

## **Child Welfare League of America**

### **Summary of the Adoption And Safe Families Act of 1997**

On November 19, 1997, the President signed into law (P.L. 105-89) the Adoption and Safe Families Act of 1997, to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. This new law makes changes and clarifications in a wide range of policies established under the Adoption Assistance and Child Welfare Act (P.L. 96-272), the major federal law enacted in 1980 to assist the states in protecting and caring for abused and neglected children. The new law:

**\*Continues and Expands the Family Preservation and Support Services Program.**

The Family Preservation and Support Services Program, renamed the Promoting Safe and Stable Families Program, is reauthorized through FY 2001 at the following levels: FY 1999 at \$275 million; FY 2000 at \$295 million; and FY 2001 at \$305 million. The set-asides are maintained for the Court Improvement Program, evaluation, research, training, technical assistance, and Indian tribes. State plans are now also required to contain assurances that in administering and conducting service programs, the safety of the children to be served will be of paramount concern.

The new law further clarifies that for the purposes of the maintenance of effort requirement in the program, "non-federal funds" may be defined as either state or state and local funds. This change is made retroactive to the enactment of the Family Preservation and Support Services Program (P.L. 103-66) on August 10, 1993.

In addition to the funds to prevent child abuse and neglect and to assist families in crisis, the program's funds specifically include time-limited reunification services such as counseling, substance abuse treatment services, mental health services, assistance for domestic violence, temporary child care and crisis nurseries, and transportation to and from these services. Adoption promotion and support services are also included and are defined as pre- and post-adoptive services and activities designed to expedite the adoption process and support families.

**\*Continues Eligibility for the Federal Title IV-E Adoption Assistance Subsidy to Children Whose Adoption is Disrupted.** Any child who was receiving a federal adoption subsidy on or after October 1, 1997, shall continue to remain eligible for the subsidy if the adoption is disrupted or if the adoptive parents die.

**\*Authorizes Adoption Incentive Payments for States.** The Act authorizes \$20 million for each of FY 1999-2003 for payments to eligible states which exceed the average number of adoptions the state completed during FY 1995-FY 1997, or in FY 1999 and subsequent years, in which adoptions of foster children are higher than in any previous fiscal year after FY 1996. The amount of the bonus is \$4,000 for each foster child adopted and \$6,000 for each adoption of a child with special needs previously in foster care. To be eligible to receive these payments for FY 2001 or FY 2002, states are

required to provide health insurance coverage to any special needs child for whom there is an adoption assistance agreement between the state and the child's adoptive parents.

**\*Requires States to Document Efforts to Adopt.** States are required to make reasonable efforts and document child specific efforts to place a child for adoption, with a relative or guardian, or in another planned permanent living arrangement when adoption is the goal. The law also clarifies that reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to reunify a child with his or her family.

**\*Expands Health Care Coverage to Non-IV-E Eligible Adopted Children with Special Health Care Needs.** States are required to provide health insurance coverage for any child with special needs for whom there is an adoption assistance agreement between the state and the adoptive parents and whom the state has determined could not be placed for adoption without medical assistance because the child has special needs for medical, mental health, or rehabilitative care. The health insurance coverage can be provided through one or more state medical assistance programs including Medicaid and must include benefits of the same type and kind as provided under Medicaid. The state may determine cost sharing requirements.

**\*Authorizes New Funding For Technical Assistance to Promote Adoption.** The U.S. Department of Health and Human Services (HHS) may provide technical assistance to states to promote the adoption, or other alternative permanent placement, of foster children. The technical assistance may include guidelines for expediting termination of parental rights; encouraged use of concurrent planning; specialized units and expertise in moving children toward adoption; risk assessment tools for early identification of children at risk of harm if returned home; encouraged use of fast tracking for children under age one into pre-adoptive placements; and programs to place children into pre-adoptive placements prior to termination of parental rights. At least half of the appropriated funds are reserved for providing technical assistance to the courts.

