their programs on the basis of statewide data indicators will present a challenge for States that have not begun to use data widely to drive decision-making.
- Involving community and inter-agency representatives in the process of completing a statewide assessment will also challenge States to collaborate and form working partnerships throughout the review process.
- Involving States as full partners in both the child and family services reviews and the title IV-E foster care eligibility reviews will require greater commitment on their part than has previously been necessary, including making logistical arrangements and providing approximately half of the review team members.
- States with multiple or complex needs for improvement will be challenged to plan effectively and implement changes promptly.
- In many situations, the evidence of a State's successful implementation of program improvement plans will be improved outcomes for children and families, not merely the establishment of new policies or procedures. Therefore, the challenge to make lasting and effective improvements is substantial.
- Some of the new title IV-E requirements we are putting into regulation will require States to make significant changes in practices; for example, the requirements that all foster family

homes meet full licensure requirements and obtaining judicial determinations of reasonable efforts to finalize a child's permanency plan. To reduce the burden on States, we have built in six- and 12-month transition periods before taking adverse action for noncompliance with those provisions that may be particularly challenging to States.

***Question*: What are your plans for training States, national organizations, advocates, and other interested parties on the regulations?**

***Answer*:** Immediately prior to publishing the final rule, we briefed central office staff (IGA, ASL, Assistant Secretary, Commissioner, etc.) and the ACF Regional Offices. Soon thereafter, we will brief Hill staff and hold a briefing for national organizations and advocacy groups (APHSA, NGA, NCSL, CDF, CWLA, etc.)

Immediately following the publication of the rule, we will begin conducting training in each Regional Office for the Regional staff, States, Tribes, staff of the National Resource Centers, and other interested stakeholders. More specific training on the procedures involved in the Child and Family Services Reviews and the Title IV-E Foster Care Eligibility Reviews will be provided to the Regional Offices and the States closer to the initiation of the reviews.

***Question:* When and how will the review instruments be made available to the public? What is the timetable for conducting the reviews?**

Answer: The review instruments must be cleared through the Paperwork Reduction Act process, and we expect that process to be complete by April 2000. When they are cleared, the instruments will be published on the Children's Bureau website. The Children's Bureau is currently working with the Regional Offices to identify the first States to be reviewed under the new rule and to develop a schedule for reviewing all States during the next four years. The first ten title IV-E foster care reviews will be conducted during FY 2000. The first 17 CFS reviews will be completed during FY 2001, although some of those 17 States will begin completing the statewide assessment during FY 2000.

***Question*: What appeals process is available to States that have been assessed a penalty under one of these new review protocols?**

***Answer*:** The State (or entity in the case of a §471(a)(18) violation) may appeal any penalty to the Departmental Appeals Board (DAB). DAB decisions may be appealed to the appropriate U.S. district court.

MEPA

***Question*: Describe your activities to implement the MEPA, as amended, prior to issuing this regulation.**

Answer: Following the enactment of the MEPA in 1994, the Department's Office for Civil Rights (OCR) and the Administration on Children and Families (ACF):

- reviewed all applicable State statutes, regulations and published policies on adoption and foster care to determine their compliance with MEPA;

- issued letters to 29 States and the District of Columbia outlining the problem areas of noncompliance with MEPA identified in the review process and offered technical assistance. Those letters were followed up by site visits. The States made the corrections necessary to come into compliance with MEPA;

- issued MEPA guidance and fact sheets to State agencies administering or supervising the administration of titles IV-B and IV-E of the Social Security Act, Adoption Opportunities grantees, and State agencies enforcing civil rights; and

- conducted briefings for child welfare advocates and House and Senate staff on the MEPA guidance.

MEPA was later amended by the Small Business Job Protection Act of 1996. Following the enactment of this legislation, the Department issued a memorandum to the OCR Regional Managers and the ACF Regional Administrators to provide guidance on the implementation of these amendments to the MEPA. This document was widely circulated among state agencies and advocacy groups. Soon after, the Department issued practice-level guidance to assist States in identifying what activities would constitute a violation of MEPA.

In terms of ensuring that information is continuously available, both ACF and OCR maintain web sites that have made MEPA guidance easily accessible to the public and policymakers. Some of the Resource Centers funded by ACF, in addition to providing training and technical assistance on this subject, have provided informational materials as well. Many States and counties have developed their own MEPA guidance, often basing their information on materials supplied by HHS.

