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1st Session
HOUSE OF REPRESENTATIVES
REPORT
105–77

ADOPTION PROMOTION ACT OF 1997

APRIL 28, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 867]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 867) to promote the adoption of children in foster care, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Adoption Promotion Act of 1997".

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

SEC. 2. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

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

"(15)(A) provides that—

"(i) except as provided in clauses (ii) and (iii), reasonable efforts shall be made—

"(I) before a child is placed in foster care, to prevent or eliminate the need to remove the child from the child's home; and

"(II) to make it possible for the child to return home;

"(ii) if continuation of reasonable efforts of the type described in clause (i) is determined to be inconsistent with the permanency plan for the child, reasonable efforts of the type required by clause (iii)(II) shall be made;

"(iii) if a court of competent jurisdiction has determined that the child has been subjected to aggravated circumstances (as defined by State law, which definition may include abandonment, torture, chronic abuse, and sexual abuse) or parental conduct described in section 106(b)(2)(A)(xii) of the Child Abuse Prevention and Treatment Act, or that the parental rights of a parent with respect to a sibling of the child have been terminated involuntarily—

"(I) reasonable efforts of the type described in clause (i) shall not be required to be made with respect to any parent of the child who has been involved in subjecting the child to such circumstances or such conduct, or whose parental rights with respect to a sibling of the child have been terminated involuntarily; and

"(II) if reasonable efforts of the type described in clause (i) are not made or are discontinued, reasonable efforts shall be made to place the child for adoption, with a legal guardian, or (if adoption or legal guardianship is determined not to be appropriate for the child) in some other planned, permanent living arrangement; and

"(iv) reasonable efforts of the type described in clause (iii)(II) may be made concurrently with reasonable efforts of the type described in clause (i); and

"(B) in determining the reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety shall be of paramount concern;".

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

SEC. 3. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.

(a) IN GENERAL.—Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended—

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

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

(3) by adding at the end the following:

"(E) in the case of a child who has not attained 10 years of age and has been in foster care under the responsibility of the State for 18 months of the most recent 24 months, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), unless—

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

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

"(iii) the State has not provided to the family of the child such services as the State deems appropriate, if reasonable efforts of the type described in section 471(a)(15)(A)(i) are required to be made with respect to the child.".

(b) LIMITATION ON APPLICABILITY.—The amendments made by subsection (a) shall apply only to children entering foster care on or after October 1, 1997.

SEC. 4. ADOPTION INCENTIVE PAYMENTS.

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

"SEC. 473A. ADOPTION INCENTIVE PAYMENTS.

"(a) GRANT AUTHORITY.—Each State that is an incentive-eligible State for a fiscal year shall be entitled to receive from the Secretary in the immediately succeeding fiscal year a grant in an amount equal to the adoption incentive payment.

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

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

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

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

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

"(c) DATA REQUIREMENTS.—

"(1) IN GENERAL.—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2) for fiscal year 1997 (or, if later, the fiscal year that precedes the 1st fiscal year for which the State seeks a grant under this section) and for each succeeding fiscal year.

"(2) DETERMINATION OF NUMBERS OF ADOPTIONS.—

"(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1997 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 479, as reported by the State in May of the fiscal year and in November of the succeeding fiscal year, and approved by the Secretary by April 1 of the succeeding fiscal year.

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

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

"(d) ADOPTION INCENTIVE PAYMENT.—

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

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

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

"(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.—If the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount then available for grants under this section, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

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

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

"(e) 2-YEAR AVAILABILITY OF INCENTIVE PAYMENTS.—Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

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

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

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

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

"(3) BASE NUMBER OF FOSTER CHILD ADOPTIONS.—The term 'base number of foster child adoptions for a State' means, with respect to a fiscal year, the largest number of foster child adoptions in the State in fiscal year 1997 (or, if later, the 1st fiscal year for which the State has furnished to the Secretary the data described in subsection (c)(2)) or in any succeeding fiscal year preceding the fiscal year.

"(4) BASE NUMBER OF SPECIAL NEEDS ADOPTIONS.—The term 'base number of special needs adoptions for a State' means, with respect to a fiscal year, the largest number of special needs adoptions in the State in fiscal year 1997 (or, if later, the 1st fiscal year for which the State has furnished to the Secretary the data described in subsection (c)(2)) or in any succeeding fiscal year preceding the fiscal year.

"(h) APPROPRIATION.—

"(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 such sums as are necessary for grants under this section, in a total amount not to exceed $108,000,000.

"(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available until expended, but not after fiscal year 2003.".

SEC. 5. EARLIER STATUS REVIEWS AND PERMANENCY HEARINGS.

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

(1) by striking "eighteen months after" and inserting "12 months after";

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

(3) by striking "future status of" and all that follows through "long-term basis)" and inserting "permanency plan for the child (including whether (and, if applicable, when) the child will be returned to the parent, the child will be placed for adoption and the State will file a petition to terminate the parental rights of the parent, a legal guardian will be appointed for the child, or the child will be placed in some other planned, permanent living arrangement, including in the custody of another fit and willing relative)".

SEC. 6. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 3 of this Act, is amended—

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

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

(3) by adding at the end the following:

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

SEC. 7. DOCUMENTATION OF REASONABLE EFFORTS TO ADOPT.

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by sections 3 and 6 of this Act, is amended—

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

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

(3) by adding at the end the following:

"(G) in the case of a child with respect to whom the State's goal is adoption or placement in another permanent home, the steps taken by the State agency to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a legal guardian, or in another planned permanent living arrangement (including in the custody of another fit and willing relative), and to finalize the adoption or legal guardianship are documented, and such documentation shall include documentation of child specific recruitment efforts such as the use of State, regional, and national adoption information exchanges, including electronic information exchange systems.".

SEC. 8. KINSHIP CARE.

(a) REPORT.—

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

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

(B) not later than November 1, 1998, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a final report on the matter described in subparagraph (A), which shall—

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

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

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

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

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

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

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

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

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

(vi) the goal for a permanent living arrangement for the child and the actions being taken by the State to achieve the goal;

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

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

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

(b) ADVISORY PANEL.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate, shall convene an advisory panel which shall include parents, foster parents, former foster children, State and local public officials responsible for administering child welfare programs, private persons involved in the delivery of child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts.

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

SEC. 9. USE OF THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE SERVICES.

