

<h1>ACF</h1> <p>Administration for Children and Families</p>	DEPARTMENT OF HEALTH, EDUCATION AND WELFARE Administration for Children, Youth and Families	
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	3. Originating Office: Children's Bureau	

ACTION TRANSMITTAL

TO: ADMINISTRATORS OF STATE PUBLIC WELFARE AGENCIES, DIRECTORS OF CHILD WELFARE SERVICES STATE GRANT PROGRAMS

SUBJECT: Adoption Assistance and Child Welfare Act of 1980 (formerly H.R. 3434)

CONTENT: Summary of Title I--"Foster Care and Adoption Assistance and an Explanation of State Plan Requirements, for the Receipt of Federal Funds under the Act" The bill was passed by the Congress on June 13, 1980 and signed into law by the President on June 17, 1980. This summary is unofficial but may be useful to States in planning implementation of the Act.

ATTACHMENT: Conference report on H.R. 3434 PROGRAM

APPLICABILITY: Child Welfare Services, AFDC-Foster Care and Adoption Assistance.

INQUIRIES TO: Regional Program Directors, ACYF Associate Chief, Children's Bureau signed:
 Commissioner,
 Administration Children, Youth and Families
 Adoption Assistance and Child Welfare Act of 1980

TITLE I -- FOSTER CARE AND ADOPTION ASSISTANCE

TITLE IV-E -- FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

Section 101 of the bill would amend the Social Security Act ("the Act") to create a new part E of title IV, entitled "Federal Payments for Adoption Assistance and Foster Care", providing authority for Federal matching of State payments for foster care for AFDC-eligible children, and adoption assistance for AFDC-eligible, AFDC-FC eligible and SSI-eligible children. The bill would provide for a phased repeals of section 408 of the Act, which provides authority for Federal matching of State foster care (AFDC-FC) payments for AFDC-eligible children under

part A of title IV. States could continue to receive Federal matching for AFDC-FC payments under title IV-A until September 30, 1982, or, if earlier, the quarter in which the State implemented an approved plan under title IV-E.

Section 101 of the Amendments would add new sections 470 through 476 of the Act.

State Plan Requirements Under Title IV-E

1. General Requirements

The State plan requirements (Section 471) would include requirements applicable to AFDC State plan under present law. These include requirements relating to administration, personnel standards, reporting, privacy, benefit standards, provision for fair hearing, and others. State title IV-E plans would also be subject to additional administrative requirements. The plan would have to be administered by the same State agency that administers the Child Welfare State Grant Program under title IV-B of the Act. An independent audit would be required, at least every three year, of the programs under titles IV-B and IV-E. (Section 471(a)(13)) State plans would be required to restrict the use or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with the administration of the plan of any other Federal or Federally assisted program which provides assistance or services to individuals on the basis of need. The bill specifically authorizes disclosure of information in connection with audits authorized by law, and disclosure of information (other than names and addresses) to appropriate congressional committees. (Section 471(a)(8)) States would be required to establish by law, by October 1, 1982, for each fiscal year beginning with fiscal year 1983, goals as to the maximum number of children in the State who will remain in foster care after having been in such a care over 24 months. (Section 471(a)(14)).

2. Increased Protections for Children in Foster Care The bill (in Section 471(a)(16)) would strengthen the requirements for case plans and case reviews for children in foster care. Present law requires only that there be a case plan and periodic review of the necessity for foster placement. Under title IV-E, the case plan (Sec. 475(1)) must include a description of the placement and its appropriateness, a plan to comply with judicial requirements, and a plan of services to meet the needs of the child while in foster placement and to facilitate return home or other permanent placement. An administrative or judicial case review would be required at least every six months. (Section 475(5)(B)).

Effective October 1, 1983, State plans would have to provide that reasonable efforts would be made prior to foster care placement to prevent removal of the child from his home, and that reasonable efforts would be made to enable the child to return home. (Section 471(a)(15)). Also effective October 1, 1983, in the case of children involuntarily removed from their homes by court order, the order would have to include a determination that reasonable efforts had been made to prevent removal, in order for the child to receive title IV-E assistance payments. (Section 472(a)(1)).