As we continue to implement the MEPA, ACF and OCR continue to work hard to ensure our enforcement activities are coordinated. To that end, an OCR/ACF workgroup meets monthly.

Question: **The NPRM did not contain case specific information on what would constitute a delay or denial of adoption or foster care based on race, color, or national origin; nor did it address when race, color, or national origin can be considered when making a foster care or adoptive placement. Do the final regulations contain specific information and guidance that States and entities can use to ensure compliance with the MEPA, as amended?**

Answer: No. We did not provide case specific examples of what constitutes a violation of MEPA, or definitive criteria for determining whether such a violation has occurred, in regulation. While we have provided this and other information guidance form, we do not believe such practice-level detail is appropriate for regulation. When potential violations of MEPA come to our attention, the specific facts of each case will be reviewed to determine if a State or entity is in violation of MEPA or if a policy or practice is consistent with previously issued guidance.

Question: **Who has the final authority to determine whether a violation of the title IV-E anti-discrimination provision at section 471(a)(18) of the Social Security Act has occurred - ACF or OCR?**

Answer: The Department's Office for Civil Rights will investigate potential violations of section 471(a)(18). We chose to collaborate with OCR in enforcing section 471(a)(18) because of its expertise in investigating civil rights violations. ACF will make the final determination with respect to violations of section 471(a)(18).

ASFA

Question: **Specifically, which ASFA requirements are addressed in the final rule?**

Answer: The final rule codifies the following provisions in the ASFA:

- the requirements for a State to make reasonable efforts to prevent a child's removal from his/her home when it is safe and appropriate to do so; to make reasonable efforts to reunify a child and his/her family when the State is unable to prevent the removal; to make reasonable efforts to effect a permanency plan if the child and family cannot be reunited;

- the requirement that all prospective foster and adoptive parents undergo a criminal background check prior to obtaining final licensure or approval;

- the new case plan requirements for documenting efforts made to finalize a child's permanency plan when the goal is adoption, legal guardianship, or some other permanent arrangement;

- the requirement that permanency hearings be held within 12 months of the date a child enters foster care;

- the requirements for a State to file or join a petition to terminate the rights of a parent to a child who has been in foster care for 15 out of 22 months, is an abandoned infant, or whose parent was convicted of committing one of a list of felonies identified in statute unless an exception is warranted in a particular case;.

- the requirements regarding the date a child is considered to have entered foster care which sets the timing for compliance with the new permanency hearing requirements; and,

- the requirement that foster parents, relative caregivers, and preadoptive parents be given notice of and the opportunity to be heard in reviews and hearings.

Questions: Which ASFA requirements are not covered in this final rule, and how will you regulate them?

Answer: As noted in the NPRM, we did not regulate certain requirements of the Adoption and Safe Families Act, including:

- Title IV-B, subpart 2 of the Act regarding the Promoting Safe and Stable Families program;

- Section 471(a)(21) of the Act regarding health insurance coverage for children with special needs for whom an adoption assistance agreement is in effect; and,

- Section 473(a)(2)(C) of the Act regarding a child's continued title IV-E eligibility for adoption assistance in cases where an adoption disrupts or the adoptive parent(s) die.

Before we drafted the NPRM, we consulted widely with States to discover the provisions where States felt that regulations were most critical. We learned from those focus groups that the requirements with regard to safety and permanence, including reasonable efforts, termination of parental rights, and criminal background checks needed the most clarification. As a result, we focused our regulatory effort on those provisions. The above provisions have been in effect since the date of enactment of the ASFA. In the absence of regulations, we have guided States in their implementation of these provisions through policy issuance.

***Question:* Tell us about your efforts to implement the ASFA provisions prior to codifying them in this regulation.**

Answer: In the Spring of 1998, we sponsored 10 regional conferences on the ASFA legislation. These conferences served as a training opportunity for states, partners and stakeholders on the requirements, incentives and timelines contained in the law. The meetings allowed states the opportunity to exchange information about their current reform efforts, to learn how the law could support the changes and to discuss the service design and practice implications of the new law. We awarded a contract to the National Conference on State Legislatures to evaluate State legislation implementing ASFA and to provide technical assistance to States in drafting the ASFA legislative requirements. Additional training and technical assistance was provided to States and courts on ASFA implementation through the Children's Bureau's Resource Centers.