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

(1) in subsection (a)—

(A) by striking "or enforcing child custody or visitation orders" and inserting "or making or enforcing child custody or visitation orders"; and

(B) in paragraph (1)—

(i) by striking the comma at the end of subparagraph (C) and inserting "; or"; and

(ii) by inserting after subparagraph (C) the following:

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

(2) in subsection (c)—

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

(B) by adding at the end the following:

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

SEC. 10. PERFORMANCE OF STATES IN PROTECTING CHILDREN.

The Secretary of Health and Human Services, in consultation with the American Public Welfare Association, the National Governors' Association, and persons or organizations devoted to child advocacy, shall—

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

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

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

(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under part E of title IV of the Social Security Act;

(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved.

SEC. 11. AUTHORITY TO APPROVE MORE CHILD PROTECTION DEMONSTRATION PROJECTS.

Section 1130(a) of the Social Security Act (42 U.S.C. 1320a–9(a)) is amended by striking "10" and inserting "15".

SEC. 12. TECHNICAL ASSISTANCE.

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

(b) LIMITATIONS.—The technical assistance provided under subsection (a) shall support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and shall include the following:

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

(2) Models to encourage the use of concurrent planning.

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

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

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

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

(c) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 1998 through 2000.

SEC. 13. COORDINATION OF SUBSTANCE ABUSE AND CHILD PROTECTION SERVICES.

Within 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health and Human Services, shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee

on Finance of the Senate a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population. The report shall include recommendations for any legislation that may be needed to improve coordination in providing such services to such population.

SEC. 14. CLARIFICATION OF ELIGIBLE POPULATION FOR INDEPENDENT LIVING SERVICES.

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

SEC. 15. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on October 1, 1997.

(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

I. INTRODUCTION

A. PURPOSE AND SCOPE

The Committee bill is expected to increase the number of adoptions in the United States. Three major provisions of the bill were designed to produce this increase in adoptions. First, under current law, States must engage in "reasonable efforts" to help families that have abused or neglected their children. Some observers have argued that uncertainty about the reasonable efforts standard sometimes delays State action in making children available for adoption. In response to this problem, the bill requires States to define "aggravated circumstances" in State law, such as child torture or sexual abuse, that would permit the State to bypass the Federal reasonable efforts criterion and move expeditiously to terminate parental rights and make a child available for adoption. In addition, States would not be required to reunite families in cases where a parent has murdered another child or lost their parental rights to a sibling. Second, the bill provides States with a $4,000 ($6,000 for special needs children) incentive payment for each adoption above the number of adoptions during the previous year. Third, in the case of children under age 10 who have been in foster care for at least 18 of the past 24 months, the bill requires States to move toward terminating parental rights under most circumstances. Taken together, these provisions and associated provisions of the Committee bill can be expected to produce a substantial increase in adoptions in the years ahead.

B. BACKGROUND AND NEED FOR LEGISLATION

After many years of growth, especially in the late 1980s and early 1990s, the nation's foster care caseload is now almost

500,000. Recent studies have shown that in some States, the average child removed from the home because of family problems spends almost three years in foster care. Many of these children will never return home; many more will return home one or more times before it becomes evident that their families will not be able to take care of them permanently. And yet, testimony before the Committee, as well as scientific studies, have shown that adoption is an effective way to assure that children grow up in loving families and that they become happy and productive citizens as adults.

There seems to be almost universal agreement that adoption is preferable to foster care and that the nation's children would be well served by a policy that increases adoption rates. Over the past several years, however, witnesses before the Committee have testified that there are a variety of barriers to adoption, some of them Federal. One barrier is the "reasonable efforts" criterion in the Federal statute. This criterion requires States to make reasonable efforts to prevent removing a child from its home and to facilitate returning children to their homes if removal has been necessary. The intent of this policy is to provide services to families so that they can continue to fulfill their child rearing function.

However, there seems to be a growing belief that Federal statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents. As a result, too many children are subjected to long spells of foster care or are returned to families that reabuse them.

The bipartisan group that wrote this legislation recognized the importance and essential fairness of the reasonable efforts criterion. What is needed is not a wholesale reversal of reasonable efforts or of the view that government has a responsibility to help troubled families solve the problems that lead to child abuse or neglect. The Federal government now spends well over $4.5 billion dollars helping these families and their children and the money is well spent. Rather than abandoning the Federal policy of helping troubled families, what is needed is a measured response to allow States to adjust their statutes and practices so that in some circumstances States will be able to move more efficiently toward terminating parental rights and placing children for adoption.

Thus, the Committee bill would require States to define "aggravated circumstances," such as child torture, chronic abuse, or sexual abuse, in which States are allowed to bypass the Federal reasonable efforts criteria and instead would be required to make efforts to place the child for adoption. In addition, States would be required to bypass reasonable efforts to provide services to families if the parent has murdered a child, committed manslaughter in the death of a child, or has another child for whom parental rights were involuntarily terminated.

In addition to the reasonable effort criterion, another barrier to adoption has been that States often move slowly in moving children toward permanent settings. Child protective case workers are often consumed by providing immediate protection to endangered children. Especially in States that require their caseworkers to handle large caseloads, workers are forced to attend to cases with immediate, often life-threatening, difficulties. As a result, children already in a foster care placement and assumed to be safe from im-

mediate harm sometimes get less attention than they deserve. Thus, a second provision of the Committee bill would promote adoption by requiring States to initiate action to terminate parental rights in the case of children under age 10 who have been in foster care for 18 of the past 24 months. This provision would move States toward establishing timeframes and deadlines in their attempts to provide reasonable help to families.

A third major provision of the Committee bill, would reward States with a $4,000 ($6,000 in the case of special needs adoptions) incentive payment for every adoption out of foster care above the number achieved over the previous year. If States and localities can develop their own solutions tailored to their own traditions and practices and thereby increase adoption rates, they will receive financial rewards.

The bill continues the Committee's strong commitment to helping some of the nation's most unfortunate children by facilitating their placement in loving families through adoption. Previously, the Committee approved legislation that is just now beginning to exert an influence on adoption rates. Specifically, in the 104th Congress, the Committee approved legislation that provided adopting families with a tax credit of $5,000 and outlawed delays in the placement of children for the purpose of promoting same-race or same-ethnic group placement (Public Law 104–188).

C. Legislative History

COMMITTEE BILL

On April 16, 1997 the Subcommittee on Human Resources ordered favorably reported to the full Committee, as amended, H.R. 867, the "Adoption Promotion Act of 1997," by a voice vote, with a quorum present. On April 23, 1997, the full Committee ordered favorably reported, as amended, H.R. 867 by a voice vote, with a quorum present.

