

ACF

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INFORMATION MEMORANDUM

TO: State Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act

SUBJECT: New Legislation: Authorization of Demonstration Projects and Waivers for Programs under Title IV-B or IV-E of the Social Security Act (the Act)

LEGAL AND RELATED REFERENCES: Section 1129 of title XI of the Social Security Act (the Act); titles IV-E and IV-B of the Act; P. L. 103-432

PURPOSE: This memorandum is intended to inform the States of the passage of new legislation and to provide basic information about the new statute and requirements related to child welfare.

BACKGROUND: On October 31, 1994, the President signed the Social Security Amendments of 1994 (P. L. 103-432) which includes a number of child welfare provisions. Among other things, this legislation amends Part A of title XI of the Act by establishing a new section 1129 entitled Demonstration Projects.

Attached is a copy of section 1129 which authorizes not more than ten States to conduct demonstration projects related to title IV-B or IV-E and incorporates waiver authority.

INFORMATION: The major provisions of section 1129 are as follows:

- Not more than ten States will be selected to conduct demonstration projects to promote the objectives of title IV-B or IV-E.
- Waivers of requirements for title IV-B or IV-E will be granted if such requirements would prevent a State from carrying out or effectively achieving the purpose of the demonstration project.

Such waiver authority may not include:

(1) any provisions under sections 427 (effective before April 1, 1996), 422 (b)(9) (effective after April 1, 1996) or 479. In addition, waivers will not be granted if they would impact on the benefit entitlement of any qualified child or family under the title IV-E State plan.

- Expenditures to conduct demonstration projects under section 1129 will be considered as expenditures under title IV-E or title IV-B (subpart 1 or 2).
- The demonstration project will be conducted for not more than five years.
- States that wish to be considered for selection must submit an application that meets the requirements set forth in section 1129, including a description of the demonstration project, the benefits expected, the program requirements to be waived and the proposed evaluation design.
- States selected for demonstration projects under section 1129 must provide for evaluation of the demonstration project by a private contractor and must provide interim and final evaluation reports.

The cost of demonstration projects conducted under section 1129 may not exceed the amount of funds that would otherwise have been expended by the States under approved title IV-B or IV-E State plans if the demonstration projects were not approved.

To ensure full and effective implementation of this legislation, the Administration on Children, Youth and Families will issue guidance which will describe the child welfare demonstration projects and waiver authority, and the requirements necessary for approval of a State demonstration project. The guidance is expected to be issued by March 31, 1995.

INQUIRIES TO:

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Commissioner
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[Attachment:](#) Section 1129 of title XI of the Act

[HR5252, portion thereof...]

TITLE II--MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM

Subtitle A--Child Welfare, Foster Care, Adoption

SEC. 201. INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM.

Section 501(a) (42 U.S.C. 701(a)) is amended by striking "\$686,000,000 for fiscal year 1990" and inserting "\$705,000,000 for fiscal year 1994".

SEC. 202 REQUIRED PROTECTIONS FOR FOSTER CHILDREN.

(a) In General.--Section 422(b) (42 U.S.C. 622(b)) is amended--

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

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) provide assurances that the State--

"(A) since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined--

"(i) the appropriateness of, and necessity for, the foster care placement;

"(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

"(B) is operating, to the satisfaction of the Secretary--

"(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

"(ii) a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State;

"(iii) a service program designed to help children--

"(I) where appropriate, return to families from which they have been removed; or

"(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement; and

"(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain with their families; and

"(C)(i) has reviewed (or within 12 months after the date of the enactment of this paragraph will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

"(ii) is implementing (or within 24 months after the date of the enactment of this paragraph will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children."

(b) Restriction on Reallotment.--Section 424 (42 U.S.C. 624) is amended--

(1) in the first sentence, by striking "The amount" and inserting the following:

"(a) In General.--Subject to subsection (b), the amount"; and

(2) by adding at the end the following:

"(b) Exception Relating to Foster Child Protections.--The Secretary shall not reallot under subsection (a) of this section any amount that is withheld or recovered from a State due to the failure of the State to meet the requirements of section 422(b)(9)."