Foster Care Maintenance Payment Program

1. Eligibility for Children in Public Child Care Institutions; Medicaid Eligibility Title IV-E would authorize Federal assistance for all children currently eligible for AFDC-FC funds under title IV-A. Under present law, Federal AFDC-FC funds are available for maintenance payments for a child otherwise eligible for AFDC payments, who is placed in a foster home or nonprofit private child care institution. Eligibility for Federally matched funds under title IV-E would also be extended to children placed, on or after the date of enactment of this bill, in public child care institutions which accommodate no more than 25 children. (Section 472(c)(2)). Children receiving foster care maintenance payments under title IV-E would be deemed, for purposes of title XIX, to be dependent children as defined in title IV-A, and so would be categorically eligible for Medicaid (Section 472(d)).
2. Conditional Ceiling on Federal Matching for State Payments Under present law, Federal matching funds for AFDC-FC payments are available to States on an open-ended, entitlement basis. Under title IV-E, there would be a ceiling on Federal foster care matching funds for each of fiscal years 1981 to 1984, if appropriations for title IV-B child welfare services equaled or exceeded specified amounts: \$163.55 million for fiscal year 1981; \$220 million for fiscal year 1982, and \$266 million for each of fiscal years 1983 and 1984. (Section 474(b)(1) and (2)). Each State's ceiling would be one of the following, chosen at State's option.
 1. The State's Federal matching for AFDC-FC payments for fiscal year 1978, increased by one-third for fiscal year 1981, and further increased by ten percent per year thereafter (Section 474(b)(4)); or
 2. the State's share of \$100 million, based on the ratio of the population of the State under age eighteen to the total population under eighteen in the fifty States and the District of Columbia (Section 474(b)(3)(B)); or
 3. (if the State's AFDC-FC caseload in fiscal year 1978 and for each succeeding year was below the fiscal year 1978 national average) the State's Federal matching for AFDC-FC payments for fiscal year 1978, increased by the percentage by which its caseload had increased since 1978, not to exceed ten percent per year, and further increased by one-third for fiscal year 1981 and by 10 percent per year thereafter. (Section 474(b)(5)).
 4. Transfer of Unused Title IV-E Allotment to Title IV-B Federal funds made available to the State under the foster care matching ceiling which were not used for maintenance payments could be used for child welfare services under title IV-B (at 75 percent matching rate), under certain conditions. (Section 474(c)).

A State which elected to have its ceiling determined under option 3 above could not transfer title IV-E funds to its title IV-B program. (Section 474(c)(3)). No State could transfer funds until it had implemented certain protections required by section 103 (in Sections 427(a) and (b) of this bill as a condition of increased title IV-B funding. A State could not transfer more than an amount which, together with its title IV-B allotment, equaled its share of \$141 million under the title IV-B allocation formula, until it had implemented all required procedures and protections other than pre placement preventive services. (Section 474(c)(4)(A)) After Federal Title IV-B appropriations had equalled

\$266 million for two consecutive years, a State could not transfer any funds until it had implemented all required protections. (Section 474(c)(4)(B)). In any year in which there was not title IV-E ceiling because of insufficient title IV-B appropriations, a State could elect to be under a ceiling in order to transfer title IV-E funds to title IV-B. In that case, the State would have to meet similar conditions to be permitted to transfer funds. (Section 474(c)(2)).

5. Federal Matching Rate Under present law, States may receive Federal matching for AFDC payments (including (AFDC-FC payments) on the basis of either the AFDC formula (used by only four States) or the Medicaid formula. All Federal matching under the title IV-E program would be determined using the Medicaid formula. (Section 474(a)(1) and (2)).
6. Definition of Foster Care Maintenance Payments In present law, there is no general definition covering all foster care maintenance payments. However, payments on behalf of children in an institution are subject to limitations prescribed by the Secretary with a view to including only those items which are included in the case of foster care provided in a foster family home. The bill defines "foster care maintenance payments" as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance for the child, and reasonable to the child's for visits. In the case of institutional care, the term would include the reasonable costs of administration and operation of the institution. (Section 475(4)).
Temporary Provisions Concerning Certain Children Voluntarily placed in Foster Care Under present law, Federal AFDC matching funds are not available or children placed in foster care without a judicial determination. Section 102 of the bill would temporarily amend title IV-E to authorize Federal matching under title IV-E of expenditures made after September 30, 1980 and before October 1, 1983 (and under Title IV-A of expenditures made after September 30, 1979, and before October 1, 1983) for foster care maintenance payments with respect to a child removed from home pursuant to a voluntary placement agreement. Federal matching would be available only for expenditures made after the State had implemented the protections and procedures required by section 103 of the bill for receipt of additional title IV-B matching funds, including a program of pre placement preventive services. Section 102 would add to Section 472 a new paragraph (f), to define "voluntary placement" and "voluntary placement agreements" as follows:

"(1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement." The Secretary would be required to report to the Congress, within three months after the close of each fiscal year for which the amendments made by section 102 of the bill were in effect, the number of children placed in foster pursuant to voluntary placement agreements, the reasons for the placement, and

an evaluation and recommendations as to the appropriateness of continuation of the authority to make Federal payments for children voluntarily placed in foster care (Section 102(e)).