LEGISLATIVE HEARINGS

The Subcommittee on Human Resources held a hearing on encouraging adoption on February 27, 1997, that included testimony from the U.S. General Accounting Office, State child welfare administrators, foundation officials, legal scholars, and child advocates. The Subcommittee also held a hearing on April 8, 1997 on H.R. 867, the "Adoption Promotion Act of 1997," that included testimony from Rep. Dave Camp (R–MI) and Rep. Barbara Kennelly (D–CT), co-sponsors of the legislation, as well as from Senator Mike DeWine (R–OH), the Department of Health and Human Services, and other interested outside organizations.

II. EXPLANATION OF PROVISIONS

1. Short title; table of contents

Present law

No provision.

Explanation of provision

The Act is named the "Adoption Promotion Act of 1997."

Reason for change

Not applicable.

Effective date

Upon introduction.

2. Clarification of the reasonable efforts requirement

Present law

"Reasonable efforts" must be made:

prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home; and

to make it possible for the child to return to his home. (Sec. 471(a)(15))

Explanation of provision

Provides that States are not required to make reasonable efforts in cases in which a court of competent jurisdiction has found that a child has been subjected to aggravated circumstances, as defined in State law. These circumstances could include cases of abandonment, torture, chronic abuse, and sexual abuse. However, this list of circumstances is illustrative. The bill allows States to define aggravated circumstances tailored to their own community standards.

Mandatory circumstances in which reasonable efforts would not be required of the State include involuntary termination of parental rights with siblings or when a parent has been found by a court of competent jurisdiction:

to have committed murder of another child of such parent;

to have committed voluntary manslaughter of another child of such parent;

to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter or to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent. State laws must include these four circumstances.

The provision continues to require States to make reasonable efforts on behalf of non-offending parents. In specific cases in which a parent exists who has not been involved in the abuse of the child, then reasonable efforts must be made to reunify the child with that parent.

In cases in which States choose to bypass or discontinue reasonable efforts, as allowed above, then States are required to make reasonable efforts to place children for adoption, with a legal guardian, or in another planned permanent living arrangement. In addition, in cases in which reasonable efforts have been required, but continuation of such efforts is no longer consistent with the child's permanency goal, States are required to make reasonable efforts to place children for adoption, with a legal guardian, or in another planned permanent living arrangement. The provision allows for concurrent planning in which both family reunification and adoption planning are simultaneously pursued.

In determining the reasonable efforts to be made, the child's health and safety must be the paramount concern.

Reason for change

Under current law, states are required to make "reasonable efforts" prior to the placement of a child in foster care, to prevent or eliminate the need for removal, or to make it possible to reunify the child with the family. States can lose Federal foster care and adoption funds if they fail to provide such efforts. In fact, for a state to claim Federal subsidies, the court must make a judicial determination that reasonable efforts have been made. However, "reasonable efforts" are not defined in statute nor have final regulations been issued to clarify what steps a state or a court has to take to satisfy the requirement that "reasonable efforts" to reunify families are made. The result has been considerable confusion among the states about what constitutes reasonable efforts. Committee Members recognize that in certain extreme cases, no efforts to reunite the family are reasonable. In addition, in cases in which reasonable efforts are required, the Committee understands that such efforts should reflect the child's needs for a permanent family as timely as possible. Further, the provision allows for concurrent planning, in which both family reunification and adoption planning are simultaneously pursued. For example, while family reunification might be the preferred goal for a particular child, caseworkers could also begin adoption planning, so that if family reunification is unsuccessful then termination of parental rights can be started immediately. The Committee believes that concurrent planning will promote efficiency and timely planning to move more children toward permanency. Committee Members recognize that in all decisions regarding a child's future placement, the child's health and safety are of primary concern.

Effective date

October 1, 1997.

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

Present law

No provision.

Explanation of provision

States are required to file a termination of parental rights petition with the court (or join any existing petition) in the case of a child under age 10 who has spent 18 out of the past 24 months in State foster care, with the following three exceptions: (1) the child is being cared for by a relative; (2) a State court or agency documents a compelling reason why doing so would not be in the best interests of the child; or (3) in cases in which reasonable efforts are required, services the State deems appropriate for the family have not been provided. This provision will only apply to children who enter foster care on or after Oct. 1, 1997.

Reason for change

Children are experiencing increasingly longer stays in foster care. The median length of stay for children is now more than 2 years. Moreover, the percentage of children who exit foster care through adoption has decreased. While adoption was the permanency goal for 15% of foster children in 1990, only 8% of the children who left care in that year were adopted. In addition, the median age of children in foster care has dropped to 8.6 years in 1990 from 12.6 years at the end of 1982. The emerging statistical picture shows that young children are spending substantial portions of their childhood in a system that is designed to be temporary. This provision addresses these long stays in foster care by requiring that a State file a termination of parental rights petition when a child under 10 has spent 18 of the past 24 months in State foster care. The three exceptions to this requirement are included because the Committee recognizes that there are circumstances in which foster care stays of longer than 18 months are necessary. For example, termination of parental rights may not be in the best interests of a child who is being safely cared for by a relative under State supervision. In such a case the child may be better served by protecting the familial bonds that exist between the child and their relatives. In addition, there may be cases in which the State court or agency finds compelling reasons not to pursue termination of parental rights at 18 months, such as when a family is successfully completing treatment. Finally, the Committee believes that the termination of parental rights is such a serious intervention that it should not be undertaken without some effort to offer services to the family. However, the State retains the discretion to determine what services, if any, are appropriate, and of sufficient quality, intensity and duration in individual cases. None of these exceptions should be interpreted to preclude States from pursuing termination of parental rights within the 18 month time frame or earlier.

Effective date

October 1, 1997.

4. Adoption incentive payments

Present law

No provision.

Explanation of provision

A per child incentive payment will be awarded to each State that increases its annual number of finalized adoptions from the foster care system above the base year. Qualifying States are eligible to receive $4,000 for each foster child with a finalized adoption, and an additional $2,000 for each special needs adoption. At the beginning of the program, the base year would be Fiscal Year 1997, and after that, the base year would rise as the State's adoptions rise. The incentive payments would be paid beginning in 1999. Incentive payments are available for use by States for any activity or service allowable under title IV–B or IV–E of the Social Security Act. The funding for incentive payments will be provided through a manda-

tory capped entitlement equal to a total of $108 million, payable over 5 years.