All of the states and Puerto Rico have enacted legislation to comply with the ASFA provisions.

Legislation from three of these states is under review by RO ACF and/or OGC staff. The legislation from Michigan, New Mexico, and Hawaii is deficient.

We are continuing our technical assistance efforts to bring all State legislation into compliance with the ASFA provisions and to assist States as they promulgate policies and procedures and train their staff in their ASFA-compliant legislation.

Question: What have you been doing to ensure that States are complying with the requirements to file a petition for termination of parental rights?

Answer: For all ASFA provisions, HHS has monitored States' enabling legislation to ensure that it complies with the law. To date, all States have passed legislation, and only three States have legislation that does not yet comply with ASFA. For the TPR requirement in particular, HHS issued policy explaining how States should apply the transition rule to phase in implementation of the provision. HHS also collected information on each State's status in implementing the TPR provision in June 1999 as part of the annual title IV-B plan update. Further, the new child and family services review will monitor States compliance with the TPR requirement.

Question: The final rule requires States to exclude time a child spends as a runaway and on a trial home visit from the calculation of when a State must file a petition to terminate parental rights. Does this create a loophole for States?

Answer: No, in our view, it does not. First, we want to emphasize that we do not believe it is appropriate to require states to count the time a child is on "runaway" because, during that time, the agency is unable to provide services to the child or the family. Similarly, counting time when a child is at home with the family toward the time for calculating when to file a petition for TPR is inappropriate. While the child may be in the legal custody and under the supervision of the State agency, both the child and the parent consider him or her to be at home. However, a State has the discretion to file a petition for TPR at whatever point in time it is in the best interests of the child to do so.

Question: **The final rule allows States to make exceptions from the requirement to file a petition to terminate parental rights when a child has been in foster care for 15 out of 22 months. Do these exceptions undermine the law?**

Answer: No, the exceptions are statutory. Those exceptions include: situations where the child is placed with a relative; there is a compelling reason not to pursue a TPR; and, situations when the State agency has not provided services necessary to reunite the family within the time frame documented in the case plan. The regulation follows the statute and clarifies that States cannot exempt groups of children from the TPR requirement and must make decisions not to file a petition for on a case-by-case basis. The statute created certain exceptions to the general requirement for States to file a petition for TPR for children who have been in foster care for 15 out of the most recent 22 months, abandoned infants and children of parents who have committed certain felonies.

Question: Do your regulations make clear that States have broad discretion to define the aggravated circumstances in which reasonable efforts to preserve or reunify a family are not required?

Answer: Yes. We did not limit State authority in any way to define the types of aggravated circumstances that would allow the State to forego reasonable efforts to preserve or reunify a family. We followed the statutory language in this regard.

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file: Child welfare

DATE: 9/21

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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TOTAL PAGES
INCLUDING COVER): ____________

REMARKS: Re Johnson C.W. proposal.
+ I'm still trying to reach Michael K re pres
+ B. Chew called me on another matter and I briefly mentioned this

SEP.21.2000 11:37 202 690 8425 HEALTH LEGISLATION DHHS/OS/ASL #0316 P.001

Talking Points on Draft Johnson Flexibility Bill

- While the bill terms the flexible funding options as "demonstration" projects and includes some language relating to evaluation, it is unclear what the projects are intended to demonstrate or achieve or how it will be determined if they have been successful. Indeed, States would, under some circumstances, have the unilateral option to continue the demonstrations indefinitely, regardless of whether they are successful in improving outcomes for children and families.

- The bill raises questions about the applicability of various provisions of title IV-E to individual children and the relationship of title IV-E to other Federal programs (e.g. Medicaid). Under the first "consolidated grant" option, income eligibility determinations for title IV-E would be eliminated. It is unclear whether all of the protections associated with title IV-E eligibility would apply to all children in foster care, regardless of their family's income. In addition, it is not clear whether in the States that choose this option all children in foster care would be deemed IV-E eligible and therefore Medicaid-eligible, or whether separate income eligibility determinations would be needed to assure Medicaid eligibility. If all children in foster care in these States are considered Medicaid eligible, this will have cost implications for the Medicaid program, and if not, States will still have to make income eligibility determinations.