Section 102 of the bill would also amend section 472 of the Act to provide that, for purposes of Federal matching of foster care payments under title IV-E, a child who was voluntarily removed from the home of a relative prior to enactment of the bill and who had a judicial determination, on or before October 1, 1978, to the effect that continuation in the home would be contrary to his welfare, would be deemed to have been removed from the home as a result of that judicial determination. The bill would also authorized Federal matching of such payments under title IV-A until the State had an approved plan under title IV-E. Federal matching would only be available in such cases if the title IV-E requirements for case plan and case review were met with respect to that child. The date of the voluntary removal would be deemed to be the date on which the court proceedings were initiated. (Section 102(d)) Adoption Assistance Program Section 101 of the bill would provide, in the program under Title IV-E of the Act, for Federal matching of State adoption assistance payments. (There is no such authority in present law.) States participating in the title IV-E program would be required to establish, by October 1, 1982, a program of adoption assistance payments. (Section 471(a)(1))

1. Eligibility for Adoption assistance

Federal matching for adoption assistance would be available for a child with "special needs" who was eligible for SSI, AFDC, or foster care maintenance payments under title IV-E. To find that a child had "special needs", the State agency would have to determine that the child could not or should not be returned to his home; that there existed with respect to the child a special factor (such as ethnic background, age, membership in a minority or sibling group, or the presences of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it was reasonable to conclude that the child could not be place without providing adoption assistance; and that a reasonable but unsuccessful effort had been made to place the child without providing assistance (except where to do so would be against the best interests of the child, as where significant emotional ties had been formed with a foster family). (Section 473).

2. Adoption Assistance Agreement

An adoption assistance agreement would be required for each child, which would be a written statement, binding on all parties, between the State agency, other relevant agencies, and the prospective adopting parents, which specified, at a minimum, the amount of payments and any additional services and assistance to be provided. The bill defines "adoption assistance agreement" as: "a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given

time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective." (Section 475(3)). Effective October 1, 1983, States would be required to continue to comply with adoption assistance agreements regardless of whether the adoptive parents were or remained residents of the State. (Section 475(3)(B) Between enactment and October 1, 1983, Department of Health and Human Services would be directed to assist the States to enter into interstate compacts under which the interests of adopted children covered by adoption assistance agreements were adequately protected when the child and adoptive parents moved to another State. (Section 476(4)(B))

3. Amount and Duration of Adoption Assistance Payments

The amount of adoption assistance payment would be determined through agreement between the parents and the agency, taking into consideration the economic or other circumstances of the adopting parents and the needs of the child being adopted, and could be readjusted periodically depending on changes in circumstances. The adoption assistance payment under title IV-E could not exceed the foster care maintenance payment which would have been paid for the child in a foster home, and could not include the nonrecurring expenses associated with an adoption proceeding (although these could be paid with title IV-B funds). (Section 473(a)(2) and 425(a)(2)). Federally matched adoption assistance could continue until the child reached age 18, or until age 21 in the case of a child with a mental or physical handicap. The payments would stop if the State determined that the parents were no longer supporting the child or no longer legally responsible for supporting the child. (Section 473(a)(2) and (3)).

4. Medicaid Eligibility for Adopted Children

Children receiving adoption assistance payments under Title IV-E would be considered to be receiving AFDC and therefore would be categorically eligible for Medicaid. (Section 437(b)).

5. Federal Matching for Adoption Assistance Payments

Federal matching for adoption assistance payments would be permanent, on an open-ended entitlement basis, and would be determined based on the Medicaid matching formula. (Section 474(a)(2))

Administrative and Training Costs

Administrative and training costs would be reimbursed for adoption assistance and AFDC-FC at the same match rates as they are currently.

HHS responsibilities for Studies, Technical assistance, and Reports

The Secretary would be authorized to provide technical assistance to the States in implementing the new title IV-E. (Section 476(a))

The Secretary would be required to conduct a study of foster care and adoption assistance programs established under the new title IV-E, and to submit a report to the Congress by October 1, 1983, including an analysis and evaluation of the effectiveness of the new programs, and recommendations as to whether the programs should continue or any recommendations regarding changes needed in the programs. (Section 476(b))

TITLE IV-B -- CHILD WELFARE SERVICES

Overall

Section 103 of the bill would amend title IV-B of the Act to set new conditions and restrictions on the use of any increases in appropriations above the current appropriation level; to change the Federal matching rate; to require advance appropriation of Federal title IV-B funds; and to make other changes discussed below. In addition, section 103 of the bill would make technical revisions to improve the organization of the statute. Section 422 of the bill should be compared to current Section 422 to note these revisions.