Reason for change

Under current law, there are no financial incentives to move children from foster care to adoption. States continue to receive Federal subsidies on an open-ended basis as long as children remain in care. This provision would provide a per-child incentive payment to each State that increases its annual number of adoptions from the foster care system, thereby offsetting the incentives of the current system by giving States additional money for each child adopted. The extra cash provided for adoption of special needs children provides extra incentive for States to find adoptive homes for these children.

Effective date

October 1, 1997.

5. Earlier status reviews and permanency hearings

Present law

Children in foster care are entitled to a dispositional hearing at 18 months to determine the child's future status, including whether the child should be returned to the parent, continued in foster care for a specified period, placed for adoption, or continued in permanent or long-term foster care. (Sec. 475(5))

Explanation of provision

The timetable for the initial hearing is shortened to 12 months. In addition, the name of the hearing is changed from "dispositional" to "permanency" to emphasize the goal of early permanent placements. Further, the listing of possible permanency outcomes is revised to include: whether, and if applicable when, the child will be returned to the parent, placed for adoption and referred for termination of parental rights, referred for legal guardianship, or referred for other permanent living arrangements, including the transfer of custody to another fit and willing relative.

Reason for change

This provision recognizes that 18 months is a very long time in the life of a young child and that no child should experience unnecessarily prolonged stays in foster care. A shortened timetable for the permanency hearing responds to the young child's need for a stable, permanent home. The General Accounting Office has found that almost half of the States have already moved to a 12 month hearing. The Committee fully expects that final permanency decisions, including adoption and transfer of custody to a fit and willing relative, will be made at the 12 month hearing. The amendment also requires States to make specific choices about the appropriate permanent placement by specifying the desired permanent outcomes. The Committee intentionally deleted non-relative long term foster care from this list to emphasize that such an arrangement should be rarely used and should not be considered a permanent placement.

Effective date

October 1, 1997.

6. Notice of reviews and hearings; opportunity to be heard

Present law

The administrative review is open to the participation of the parents of the child. (Sec. 475(6))

Explanation of provision

Foster parents and relatives providing foster care must be notified of reviews and permanency hearings regarding child placement and be given the opportunity to be heard at these proceedings. However, foster parents are not granted a Federal private right of action.

Reason for change

Testimony before the Committee indicated that as the child's primary caregivers, foster parents and relatives caring for the child often have information about the child that is relevant to placement proceedings. According to those witnesses, foster parents and relative caregivers are frequently denied access to both case reviews and hearings. The amendment solves this problem by requiring States to notify foster parents and relatives of the hearing and allow them to be heard. The Committee has also heard testimony that biological relatives, including fathers, have not been given notice of reviews and hearings. The Committee notes that under current law, the administrative review is open to the participation of parents of the child.

Effective date

October 1, 1997.

Sec. 7. Documentation of reasonable efforts to adopt

Present law

No provision.

Explanation of provision

In the case of children with a permanency goal of adoption or other permanent placement, States must document steps taken both to find an adoptive or other permanent home for the child including placement in the custody of another fit and willing relative and to finalize the adoption or placement. At a minimum, such documentation must include child-specific recruitment efforts such as use of State, regional, and national adoption exchanges, including electronic exchange systems.

Reason for change

This provision emphasizes the State's responsibility for taking specific actions to find and finalize adoptive families. The Committee provision also encourages the use of state-of-the-art technology to recruit families for specific children through the use of State, regional, and national adoption exchanges. The Committee encour-

ages States to utilize the expertise and resources of private agencies to recruit potential adoptive families for children in foster care and to finalize adoptive placements. The Committee recognizes that some States are already utilizing private agencies through contracting out and managed care arrangements.

Effective date

October 1, 1997.

Sec. 8. Kinship care

Present law

No provision.

Explanation of provision

An Advisory Panel on Kinship Care, composed of parents, foster parents, former foster children, State and local public officials involved in child welfare, private citizens involved in child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts, must be appointed by the Secretary in consultation with the Chairmen of the Committees on Ways and Means and Finance not later than March 1, 1998. The Secretary must also prepare a report on kinship care, based on available information from States, that addresses several issues:

the policy of States regarding kinship care,

the characteristics of kinship care providers,

the frequency of access between children in kinship care and their biological parents,

the cost of kinship care and the source of funds to pay these costs,

the services provided to biological parents and kinship care providers while children are in kinship care, and

the circumstances or conditions under which children enter kinship care.

The Secretary's report must be submitted to the Panel by March 1, 1998.

The duties of the Advisory Panel on Kinship Care are to:

review the Secretary's report, and

submit recommendations to the Secretary for needed changes in public policy on kinship care.

The Panel's report must be submitted to the Secretary by July 1, 1998.

Based on her initial report, the Panel's review of the report, the Panel's recommendations, and other information and considerations, the Secretary of HHS must submit a final report, that includes policy recommendations, to the Committees on Ways and Means and Finance by November 1, 1998.

Reason for change

Many children entering foster care in recent years have been placed with their own relatives, in a form of substitute care known as "kinship" care. Between 1986 and 1990, half the states reported an increase in use of relatives as foster care providers. In the average State, kinship care rose from 18% of the foster care caseload

to 31% of the caseload, with New York, Illinois, and California accounting for much of this increase. By 1993, relatives cared for a third of the foster children in New York, about 40% in California, and half in Illinois. Despite the explosion of kinship care placements, very little is known about the nature of these placements. The Committee wants to know more about these placements before deciding whether Federal action is required to improve the well-being and long-term prospects of these children. The Committee anticipates that the Advisory Panel will include such representatives as volunteer guardians ad litem, members of both foster care review panels and citizen review panels, and academic experts representing such fields as mental health, child development and family dynamics.

Effective date

October 1, 1997.

9. Use of the Federal Parent Locator Service for Child Welfare Services

Present law

The Child Support Enforcement Program requires the establishment of a Federal Parent Locator Service to be used to find absent parents in order to secure and enforce child support and custody and visitation obligations (P.L. 93–647).

Explanation of provision

The Federal Parent Locator Service (FPLS) is authorized to be used to locate parents for the purpose of making or enforcing child custody or visitation orders. State child welfare agencies are authorized to have access to information in the FPLS.

Reason for change

This provision assists States in making timely and informed decisions about permanency by allowing State child welfare agencies to access the Federal Parent Locator Service to identify and locate parents or other relatives who may be interested in providing a permanent home for a child in foster care. Even if a parent or other relative is unable to provide a home for the child, ruling out this alternative early in a child's placement will allow the agency and court to move expeditiously towards adoption or another permanent alternative. The Committee understands that under current law, the FPLS can also be used specifically to provide notice of termination of parental rights proceedings.