**\*Addresses Geographic Barriers to Adoption.** States are required to assure that the state will develop plans for the effective use of cross-jurisdictional resources to facilitate timely permanent placements for children awaiting adoption. The state's Title IV-E foster care and adoption assistance funding is conditioned on the state not denying or delaying a child's adoptive placement, when an approved family is available outside of the jurisdiction with responsibility for the child. Funding is also conditioned upon the state granting opportunities for fair hearings for allegations of violations of the requirements. The U.S. General Accounting Office must study and report to Congress on how to improve procedures and policies to facilitate timely adoptions across state and county lines.

**\*Establishes Kinship Care Advisory Panel.** HHS is required to prepare and submit, by June 1, 1999, a report for Congress on the extent of the placement of children in foster care with relatives and to convene an advisory panel on kinship care to review and comment on the report before it is submitted.

**\*Issues Sense of Congress on Standby Guardianship.** It is the Sense of Congress that states should have laws and procedures to permit a parent who is chronically ill or near death to designate a standby guardian for their child, without surrendering their own parental rights. The standby guardian's authority would take effect upon the parent's death, mental incapacity, or physical debilitation and consent.

**\*Establishes New Time Line and Conditions for Filing Termination of Parental Rights.** Federal law did not require states to initiate termination of parental rights proceedings based on a child's length of stay in foster care. Under the new law, states must file a petition to terminate parental rights and concurrently, identify, recruit, process and approve a qualified adoptive family on behalf of any child, regardless of age, that has been in foster care for 15 out of the most recent 22 months. A child would be considered as having entered foster care on the earlier of either the date of the first judicial finding of abuse or neglect, or 60 days after the child is removed from the home.

This new requirement applies to children entering foster care in the future and to children already in care. For children already in care, states are required to phase in the filing of termination petitions beginning with children for whom the permanency plan is adoption or who have been in care the longest. One third must be filed within six months of the end of the state's first legislative session following enactment of this law, two-thirds within 12 months and all of them within 18 months. A state must also file such a petition if a court has determined that an infant has been abandoned (as defined in state law) or if a court has determined that a parent of a child has assaulted the child, or killed or assaulted another one of their children. Exceptions can be made to these requirements if: (1) at the state's option, a child is being cared for by a relative; (2) the state agency documents in the case plan which is available for court review, a compelling reason why filing is not in the best interest of the child; or (3) the state agency has not provided to the child's family, consistent with the time period in the case plan, the services deemed necessary to return the child to a safe home.

**\*Sets New Time Frame for Permanency Hearings.** Former federal law required a dispositional hearing within 18 months of a child's placement into out-of-home care. The new law establishes a permanency planning hearing for children in care that occurs within 12 months of a child's entry into care. At the hearing, there must be a determination of whether and when a child will be returned home, placed for adoption and a termination of parental rights petition will be filed, referred for legal guardianship, or another planned permanent living arrangement if the other options are not appropriate.

**\*Modifies Reasonable Efforts Provision in P.L. 96-272.** States continue to be required to make reasonable efforts to preserve and reunify families. In making decisions about the removal of a child from, and the child's return to, his or her home, the child's health and safety shall be the paramount concern. The reasonable efforts requirement does not apply in cases in which a court has found that:

\* the parent has subjected the child to "aggravated circumstances" as defined in state law

(including but not limited to abandonment, torture, chronic abuse, and sexual abuse);

- \* the parent has committed murder or voluntary manslaughter or aided or abetted, attempted, conspired or solicited to commit such a murder or manslaughter of another child of the parent;

- \* the parent has committed a felony assault that results in serious bodily injury to the child or another one of their children; or

- \* the parental rights of the parent to a sibling have been involuntarily terminated

In these cases, states would NOT be required to make reasonable efforts to preserve or reunify the family but are required to hold a permanency hearing within 30 days and to make reasonable efforts to place the child for adoption, with a legal guardian, or in another permanent placement.