- Both the "consolidated grant" and the "transfer of funds" options are premised on the ability to make multi-year projections of title IV-E expenditures in order to set baselines that would determine the amount of funding a State would receive. Projecting expenditures for title IV-E has been historically difficult and the longer the timeframe for the projection, the poorer the accuracy of the estimates. Experience with the current title IV-E demonstration waivers has indicated that many States have poor historical program and fiscal data on which to base future fiscal projections. Therefore, the negotiation of baselines would be labor-intensive, contentious and would likely result in greater Federal expenditures.

- The ability of a participating State to opt out of the consolidated grant demonstration if, for example, its foster care caseload rises more rapidly than expected (coupled with the financial incentive to remain in the demonstration if its caseload begins to decline more quickly than anticipated) could make these demonstrations costly from a Federal perspective.

- The provisions of the consolidated grant option that allow States to opt in and out of the consolidation of various aspects of the title IV- E program (i.e. foster care maintenance payments, administration and training, and adoption assistance payments, administration and training) would make the task of projecting the baseline even more complicated and difficult. Furthermore, the distinctions among the categories of expenditures are not always clear -- e.g. some expenses may be claimed either under the title IV- E foster care or the adoption assistance programs. This would leave open to question which expenditures would be included in the consolidated block grant and which would remain an open-ended entitlement.

- The income de-linking provisions in the consolidated grant option are confusing, particularly the separate treatment of adoption assistance payments, even when these payments are not included in the consolidated grant. Furthermore, the rationale for allowing a group of five States to continue the de-linking indefinitely beyond the period of the demonstration is unclear and raises issues of equity and administrative burden, since some States would permanently be treated differently than others.

- The proposal raises a number of issues about how it would interact with the new Child and Family Services reviews. Would a State have to already have had a review already to be eligible for a demonstration? If in the course of a demonstration a State moved into a penalty status, would it continue to be eligible to participate in the demonstration? Given that the pool for penalties under the reviews includes title IV-E administrative payments, how would the penalty be calculated in a State that had been participating in a consolidated grant demonstration?

- The proposal allows States with waivers under the existing demonstration authority to continue those waivers indefinitely and unilaterally regardless of whether the approach is either effective or cost-neutral. This fundamentally changes the nature and purpose of the demonstration, which was to test and evaluate innovative approaches. The proposed change would also put a much more substantial burden on the initial negotiation of demonstrations, since the demonstrations would become, in many cases, permanent changes to the program.

- The draft bill is a very complicated piece of legislation that on its face is difficult to understand and that would greatly increase the complexity of the title IV-E program. In addition to amending the current demonstration waiver authority for the title IV-E program, the bill would introduce two new types of "flexible funding demonstrations," each with multiple variations as to how they might be carried out. The many issues raised by the legislation require extensive work to resolve - if they can be resolved at all.

Federal-State Partnerships Encourage Flexibility and Innovation

Section 1130 of the Social Security Act allows the Secretary of HHS to waive provisions of the federal Foster Care and Adoption Assistance (Title IV-E), Child Welfare Services and Safe and Stable Families Act (Title IV-B) programs. This waiver authority provides States with extensive federal funding flexibility under new federal-State partnerships that promote creative strategies to achieve positive results for children and families in the child welfare system.

States are using this broad waiver authority to develop flexible and innovative approaches to provide a more extensive range of child welfare services. Under these waiver mechanisms, child welfare systems focus greater attention on prevention and permanency and become more responsive to the multiple and complex needs of children and families.

- California is using Title IV-E funds to offer comprehensive and integrated services designed to prevent placement in foster care and expedite permanency. In addition to using IV-E funds for traditional maintenance costs, the State will use federal funds to provide individually targeted, flexible services to children and families. The program is focusing both on children who would otherwise be removed from their homes as well as on children currently in out-of-home care.

- Maryland is using Title IV-E funds to provide services to substance-abusing caretakers to prevent unnecessary out-of-home foster care placement and expedite reunification of children already in foster care. The State expects this new approach will reduce of the number of children re-abused, reduce the length of stay in foster care and increase the number of parents who become drug-free and assume a healthy parenting role.