(c) Repeal.--Section 427 (42 U.S.C. 627) is hereby repealed.

(d) Conforming Amendments.--

(1) Section 423(a) (42 U.S.C. 623(a)) is amended by striking "and in section 427".

(2) Section 425(a)(2) (42 U.S.C. 625(a)(2)) is amended by striking "the statistical report required by section" and inserting "section 422(b)(9) or".

(3) Section 472(d) (42 U.S.C. 672(d)) is amended by striking "427(b)" and inserting "422(b)(9)".

(e) Effective Date.--The amendments and repeal made by this section shall be effective with respect to fiscal years beginning on or after April 1, 1995.

SEC. 203. CONFORMITY REVIEWS.

(a) In General.--Part A of title XI (42 U.S.C. 1301-1320b-13) is amended by inserting after section 1122 the following: "reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with state plan requirements "Sec. 1123. (a) In General.--The Secretary, in consultation with the State agencies administering the State programs under parts B and E of title IV, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with--

"(1) State plan requirements under such parts B and E, "(2) implementing regulations promulgated by the Secretary, and "(3) the relevant approved State plans.

"(b) Elements of Review System.--The regulations referred to in subsection (a) shall--

"(1) specify the timetable for conformity reviews of State programs, including--

"(A) an initial review of each State program;

"(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

"(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

"(2) specify the requirements subject to review, and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

"(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that--

"(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

"(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and "(C) the amount of such funds withheld is related to the extent of the failure to so conform; and "(4) require the Secretary, with respect to any State program found to have failed substantially to so conform--

"(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

"(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

"(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

"(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

"(c) Provisions for Administrative and Judicial Review.--The regulations referred to in subsection (a) shall--

"(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of--

"(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

"(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

"(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located."

(b) Conforming Amendment.--Section 471(b) (42 U.S.C. 671(b)) is amended by striking all that follows the first sentence.

(c) Effective Dates.--

(1) In general.--The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Conforming amendment.--The amendment made by subsection (b) shall take effect on October 1, 1995.

(3) Regulations.--The Secretary shall promulgate the regulations referred to in section 1123(a) of the Social Security Act (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.

SEC. 204. STATES REQUIRED TO REPORT ON MEASURES TAKEN TO COMPLY WITH THE INDIAN CHILD WELFARE ACT.

(a) State Plan Requirement.--Section 422(b) (42 U.S.C. 622(b)), as amended by section 301(a), is amended--

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by adding at the end the following:

"(10) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act."

(b) Effective Date.--The amendments made by subsection (a) shall be effective with respect to fiscal years beginning on or after October 1, 1995.

SEC. 205. CHILD WELFARE TRAINEESHIPS.

(a) In General.--Subpart 1 of part B of title IV (42 U.S.C. 620- 628) is amended by inserting after section 428 the following:

"child welfare traineeships

"Sec. 429. The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 426(a)(1)(C) only if the application--

(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a "recipient") will enter into an agreement with the institution under which the recipient agrees--

"(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

"(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the postsecondary education for which the traineeship was awarded;

"(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

"(2) provides assurances that the institution will--

"(A) enter into agreements with child welfare agencies for onsite training of recipients;

"(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field."

(b) Conforming Amendment.--Section 426(a)(1)(C) (42 U.S.C. 626(a)(1)(C)) is amended by inserting "described in section 429" after "including traineeships".

(c) Applicability.--The amendments made by this section shall apply to grants awarded on or after October 1, 1995

SEC. 206. DISPOSITIONAL HEARING.

(a) Most Appropriate Setting.--Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by inserting "and most appropriate" after "(most family like)".

(b) Timing of Subsequent Review.--Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by striking "periodically" and inserting "not less frequently than every 12 months".

(c) Effective Date.--The amendments made by this section shall take effect on October 1, 1995.