Effective date

October 1, 1997.

10. Performance of States in protecting children

Present law

No provision.

Explanation of provision

The Secretary of Health and Human Services, after consultation with the National Governors' Association, the American Public Welfare Association, and persons or organizations devoted to child welfare, must develop a set of outcome measures that can be used to assess the performance of States in operating child protection and child welfare programs.

The outcome measures should be based on data currently collected by the States under the Adoption and Foster Care Analysis and Reporting System (AFCARS). Based on these outcome measures, the Secretary must develop a rating system and provide States with an explanation of the rating system.

By May 1, 1999 and annually thereafter, the Secretary must prepare and submit to Congress a State report card which will include a rating for every state, an analysis of the reasons for high and low performance by States, and recommendations for how State performance could be improved.

Reason for change

This provision is an attempt to develop meaningful child-based outcome measures and to recognize successful State performance in achieving these outcomes. The provision would emphasize the importance of achieving positive outcomes for children without increasing mandated procedures. Both positive publicity about good programs and negative publicity about inferior programs will serve as an incentive for States to maintain or improve their programs. The Committee expects that the consultation process will include such individuals as child development experts, foster care and citizen review board members, juvenile justice experts, and representatives of county governments.

Effective date

October 1, 1997.

11. Authority to approve more child protection demonstration projects

Present law

The Secretary may authorize not more than 10 States to conduct demonstration projects to waive compliance with requirements of part IV–B or IV–E (Sec. 1130).

Explanation of provision

Secretary's authority to grant waiver projects is expanded from 10 States to 15 States.

Reason for change

Currently six states (Oregon, North Carolina, Delaware, Illinois, Ohio, Maryland) have been granted waivers. These waivers encourage state flexibility to undertake innovative approaches to improving child welfare programs and practices. Given the increasing interest in undertaking these innovative reforms, as well as the potential for developing successful new programs and practices that

can be used effectively throughout the Nation, allowing more States to undertake demonstration programs is good policy.

Effective date

October 1, 1997.

12. Technical assistance

Present law

No provision.

Explanation of provision

The Secretary is authorized to spend $10 million annually for 3 years (Fiscal Years 1998–2000) to provide technical assistance to States to promote adoption. The technical assistance must support the goal of encouraging more adoptions out of the foster care system when adoption promotes the best interests of children. Topics for technical assistance include:

development of best practice guidelines for expediting termination of parental rights;

creation of methods of concurrent planning so that family preservation and adoption can be pursued simultaneously;

development of specialized local administrative units and expertise in moving children toward adoption;

development of risk assessment tools to facilitate early identification of children at risk of harm if returned home;

promotion of arrangements to encourage fast tracking children under the age of 1 into pre-adoptive placements; and

development of programs that place children in pre-adoptive families without waiting for termination of parental rights.

Reason for change

Technical assistance can help States and communities increase adoptions and alternative permanent placements for children in foster care by promoting policies and practices that have worked well in other locations. The Committee expects that the Department of Health and Human Services will disseminate information and provide technical assistance based on best practices that have already been evaluated.

Effective date

October 1, 1997.

13. Coordination of Substance Abuse and Child Protection Services

Present law

No provision.

Explanation of provision

The Secretary of the Department of Health and Human Services must submit a report to the Committees on Ways and Means and Finance on the coordination of substance abuse and child protection services. The report must be based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families. The report address-

es the following issues: the extent and scope of the problems of substance abuse in the child welfare population; the types of services and the outcome of services delivered to this population; and legislative recommendations to the Committees on Ways and Means and Finance. The report is due 1 year after enactment.

Reason for change

Substance abuse has been cited by child welfare agencies as one of the three most common reasons for children entering foster care, together with abuse and neglect and economic stress, and appears in up to 80% of substantiated abuse and neglect cases. This provision would encourage collaboration between the Federal agency responsible for substance abuse prevention and treatment and the agency responsible for child welfare services.

Effective date

October 1, 1997.

14. Clarification of eligible population for Independent Living Services

Present law

Independent Living Initiatives assist States and localities in establishing programs to help children in foster care who have attained the age of 16 in making the transition from foster care to independent living. (Sec. 477)

Explanation of provision

The amendment clarifies that the population eligible for Independent Living Services is children who are or have been in foster care, who are 16 years of age and who are making the transition from foster care to independent living. Eligibility for Independent Living Services is not dependent on eligibility for Title IV–E.

Reason for change

There is considerable State variation in applying the eligibility criteria, specifically with regard to the $1,000 asset limit. The Committee clarifies that children who are or have been in foster care, who are 16 years of age or older, are eligible for Independent Living Services, regardless of whether they are eligible for Title IV–E foster care subsidies.

Effective date

October 1, 1997.

15. Effective date

Present law

No provision.

Explanation of provision

The amendments made by this Act take effect on October 1, 1997. State plans under Title IV–B and IV–E of the Social Security Act will not be considered as failing to comply with the Act's provi-

sions until after the close of the first regular session of the State legislature that begins after the date of enactment.

Reason for change

States must change their laws in order to comply with the provisions of this Act. Thus, States need to know the deadline for enacting the necessary laws and the timetable for beginning to implement their programs.

Effective date

October 1, 1997.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee in its consideration of the bill, H.R. 867.

MOTION TO REPORT THE BILL

The bill, H.R. 867, as amended, was ordered favorably reported by voice vote on April 24, 1997, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made:

The Committee agrees with the estimate prepared by the Congressional Budget office (CBO) which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions in the Committee bill, if enacted, would decrease direct spending by $34 million over the budget period Fiscal Years 1997–2002.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office (CBO), the follow report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 25, 1997.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 867, the Adoption Promotion Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Justin Latus (for federal budgetary impacts), Marc Nicole (for state and local government impacts), and Julia Matson (for private-sector impacts).

Sincerely,

JUNE E. O'NEILL, *Director.*

H.R. 867—Adoption Promotion Act of 1997

Summary: H.R. 867 would make changes to Title IV, Part E of the Social Security Act, which deals with federal payments for foster care and adoption assistance. The bill has several provisions designed to reduce the amount of time spent by children in foster care settings and to move these children more quickly into permanent settings such as adoptive homes.