- Mississippi is also using Title IV-E foster care maintenance funds for a broad range of preventive, treatment and early intervention services in order to eliminate harm-causing factors through a child-focused, family-centered practice. It is focusing on a broader population that not only includes children in foster care, but their parents, foster parents, potential foster parents, custodial relatives, siblings and adoptive parents.

- North Carolina, Ohio and Oregon similarly requested waiver authority to use Title IV-E federal funding more flexibly in order to focus attention on prevention and treatment and better achieve permanency, safety and well-being for its children. In each states, these funds are being used for a broad range of services both for children at risk of out-of-home placement as well as for children in foster care.

- Several other states are using the flexibility inherent in the section 1130 authority for other creative approaches to child welfare services. A number of states are using the title IV-E funds normally available for out-of-home placement for assisted guardianship arrangements. Others have developed managed care/capitated payment systems designed to ensure children and families a broad array of prevention and intervention services.

These flexible and innovative approaches are being undertaken while preserving the entitlement of eligible children for services and the critical protections that the IV-E program affords to children in foster care. Further, these creative endeavors are being pursued on a cost-neutral basis and subject to rigorous evaluation. Section 1130 does, however, limit the number of waiver demonstrations that the Secretary may approve each year.

[DISCUSSION DRAFT]

106TH CONGRESS
2D SESSION

H. R. ____

IN THE HOUSE OF REPRESENTATIVES

MRS. JOHNSON of Connecticut introduced the following bill; which was referred to the Committee on ______________________

A BILL

To

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "____ Act of 2000".

TITLE I—FLEXIBLE FUNDING DEMONSTRATIONS

SEC. 101. DEMONSTRATIONS OF FLEXIBLE FUNDING.

(a) IN GENERAL.—Section 1130A of the Social Security Act (42 U.S.C. 1320a–10) is amended to read as follows:

"SEC. 1130A. DEMONSTRATIONS OF FLEXIBLE FUNDING.

"(a) CONSOLIDATION OF GRANTS.—

"(1) APPLICATIONS.—

"(A) IN GENERAL.—A State may submit to the Secretary an application to conduct a demonstration project in accordance with this subsection for 3 consecutive fiscal years with respect to 1 or more categories of expenditure set forth in subparagraph (B) of this paragraph, unless section 1123A requires Federal matching funds to be withheld from the State.

"(B) EXPENDITURE CATEGORIES.—The categories of expenditure set forth in this subparagraph are the following:

"(i) FOSTER CARE MAINTENANCE PAYMENTS.—Expenditures for foster care maintenance payments under section 472 for children in foster family homes or child-care institutions.

"(ii) FOSTER CARE ADMINISTRATIVE NON-TRAINING EXPENSES.—Expenditures for the proper and efficient administration of the provisions of the State plan approved under part E of title IV relating to foster care except for training.

"(iii) FOSTER CARE TRAINING EXPENSES.—Expenditures for the proper and efficient administration of the provisions of the State plan approved under part E of title IV relating to foster care training.

"(iv) ADOPTION ASSISTANCE PAYMENTS.—Expenditures for adoption assistance under section 473 pursuant to adoption assistance agreements.

"(v) ADOPTION ASSISTANCE ADMINISTRATIVE NON-TRAINING EXPENSES.—Expenditures for the proper and efficient administration of the provisions of the State plan approved under part E of title IV relating to adoption except for training.

"(vi) ADOPTION ASSISTANCE TRAINING EXPENSES.—Expenditures for the proper and efficient administration of the provisions of the State plan approved under part E of title IV relating to adoption assistance training.

"(C) ESTIMATION OF STATE BASELINE.—The application shall contain an estimate of the State baseline for each fiscal year covered by the application.

"(2) APPROVAL OF APPLICATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), beginning October 1, 2001, the Secretary may approve an application submitted by a State pursuant to paragraph (1) if—

"(i) the State and the Secretary have agreed on the amount of the State baseline for each fiscal year covered by the application; and

"(ii) the application contains such other information as the Secretary may require.

"(B) LIMITATION.—The Secretary may not approve more than 5 applications submitted pursuant to this subsection.