1. Procedures and Safeguards Required as a Condition of Receiving Increased Federal Funding Present law authorized appropriations of \$266 million annually for Federal matching payments to States for child welfare services. Annual appropriations have never exceeded \$56.5 million.

Section 103 of the bill would amend title IV-B (in a new section 427) to provide that, in any year for which Federal appropriations for title IV-B exceeded \$141 million, a State could not receive any Federal IV-B funds in excess of its share of \$141 million unless it had implemented specified procedures and protections for children in foster care in the State. The State would have to conduct an inventory of children who had been in foster care under the responsibility of the State for a period of six months preceding the inventory, and determine the appropriateness of, and the necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or placement of the child for adoption or legal guardianship. (Section 427(a)(1))

Section 427(a)(2) would require the State also to have "implemented and be operating to the satisfactory of the Secretary:

- A. "a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding twelve months can readily be determined.

- B. a case review system for each child receiving foster care under the supervision of the State. The bill defines "case review system" (in section 427(5)) to mean a procedure for assuring that:
- A. each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child.
 - B. the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and
 - C. with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis); and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents."

In turn "case plan" is defined in section 475(1) as: "(1) The term "plan" means a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the judicial determination made with respect to the child in accordance with section 472(a)(1); and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitated return of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

- C. "a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship. When Federal appropriations for title IV-B had equaled the authorized maximum of 4266 million for two consecutive years,

State would have its title IV-B funds reduced, beginning with the succeeding fiscal year, to the share of \$56.5 million it received in fiscal year 1979, unless and until it had implemented the protections and procedures described above and, in addition, had implemented a service program of pre placement preventive services designed to prevent the need for removing a child from home.

(Section 427(b))

2. Limitations on use of Increased Title IV-B Funds

A State would be prohibited from using any funds it received in excess of its share of the \$56.5 million for foster care maintenance payments, adoption assistance payments, and for child care needed only for employment (Section 423(c)(1))

3. Maintenance of Effort Requirement

To be eligible to receive its share of increased appropriations under title IV-B, a State could not reduce its spending level for child welfare services, excluding expenditures for work related day care, foster care maintenance payments, and adoption assistance payments, below its fiscal year 1979 level. (Section 423(d))

4. Federal Matching Rate

The Federal matching rate for title IV-B funds would be changed to 75 percent. (Current Federal matching rates range from 33-1/3 percent to 66-2/3 percent, based upon State per capita income.) (section 423(a)) A State would be allowed to use State foster care expenditures to meet the 25 percent matching requirement. (Section 423(c)(2))

5. Advance Funding

The bill would convert the title IV-B child welfare services program to an "advance funding" basis. Beginning effective fiscal year 1981 for expenditures to be made in fiscal year 1982, Federal funds appropriated for any fiscal year would be required to be included in the appropriations Act for the preceding fiscal year. Making the transition to advance funding would require the enactment in fiscal year 1981 of separate appropriations to title IV-B for fiscal year 1981 and 1982. (Section 420(b))

6. Carryover of Unused title IV-B Funds for Fiscal Year 1980

Funds appropriated for fiscal year 1980 would remain available, to the extent provided in an appropriation act following enactment of the bill, through fiscal year 1981. (Section 428(f)(1))

7. Definition of Child Welfare Services

The bill would amend the definition of child welfare services (section 425(a) of the Act) to provide that it includes public social services which are directed toward the accomplishment of the following purposes: (a) preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children; (b) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (c) preventing the unnecessary separation of children from their families; (d) restoring to their families children who have been removed; (e) placing children in suitable adoptive homes, where restoration to the biological family is not possible or appropriate; and (f) assuring adequate care away from their homes of children who cannot be returned home or placed for adoption.

The amended definition of child welfare services would also explicitly include expenditures for nonrecurring costs of adoption of children receiving adoption assistance under title IV-E reporting requirements. (section 425(a)(2)). These amendments would state in greater detail and specify activities included within the definition of child welfare services under present law.

8. Direct payments to Indian Tribal Organizations

The bill would add to title IV-B a new section 428 which would authorize the Secretary to make payments from appropriations for title IV-B child welfare services directly to an Indian tribal organization in a State. The payments would come from the State's title IV-B allotment. (Section 428(a) and (b)).