CBO estimates that three provisions of this bill would increase or speed up adoptions and would produce budgetary savings by moving children from foster care to less expensive adoption placements. These provisions would require states to make reasonable efforts to move children toward adoption, require that termination of parental rights be initiated for children under 10 who have been in foster care for 18 of the previous 24 months, and provide incentive payments to states that increase adoptions. CBO estimates that these provisions would produce savings in foster care and adoption assistance totaling $34 million over the 1998–2002 period.

H.R. 867 would also increase authorizations of appropriations for technical assistance to states to increase adoptions by $30 million over the 1998–2002 period.

The legislation would affect direct spending; therefore, pay-as-you-go procedures would apply. H.R. 867 contains intergovernmental mandates, as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), but CBO estimates that the net effect of the bill's provisions would be to save states money. H.R. 867 does not include any private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of HR. 867 is shown in the following table.

	By fiscal years, in millions of dollars—					
	1997	1998	1999	2000	2001	2002
DIRECT SPENDING						
Spending for Foster Care and Adoption Assistance under Current Law:						
Budget authority	3,966	4,275	4,693	5,129	5,556	5,978
Estimated outlays	3,904	4,222	4,621	5,054	5,482	5,905

	By fiscal years, in millions of dollars—					
	1997	1998	1999	2000	2001	2002
Proposed Changes:						
Section 2. Clarification of reasonable efforts:						
Estimated budget authority	0	−2	−3	−5	−5	−5
Estimated outlays	0	−2	−3	−5	−5	−5
Section 3. States required to initiate termination of parental rights for certain children in foster care:						
Estimated budget authority	0	0	(1)	−2	−3	−5
Estimated outlays	0	0	(1)	−2	−3	−5
Section 4. Adoption incentive payment for states:						
Estimated budget authority	0	−1	7	−1	−1	−8
Estimated outlays	0	−1	7	−1	−1	−8
Section 5. Earlier status reviews and permanency hearings:						
Estimated budget authority	0	(1)	0	0	0	0
Estimated outlays	0	(1)	0	0	0	0
Total—Proposed Changes:						
Estimated budget authority	0	−3	4	−8	−9	−18
Estimated outlays	0	−3	4	−8	−9	−18
Spending for Foster Care and Adoption Assistance under H.R. 867:						
Estimated budget authority	3,966	4,272	4,697	5,121	5,547	5,960
Estimated outlays	3,904	4,219	4,625	5,046	5,473	5,887
SPENDING SUBJECT TO APPROPRIATION						
Spending under Current Law:						
Budget authority	0	0	0	0	0	0
Estimated outlays	0	0	0	0	0	0
Proposed Changes:						
Authorization level	0	10	10	10	0	0
Estimated outlays	0	1	7	9	9	3
Spending under H.R. 867:						
Authorization level	0	10	10	10	0	0
Estimated outlays	0	1	7	9	9	3

[1] Less than $500,000.

The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

Basis of estimate: The estimate assumes that the bill would be enacted by October, 1, 1997, which is also the effective date.

Direct spending

CBO estimates that the bill would lead to savings in federal spending for foster care and adoption assistance because some of its provisions would help to move children from foster care to adoption placements. Because federal costs of administration (for example, monitoring a child's placement, recruiting foster families, and completing necessary paperwork) and maintenance payments (payments to cover housing and food expenses for the child) for a child who has been adopted are about $5,000 less a year than for a child who is in foster care, the bill would result in savings to the federal government.

Section 2—Clarification of Reasonable Efforts. Section 2 of the bill would clarify the requirement that reasonable efforts be made to keep a child with his or her family before the child is placed in foster care or to return a child to his or her parents after removal from the home. Reasonable efforts would not have to be made in cases where a court has determined that a child has been subjected to aggravated circumstances, such as abandonment, torture, or sex-

ual abuse. This program would have no budgetary effect because it merely clarifies current law.

Section 2 would also require states to make reasonable efforts to place a child for adoption or in some other permanent placement, in all cases where it is determined that reunification with the parent is not in the best interests of the child (not just those in which the child has been subjected to aggravated circumstances). This provision would express the federal government's position that states should move children to adoption if reunification is not appropriate. Although some states have recently taken steps to increase adoptions, CBO assumes that others would respond to this signal by speeding up adoptions.

CBO estimates that this provision would save $2 million in 1998, $3 million in 1999, and $5 million a year in 2000 and thereafter. Savings would total $20 million over the 1998–2002 period. This estimate takes account of a slight initial increase in administrative costs as states work to move children to adoption. There are currently about 20,000 adoptions of children from foster care each year, of which 65 percent are eligible for the Title IV–E program. The estimate assumes that 15 percent, or 2000, of these adoptions would be sped up by an average of six months.

Section 3—Initiation of Termination of Parental Rights. Section 3 would require states to initiate termination of parental rights (TPR) if a child is under ten and has been in foster care for 18 of the previous 24 months. Termination of parental rights of the biological parent to the child must occur before a child can be adopted. There is currently no federal requirement stating when TPR must be initiated. This new provision would not apply if the child is being taken care of by a relative (at the option of the state), if a court or state agency rules that it is not in the best interests of the child to initiate TPR, or if reasonable efforts to reunify the child with his or her parent have not been made.

State adoption officials and other experts indicate that this provision has the potential to move children out of foster care more quickly. In some cases under current law, once a child is placed in foster care, the state may not have the opportunity to work toward a more permanent placement for the child because of competing demands on caseworkers' time. This provision would establish a clear, definite timetable for beginning to terminate parental rights.

CBO estimates that this provision, when its effects would be fully realized in 2002, would save $5 million a year. Savings would total $10 million over the 1998–2002 period. As with section 2, the estimate assumes that 15 percent of adoptions would be sped up by six months. However, this provision produces savings later than section 2 because the 18-month timetable would apply only to children who would enter a state's child welfare system on or after October 1, 1997. Faster terminations of parental rights as a result of this provision could not begin until mid-1999. The TPR process takes anywhere from 90 days to several years, with the median length of time being about a year. Once TPR is completed, it takes further time for the child to be adopted. No savings under this provision would occur until fiscal year 2000.

Section 4—Adoption Incentive Payments. Section 4 would provide an adoption incentive payment to states that increase adop-

tions from their foster care system over the base-year level. The incentive payment would be $4,000 for each adoption above the base year, plus $2,000 for each special needs (i.e., IV–E eligible) adoption. The base year would be 1997 or a later year if the state succeeds in increasing its adoptions. For example, a state that increases adoptions from 1,000 in 1997 to 1,100 in 1998 would receive an incentive payment for the 100 adoptions above the 1997 level. For 1999, the new base year would be 1998, and the state would receive an incentive payment only if it increased its adoptions in 1999 above 1,100.