"(3) EFFECTS OF APPLICATION APPROVAL.—

"(A) FIXED PAYMENTS TO STATES FOR SELECTED CATEGORIES OF IV-E EXPENDITURES.—

"(i) IN GENERAL.—Subject to subsection (d) of this section, a State with an approved application under this subsection shall be entitled to receive from the Secretary, for each calendar quarter of each fiscal year covered by the application, an amount equal to ¼ of the State baseline agreed on by the State and the Secretary for the fiscal year, in lieu of any payment under sections 474(a), 474(b)(1), and 474(b)(2) with respect to the expenditures of the State in the quarter in the categories of expenditure specified in the application.

"(ii) TIMING; ADJUSTMENTS.—The Secretary shall make a payment to a State under clause (i) for a calendar quarter on the 1st day of the quarter, the amounts reduced or increased to the extent of any prior overpayment or underpayment which the Secretary determines was made under this section or section 474 to the State for any prior quarter and with respect to which adjustment has not been made under this section or section 474.

"(B) RELIEF FROM INCOME DETERMINATIONS.—

"(i) DURING PERIOD COVERED BY APPLICATION.—

"(I) IN GENERAL.—During the period covered by an approved application of a State under this section, the State may determine the eligibility of a child for foster care maintenance payments under section 472 and may make such payments, and may enter into an adoption assistance agreement with respect to a child, without regard to any income requirement, to the extent that the foster care maintenance payments, or adoption assistance payments pursuant to the agreement, as the case may be, are in a category of expenditure specified in the application.

[Language of subclauses (I) above and (II) below needs to be refined. (I) may need to be modified in light of (II).]

"(II) DETERMINATIONS RELATING TO ADOPTION ASSISTANCE FOR STATES ELECTING NOT TO INCLUDE ADOPTION ASSISTANCE IN APPLICA-

TION.—If an approved application of a State under this section does not apply with respect to any adoption expenditure, the State may elect to require the Secretary, in lieu of applying any income requirement to the families of the children with respect to whom the State has made an adoption expenditure in or after the period covered by the application and submitted a claim under part E of title IV for the expenditure, to consider otherwise allowable adoption expenditures of the State allowable under part E of title IV in the same proportion as the average annual percentage of children with respect to whom State adoption expenditures were allowed under such part for the 3-year period preceding the period covered by the application. In this subclause, the term 'adoption expenditure' means an expenditure described in clause (iv), (v), or (vi) of paragraph (1)(B).

"(ii) OPTIONAL CONTINUATION.—Before the end of the period covered by an approved application of a State under this section, the State may make an irrevocable election to require the Secretary, in lieu of applying any income requirement to the families of the children with respect to whom the State has made an expenditure described in paragraph (1)(B) after the period and submitted a claim for the expenditure under part E of title IV, to consider otherwise allowable expenditures of the State allowable under part E of title IV in the same proportion as the average annual percentage of children with respect to whom State expenditures were allowed under such part for the 3-year period preceding the period covered by the application.

"(C) USE OF FUNDS.—A State to which an amount is paid under this section may not use the amount, except for expenditures under the State plan developed under subpart 1 of part B, the State plan approved under subpart

2 of part B, or the State plan approved under part E, of title IV of the Social Security Act.

"(4) STATE OPTIONS.—

"(A) NARROW SCOPE OF APPROVED APPLICATION.—A State with an approved application under this subsection may, at any time, elect to have the approved application cease to apply to any or all categories of expenditure specified in the application, beginning with any calendar quarter remaining in the period covered by the application.

"(B) WITHDRAWAL.—A State with an approved application under this subsection may, at any time, elect to have this subsection cease to apply to the application (except with respect to any penalty required to be imposed by reason of conduct before the election), beginning with any calendar quarter remaining in the period covered by the application.

"(5) RENEWAL.—

"(A) IN GENERAL.—On agreement between a State and the Secretary as to the amount of the State baseline for each year in the 3-year period following the covered by an application approved under this section, the

Secretary shall approve the application if the application contains such other information as the Secretary may require.

"(B) LIMITATION.—The Secretary may not approve an application of a State under this subsection, to the extent that the total number of years covered by approved applications of the State under this section would exceed 9.

"(b) TRANSFER OF FUNDS.—

"(1) APPLICATIONS.—

"(A) ELIGIBILITY.—A State may submit to the Secretary an application to have the amount to which the State is entitled, with respect to expenditures made during a period of 3 consecutive fiscal years to carry out the State plan approved under part E of title IV, be determined under this section in lieu of under section 474(a), unless section 1123A requires Federal matching funds to be withheld from the State.