SEC. 207. ELIMINATION OF FOSTER CARE CEILINGS AND OF AUTHORITY TO TRANSFER UNUSED FOSTER CARE FUNDS TO CHILD WELFARE SERVICES PROGRAMS.

(a) Repeal.--Subsections (b) and (c) of section 474 (42 U.S.C. 674(b) and (c)) are hereby repealed.

(b) Conforming Amendments.--Section 474 (42 U.S.C. 674) is amended--

(1) in subsection (d)(1)--

(A) by striking "subsections (a), (b), and (c)" and inserting "subsection (a)"; and

(B) by striking "the provisions of such subsections" and inserting "subsection (a)"; and

(2) by redesignating subsection (d) as subsection (b).

(c) Effective Date.--The amendments and repeals made by this section shall apply to payments for calendar quarters beginning on or after October 1, 1993.

SEC. 208. DEMONSTRATION PROJECTS.

Part A of title XI (42 U.S.C. 1301-1320b-13) is amended by inserting after section 1128B the following:

"demonstration projects

"Sec. 1129. (a) In General.--The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.

"(b) Waiver Authority.--The Secretary may waive compliance with any requirement of part B or E of title IV which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive--

"(1) any provision of section 427 (as in effect before April 1, 1996), section 422(b)(9) (as in effect after such date), or section 479; or

"(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

"(c) Treatment as Program Expenditures.--For purposes of parts B and E of title IV, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

"(d) Duration of Demonstration.--A demonstration project under this section may be conducted for not more than 5 years.

"(e) Application.--Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes--

"(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

(2) a statement of the period during which the proposed project would be conducted;

(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

"(4) an estimate of the costs or savings of the proposed project;

(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

(6) a description of the proposed evaluation design; and

(7) such additional information as the Secretary may require.

"(f) Evaluations; Report.--Each State authorized to conduct a demonstration project under this section shall--

"(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for--

"(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

"(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

"(C) any other information that the Secretary may require; and

"(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

"(g) Cost Neutrality.--The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of title IV if the project were not conducted."

SEC. 209. PLACEMENT ACCOUNTABILITY.

(a) Case Plan Requirements.--Section 475(5)(A) (42 U.S.C. 675(5)(A)), as amended by section 305(a), is amended by adding at the end the following: "(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and "(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,".

(b) Dispositional Hearing.--Section 475(5)(C) (42 U.S.C. 675(5)(C)), as amended by section 305(b), is amended by inserting "and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child," after "long-term basis)".

(c) Data Collection.--Section 479(c)(3)(C) (42 U.S.C. 679(c)(3)(C)) is amended--

(1) by striking "and" at the end of clause (i); and

(2) by adding at the end the following:

"(iii) children placed in foster care outside the State which has placement and careresponsibility, and".

(d) Effective Dates.--The amendments made by this section shall be effective with respect to fiscal years beginning on or after October 1, 1995.

SEC. 210. PAYMENTS OF STATE CLAIMS FOR FOSTER CARE AND ADOPTION ASSISTANCE.

(a) In General.--Section 474(b) (42 U.S.C. 674(b)), as redesignated by section 306(b)(2), is amended by adding at the end the following:

"(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a), the Secretary shall allow, disallow, or defer such claim.

"(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

"(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall--

"(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

"(ii) in any other case, allow the claim, subject to disallowance (as necessary)--

"(I) upon completion of the review, if it is determined that the claim is not allowable; or

"(II) on the basis of findings of an audit or financial management review."

(b) Effective Date.--The amendment made by subsection (a) shall be effective with respect to claims made on or after the date of the enactment of this Act.

SEC. 211. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

(a) In General.--Part A of title XI (42 U.S.C. 1301-1320b-13), as amended by section 307, is amended by inserting after section 1129 the following:

"effect of failure to carry out state plan

"Sec. 1130. In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: Provided, however, That this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action."

(b) Applicability.--The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.