CBO estimates that this provision would save approximately $4 million over the 1998–2002 period. Costs of providing incentive payments would be offset by savings from increasing the number of adoptions. The savings would rise over time as the number of additional adoptions increases.

State adoption directors have indicated that the incentive payment, even if it would not represent a big increase in the state's total foster care budget, would draw attention to a state's child welfare system and assist in efforts to increase adoption. CBO estimates that these adoption incentive payments would increase adoptions by 500 children a year over what they would be without the incentive payment program, and that 65 percent of these would be children eligible for IV–E payments. Under the bill, incentive payments could not exceed a total of $108 million for fiscal years 1999 through 2003. CBO estimates that only about $25 million would be needed for the incentive payments resulting from a cumulative increase of about 5,000 in the number of adoptions over the period.

The proposal for incentive payments would interact with the other provisions in this bill that would increase adoption. The 5,000 additional adoptions includes those that would result from sections 2 and 3 of the bill. Incentive payments would also be paid to states that would increase their adoptions even without any changes in federal policy.

Other Provisions.—Other provisions that are designed to streamline the adoptive process would not yield any budgetary savings. Section 5, for example, would require states to hold the first permanency hearing for a child removed from his or her home 12 months after removal, rather than 18 months. Twenty-six states already have some type of review before 18 months, so this proposal's impact would be limited. Further, it is not clear that earlier reviews have expedited the adoption process. In some states, earlier hearings have little effect on a child's movement through the state's child welfare system. In other states, because of court backlogs, requirements for earlier hearings are not met.

Other provisions would change the name of "dispositional hearings" to "permanency hearings," require that foster parents be notified and given the chance to be heard in hearings dealing with their foster child, require documentation of reasonable efforts to adopt, and allow the use of the parent locator service for child welfare services. This bill would also require the Secretary of Health and Human Services to write a report on kinship care and to develop a system for rating states' child protection systems, permit five more cost-neutral child protection demonstration projects, and clarify that states can provide services to youth in the Independent

Living program who are no longer in foster care and who have assets greater than $1,000.

Amounts subject to appropriation

Section 12 would authorize appropriations of $10 million a year from 1998 through 2000 for technical assistance to states to increase adoptions. Increases in budget authority would total $30 million, and outlays would total $29 million over the 1998–2002 period.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending and receipts through 1998. CBO estimates that enacting H.R. 867 would decrease direct spending in fiscal year 1998 by $3 million.

Estimated impact on State, local, and tribal governments: H.R. 867 contains intergovernmental mandates, as defined in UMRA, but CBO estimates that the bill would save states money, on balance. In total, we estimate states would save approximately $25 million and would receive additional funding totaling $50 million between fiscal years 1998 and 2002.

Mandates

The bill would require states to enact new foster care laws and to take certain actions related to permanency hearings and termination of parental rights sooner than under current law. These new requirements would result in a small increase in administrative costs, but such costs would be more than offset by reductions in state foster care payments. The costs and savings from the new requirements would be shared between the federal government and the states. States receive an open-ended federal match equal to the Medicaid match rate (which averages 55 percent) for foster care assistance payments and an open-ended match equal to 50 percent for most foster care administrative costs. Based on information from states and interest groups, and the methodology discussed in the federal cost section of this estimate, CBO estimates that net savings to states would total $1 million in fiscal year 1998 and approximately $25 million from 1998 to 2002.

Other impacts

The bill would allow states to collect adoption incentive payments from the federal government for increasing the number of adoptions over base year levels. CBO estimates that states would collect an additional $9 million in fiscal year 1999 and $25 million from 1999 to 2003. In addition, assuming that amounts authorized in the bill are appropriated, states would receive $10 million a year for technical assistance in fiscal years 1998 to 2000.

Finally, enactment of the bill could result in some additional costs to state and local court systems. These costs would arise from hearing more cases dealing with the termination of parental rights. Based on information from states, we expect that the costs would not be significant.

Estimated impact on the private sector: H.R. 867 does not include any private-sector mandates as defined in the Unfunded Mandates Reform Act.

Estimate prepared by: Federal Cost: Justin Latus. Impact on State, Local, and Tribal Governments: Marc Nicole. Impact on the Private Sector: Julia Matson.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the need for this legislation was confirmed by the oversight hearings of the Subcommittee on Human Resources. In the 104th Congress, the Subcommittee on Human Resources held a total of 3 hearings on adoption and child welfare. The hearings were as follows:

On February 3, 1995, the Subcommittee on Human Resources held a hearing jointly with the Subcommittee on Early Childhood, Youth, and Families of the Committee on Economic and Educational Opportunities on child care and child welfare.

On May 10, 1995, the Subcommittee on Human Resources held a hearing on Federal adoption policy.

On June 27, 1995, the Subcommittee on Human Resources held a hearing on barriers to adoption.

In the 105th Congress, the Subcommittee held a hearing on encouraging adoption on February 27, 1997, that included testimony from the U.S. General Accounting Office, State child welfare administrators, foundation officials, legal scholars, and child advocates. The Subcommittee also held a hearing on April 8, 1997 on H.R. 867, the "Adoption Promotion Act of 1997," that included testimony from Rep. Dave Camp (R–MI) and Rep. Barbara Kennelly (D–CT), co-sponsors of the legislation, as well as from Senator Mike DeWine (R–OH), the Department of Health and Human Services, and other interested outside organizations.

B. Summary of Findings and Recommendations of the Government Reform and Oversight Committee

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been submitted to the Committee on Government Reform and Oversight regarding the subject of the bill.

C. Constitutional Authority Statement

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *").

VI. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT

Pursuant to the Federal Advisory Committee Act (5 U.S.C., App., section 5(b)), the Committee states that any advisory bodies created by the bill, such as the Advisory Panel on Kinship Care in section 8(b)(1), are consciously created, and are deemed appropriate and necessary to carry out the purposes of the bill. It is the view of the Committee that the functions of any such advisory bodies are not being and could not be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee.