**\*Requires States to Check Prospective Foster and Adoptive Parents for Criminal Backgrounds.** States are required to provide procedures for criminal record checks for any prospective foster or adoptive parents, before the parents are approved for placement of a child eligible for federal subsidies. When a criminal record check reveals a felony conviction for child abuse or neglect, spousal abuse, another crime against a child (including child pornography), rape, sexual assault, or homicide, final approval of foster or adoptive parent status shall not be granted. In a case of a felony conviction for physical assault, battery, or a drug-related offense that was committed in the past five years, approval could not be granted. States can opt out of this provision either through a written notice from the Governor to HHS, or through state law enacted by the state legislature.

**\*Requires Notice of Court Reviews and Opportunity to be Heard to Foster Parents, Preadoptive Parents and Relatives.** A foster parent, any preadoptive parent or relative caring for a child must be given notice of, and an opportunity to be heard in, any review or hearing involving the child. This provision does not require that any foster or preadoptive parent or relative be made a party to such a review or hearing.

**\*Directs States to Establish Standards to Ensure Quality Services.** By January 1, 1999, states are required to develop and implement standards to ensure that children in foster care placements in public and private agencies are provided quality services that protect the safety and health of the children.

**\*Requires Assessment of State Performance in Protecting Children.** HHS will develop, in consultation with governors, state legislatures, state and local public officials and child welfare advocates, a set of outcome measures to be used to assess the performance of states in operating child protection and child welfare programs to ensure the safety of children and a system for rating the performance of states with respect to the outcome measures. HHS must submit an annual report to Congress on state performance including recommendations for improvement. The first report is due May 1, 1999. Outcome measures include length of stay in foster care and number of foster placement

adoptions; and, to the extent possible, are developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS).

**\*Directs Development of Performance-Based Incentive Funding System.** HHS, in consultation with public officials and child welfare advocates, is required to develop and recommend to Congress a performance-based incentive system for providing payments under Title IV-B and Title IV-E of the Social Security Act by February 1999, and to submit a progress report on the feasibility, timetable and consultation process for conducting such a study by May 1998.

**\*Expands Child Welfare Demonstration Waivers.** Under previous law, HHS has authority to approve up to ten child welfare demonstration waivers. Eight states (CA, DE, IL, IN, MD, NC, OH, OR) have received approval to date. This new law authorizes HHS to conduct up to 10 demonstration projects per year from FY 1998 through 2002. Specific types of demonstrations to be considered include: projects designed to identify and address reasons for delay in adoptive placements for foster children; projects designed to address parental substance abuse problems that endanger children and result in placement of a child in foster care; and projects designed to address kinship care. Eligibility for these waivers is not available if a state fails to provide health insurance coverage to any child with special needs for whom there is in effect an adoption assistance agreement.

**\*Requires Study on the Coordination of Substance Abuse and Child Protection.** HHS will prepare a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to this population, and the outcomes resulting from the provision of such services, including recommendations for legislation needed to improve coordination in providing such services.

**\*Authorizes the Use of the Federal Parent Locator Service.** Child welfare agencies can now use the Federal Parent Locator Service to assist in locating absent parents.

**\*Extends Independent Living Services.** Young people who are no longer eligible for federal foster care assistance because their savings and assets exceed \$1,000, will still be eligible for independent living services, provided their assets do not exceed \$5,000.

**\*Funding Source.** The provisions of this law are partially funded (\$40 million over four years) from an adjustment to the \$2 billion Federal Contingency Fund for State Welfare Programs, created by the 1996 welfare law (P.L. 104-193). HHS is also required to make recommendations to Congress by March 1, 1998, for improving the operation of the Contingency Fund for State Welfare Programs.

**\*Effective Date:** The provisions of this new law became effective on November 19, 1997, except for the provisions dealing with termination of parental rights, disrupted adoptions, and the definition of nonfederal funds under family preservation. States have until the close of the next regular session of the state legislature to pass any state laws to

comply with the new state plan requirements imposed by this law.

For more advocacy/policy information contact the CWLA Government Affairs Department at (202)942-0278, FAX: (202) 638-4004, or e-mail [advocate@cwla.org](mailto:advocate@cwla.org).

This article was found at:

<http://library.adoption.com/Resources-and-Information/Summary-of-The-Adoption-And-Safe-Families-Act-of-1997/article/3522/1.html>