"(B) CONTENTS.—An application submitted by a State pursuant to this subsection shall contain—

"(i) an estimate of the State baseline for each year in the period covered by the application; and

"(ii) a plan which describes how the State will expend the amounts payable to the State under this subsection, which shall be consistent with any corrective action plan that the State may be implementing pursuant to section 1123A.

"(2) APPROVAL OF APPLICATIONS.—

"(A) IN GENERAL.—Beginning October 1, 2001, on agreement between a State and the Secretary as to the amount of the State baseline for each year in the period covered by an application submitted by the State pursuant to paragraph (1), the Secretary may approve the application, except as provided in subparagraph (B).

"(B) LIMITATION.—The Secretary may not approve more than 5 applications submitted pursuant to this subsection.

"(3) EFFECTS OF APPLICATION APPROVAL.—

"(A) FIXED PAYMENTS TO STATES FOR IV-E EXPENDITURES.—A State with an approved application under this subsection shall be entitled to receive from the Secretary, for each calendar quarter in each fiscal year covered by the application, an amount equal to ¼ of the State baseline agreed on by the State and the Secretary for the fiscal year.

"(B) LIMITATION ON USE OF FUNDS.—

"(i) IN GENERAL.—A State with an approved application under this section may not use any excess amount paid to the State under this section, except in accordance with the approved application.

"(ii) EXCESS AMOUNT.—In clause (i), the term 'excess amount' means the amount (if any) by which—

"(I) the amount paid to the State under this subsection for a fiscal year covered by the approved application; exceeds

"(II) the State baseline for the fiscal year.

"(iii) CLAIMS DEADLINE.—For purposes of this subparagraph, the Secretary may not consider a claim submitted by a State with respect to an expenditure in a fiscal year more than 6 months after the end of the fiscal year.

"(c) STATE BASELINE.—In this section, the term 'State baseline' means, with respect to a State and a fiscal year, the total amount to which the State would be entitled under section 474(a), in the absence of this section, with respect to—

"(1) in the case of an application under subsection (a), the expenditures of the State in the fiscal year in the categories specified in the application; or

"(2) in the case of an application under subsection (b), all expenditures of the State in the fiscal year to carry out the State plan approved under part E of title IV.

"(d) MAINTENANCE OF EFFORT.—

"(1) REQUIREMENT.—If the Secretary determines that the average of the historic expenditure levels in effect with respect to a State for a fiscal year covered by an application approved under this section and for the preceding fiscal year exceeds the average of the total amounts of qualified State expenditures in such fiscal years:

"(A) REDUCTION OF AMOUNTS PAYABLE TO STATE.—The total of the amounts otherwise payable to the State under this section or under part E of title IV for each quarter in the succeeding fiscal year shall be reduced by an amount equal to ¼ of the excess.

"(B) ENHANCED MAINTENANCE OF EFFORT REQUIREMENT FOR NEXT YEAR.—The historic expenditure level otherwise in effect for the succeeding fiscal year with respect to the State shall be increased by an amount equal to the excess.

"(2) DEFINITIONS.—

"(A) QUALIFIED STATE EXPENDITURES.—In this subsection, the term 'qualified State expenditures' means, with respect to a fiscal year, the sum of—

"(i) the total amount expended for child welfare services during the fiscal year by the child welfare agency of the State or of a political subdivision of the State, from Federal, State, or local funds; and

"(ii) at the option of the State, the amount (if any) by which the total of the amounts expended for child welfare services during the fiscal year by other agencies of the State or of a political subdivision of the State, from State or local funds, exceeds the total of the amounts so expended during fiscal year 1998.

"(B) CHILD WELFARE SERVICES.—

"(i) DEFINITION.—In this subsection, the term 'child welfare services' has the meaning given in section 425.

"(ii) EXPENDITURES INCLUDED.—For purposes of this section, an amount shall be considered to have been expended for a child welfare service by an agency if the amount is expended directly by the agency, or by another entity under contract with the agency, to provide, or to cover any administrative cost related to the provision of, the service.