VII. CHANGES IN EXISTING LAWS MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

* * * * * * *

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

* * * * * * *

FEDERAL PARENT LOCATOR SERVICE

SEC. 453. (a) The Secretary shall establish and conduct a Federal Parent Locator Service, under the direction of the designee of the Secretary referred to in section 452(a), which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)), for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, [or enforcing child custody or visitation orders] *or making or enforcing child custody or visitation orders*—

(1) information on, or facilitating the discovery of, the location of any individual—

(A) who is under an obligation to pay child support or provide child custody or visitation rights;

(B) against whom such an obligation is sought;

(C) to whom such an obligation is owed[,]*; or*

(D) who has or may have parental rights with respect to a child,

including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;

* * * * * * *

(c) As used in subsection (a), the term "authorized person" means—

(1) * * *

* * * * * * *

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child**[**.**]***; and*

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

* * * * * * *

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

* * * * * * *

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 471. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) * * *

* * * * * * *

[(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;**]**

(15)(A) provides that—

(i) except as provided in clauses (ii) and (iii), reasonable efforts shall be made—

(I) before a child is placed in foster care, to prevent or eliminate the need to remove the child from the child's home; and

(II) to make it possible for the child to return home;

(ii) if continuation of reasonable efforts of the type described in clause (i) is determined to be inconsistent with the permanency plan for the child, reasonable efforts of the type required by clause (iii)(II) shall be made;

(iii) if a court of competent jurisdiction has determined that the child has been subjected to aggravated circumstances (as defined by State law, which definition may include abandonment, torture, chronic abuse, and sexual abuse) or parental conduct described in section 106(b)(2)(A)(xii) of the Child Abuse Prevention and Treat-

ment Act, or that the parental rights of a parent with respect to a sibling of the child have been terminated involuntarily—

(I) reasonable efforts of the type described in clause (i) shall not be required to be made with respect to any parent of the child who has been involved in subjecting the child to such circumstances or such conduct, or whose parental rights with respect to a sibling of the child have been terminated involuntarily; and

(II) if reasonable efforts of the type described in clause (i) are not made or are discontinued, reasonable efforts shall be made to place the child for adoption, with a legal guardian, or (if adoption or legal guardianship is determined not to be appropriate for the child) in some other planned, permanent living arrangement; and

(iv) reasonable efforts of the type described in clause (iii)(II) may be made concurrently with reasonable efforts of the type described in clause (i); and

(B) in determining the reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety shall be of paramount concern;

* * * * * * *

FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

SEC. 472. (a) Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 475(4)) under this part with respect to a child who would meet the requirements of section 406(a) or of section 407 but for his removal from the home of a relative (specified in section 406(a)), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) *for a child* have been made;

* * * * * * *

SEC. 473A. ADOPTION INCENTIVE PAYMENTS.

(a) GRANT AUTHORITY.—Each State that is an incentive-eligible State for a fiscal year shall be entitled to receive from the Secretary in the immediately succeeding fiscal year a grant in an amount equal to the adoption incentive payment.

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

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

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

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

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

(c) DATA REQUIREMENTS.—

(1) IN GENERAL.—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2) for fiscal year 1997 (or, if later, the fiscal year that precedes the 1st fiscal year for which the State seeks a grant under this section) and for each succeeding fiscal year.

(2) DETERMINATION OF NUMBERS OF ADOPTIONS.—

(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1997 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 479, as reported by the State in May of the fiscal year and in November of the succeeding fiscal year, and approved by the Secretary by April 1 of the succeeding fiscal year.

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

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

(d) ADOPTION INCENTIVE PAYMENT.—

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

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

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

(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.—If the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount then available for grants under this section, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

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

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

(e) 2-YEAR AVAILABILITY OF INCENTIVE PAYMENTS.—Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

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

(g) DEFINITIONS.—As used in this section:

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

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

(3) BASE NUMBER OF FOSTER CHILD ADOPTIONS.—The term "base number of foster child adoptions for a State" means, with respect to a fiscal year, the largest number of foster child adoptions in the State in fiscal year 1997 (or, if later, the 1st fiscal year for which the State has furnished to the Secretary the data described in subsection (c)(2)) or in any succeeding fiscal year preceding the fiscal year.

(4) BASE NUMBER OF SPECIAL NEEDS ADOPTIONS.—The term "base number of special needs adoptions for a State" means, with respect to a fiscal year, the largest number of special needs adoptions in the State in fiscal year 1997 (or, if later, the 1st fiscal year for which the State has furnished to the Secretary the data described in subsection (c)(2)) or in any succeeding fiscal year preceding the fiscal year.

(h) APPROPRIATION.—

(1) IN GENERAL.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 1999 through 2003 such sums as are necessary for grants under this section, in a total amount not to exceed $108,000,000.

(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available until expended, but not after fiscal year 2003.

* * * * * * *

DEFINITIONS

SEC. 475. As used in this part or part B of this title:

(1) * * *

* * * * * * *

(5) The term "case review system" means a procedure for assuring that—

(A) * * *

* * * * * * *

(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] *permanency* 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] *12 months after* the original placement (and not less frequently than every 12 months 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)] *permanency plan for the child (including whether (and, if applicable, when) the child will be returned to the parent, the child will be placed for adoption and the State will file a petition to terminate the parental rights of the parent, a legal guardian will be appointed for the child, or the child will be placed in some other planned, permanent living arrangement, including in the custody of another fit and willing relative)* 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, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; 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; [and]

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care[.]*;*

(E) in the case of a child who has not attained 10 years of age and has been in foster care under the responsibility of the State for 18 months of the most recent 24 months, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), unless—

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

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

(iii) the State has not provided to the family of the child such services as the State deems appropriate, if reasonable efforts of the type described in section 471(a)(15)(A)(i) are required to be made with respect to the child;

(F) the foster parents (if any) of a child and any relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to make any foster parent a party to such a review or hearing; and

(G) in the case of a child with respect to whom the State's goal is adoption or placement in another permanent home, the steps taken by the State agency to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a legal guardian, or in another planned permanent living arrangement (including in the custody of another fit and willing relative), and to finalize the adoption or legal guardianship are documented, and such documentation shall include documentation of child specific recruitment efforts such as the use of State, regional, and national adoption information exchanges, including electronic information exchange systems.

* * * * * * *

INDEPENDENT LIVING INITIATIVES

SEC. 477. (a)(1) * * *

(2) A program established and carried out under paragraph (1)—

(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part *(including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed $5,000, which are otherwise regarded as resources for purposes of determining eligibility for benefits under this part)*,

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TITLE XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

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PART A—GENERAL PROVISIONS

* * * * * * *

DEMONSTRATION PROJECTS

SEC. 1130. (a) IN GENERAL.—The Secretary may authorize not more than [10] *15* States to conduct demonstration projects pursu-

ant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.

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