"(C) HISTORIC EXPENDITURE LEVEL.—

"(i) IN GENERAL.—In this subsection, the term 'historic expenditure level in effect for a fiscal year with respect to a State' means the total amount expended for child welfare services during fiscal year 1998 by the child welfare agency of the State or of a political subdivision of the State, from Federal, State, or local funds, increased by the inflation percentage in effect for the fiscal year.

"(ii) INFLATION PERCENTAGE.—For purposes of clause (i), the inflation percentage in effect for a fiscal year is the percentage (if any) by which—

"(I) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the preceding fiscal year; exceeds

"(II) the average of the Consumer Price Index (as so defined) for fiscal year 1998.

"(iii) ADJUSTMENT FOR REDUCED FEDERAL FUNDING OF CHILD WELFARE SERVICES.—The historic expenditure level in effect for a fiscal year with respect to a State, as determined under clauses (i) and (ii), shall be decreased by the amount (if any) by which the amount of Federal funds available to be provided to the State or any political subdivision of the State for child welfare services for the fiscal year is less than the amount of Federal funds so available for fiscal year 1998.

"(D) FISCAL YEAR.—In this section, the term 'fiscal year' means the 12-month period ending with September 30 of the year.

"(d) APPROVED APPLICATION CONSIDERED PART OF STATE PLAN.—For purposes of part E of title IV and section 1123A, an approved application of a State under this section shall be considered part of the State plan approved under such part for the period of time covered by the approved application.".

(b) ADMINISTRATIVE GUIDELINES ON BASELINE DETERMINATIONS.—Not later than April 1, 2001, the Secretary of Health and Human Services shall issue administrative guidelines with respect to the information required in any application under section 1130A of the Social Security Act, including the manner in which the baselines described in such section are to be determined.

(c) REGULATIONS ON MAINTENANCE OF EFFORT.—Within 12 months after the date of the enactment of this section, the Secretary of Health and Human Services shall prescribe such regulations as may be necessary to carry out this section 1130(c) of the Social Security Act.

TITLE II—WAIVERS MODIFICATION

SEC. 201. ELIMINATION OF LIMITATION ON NUMBER OF WAIVERS.

Section 1130(a) of the Social Security Act (42 U.S.C. 1320a–9(a)) is amended by striking paragraph (2) and redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

SEC. 202. ELIMINATION OF RESEARCH AND EVALUATION REQUIREMENTS.

[policy to be clarified]

SEC. 203. ELIMINATION OF LIMITATION ON NUMBER OF STATES THAT MAY CONDUCT DEMONSTRATION PROJECT ON SAME TOPIC.

Section 1130 of the Social Security Act (42 U.S.C. 1320a–9) is amended by adding at the end the following:

"(h) NO LIMIT ON NUMBER OF STATES THAT MAY CONDUCT SAME OR SIMILAR DEMONSTRATION PROJECTS.—The Secretary shall not deny a State the authority to conduct a demonstration project under this section on the grounds that a purpose of the project would be the same as or similar to a purpose of another project that is or may be conducted under this section.".

SEC. 204. ELIMINATION OF LIMITATION ON NUMBER OF DEMONSTRATION PROJECTS THAT MAY BE CONDUCTED BY A SINGLE STATE.

Section 1130 of the Social Security Act (42 U.S.C. 1320a–9) is amended by adding at the end the following:

"(i) NO LIMIT ON NUMBER OF DEMONSTRATION PROJECTS THAT MAY BE CONDUCTED BY A SINGLE STATE.—The Secretary shall not impose any limit on the number of demonstration projects that a State may be authorized to conduct under this section.".

SEC. 205. CONDITIONAL AUTHORITY TO CONDUCT DEMONSTRATION PROJECTS INDEFINITELY.

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

"(d) DURATION OF DEMONSTRATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a demonstration project under this section may be conducted for not more than 5 years.

"(2) STATE OPTION TO EXTEND PROJECT INDEFINITELY.—If a State has conducted a demonstration project under this section for 5 years and has complied with the agreement under which waivers are provided under subsection (b) with respect to the project, the State may continue to conduct the project and the waivers shall continue to remain in effect, for so long as the State desires such continuance and the compliance continues.".

TITLE III—EVALUATION

SEC. 301. EVALUATION.

[policy to be supplied]