

# Chapter 11 - Child Welfare

## ***Legislative History***

This legislative history is primarily, but not exclusively, concerned with the development of programs currently authorized under Title IV-B and Title IV-E of the Social Security Act. While it is somewhat detailed, it is not comprehensive.

## **Early Years**

In 1912 (P.L. 62-116) Congress created the federal Children's Bureau requiring it to "investigate and report. . . upon all matters pertaining to the welfare of children and child life among all classes of our people." The Children's Bureau was instrumental in a number of early twentieth century reforms aimed at reducing infant mortality and ending child labor.

In addition, in the first part of the 1930s the leaders of the Children's Bureau were instrumental in helping to shape several titles of the original *Social Security Act* (P.L. 74-271), enacted in 1935. Among these were the provisions related to Child Welfare Services (originally authorized in Title V, Part 3 of the Social Security Act, but moved to Title IV-B by the Social Security Amendments of 1967, P.L. 90-248). Specifically the 1935 act authorized \$1.5 million in funds, annually (and on an indefinite basis), "for the purpose of enabling the United States, through the Children's Bureau, to cooperate with State public welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public [child] welfare services . . . for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent." All cooperating states received a base allotment of funds (\$10,000), with remaining funds distributed based on each state's relative share of the rural population.

Congress made limited legislative changes to Child Welfare Services in each of 1939 (P.L. 76-379) (funding authorization raised to \$1.510 million); 1946 (P.L. 79-719) (funding authorization raised to \$3.5 million and state base allotment increased to \$20,000); 1950 (P.L. 81-734) (funding authorization raised to \$10 million, state base allotment increased to \$40,000 with remainder of funds distributed based on rural population *under the age of 18*, and use of funds to pay cost of returning a runaway child, under age 16, to home state permitted); and 1956 (P.L. 84-880) (funding authorization raised to \$12 million).

The *Social Security Act Amendments of 1958* (P.L. 85-840) made the most extensive amendments to the Child Welfare Services program since its enactment. Use of funds was no longer restricted to "predominantly rural" or "special needs" areas. The program's funding authorization was raised to \$17 million (with each state's base allotment raised to \$60,000, provided a certain level of funding was appropriated); the remainder of funds were to be allotted based on a state's relative share of population under age 21 and a factor representing state per capita income. For the first time, states were required to provide non-federal matching funds under the program. Further, Congress specifically

authorized use of funds under the Child Welfare Services program for the return of runaway children up to age 18 (along with 15 days of maintenance for that child) and it permitted their use for administration of the state plan.

## **1960s**

The *Social Security Amendments of 1960 (P.L. 86-778)* raised Child Welfare Services funding authorization to \$25 million; set each state's base allotment at no less than \$50,000 (or up to \$70,000, depending on appropriation level). Further, the law added a new and separate funding authorization for grants by the Secretary of the Department of Health, Education, and Welfare (HEW) – forerunner of the Department of Health and Human Services, HHS – to support child welfare research of regional or national significance or for projects that demonstrated new methods or facilities and showed substantial promise of advancing the field of child welfare. Eligible grantees included public or other nonprofit institutions of higher learning, and public or other nonprofit agencies and organizations engaged in research or child welfare activities. Funding was authorized on an indefinite (no year) basis at “such sums as Congress may determine.”

Enacted in 1961, *P.L. 87-31* [no short title] permitted states, on a temporary (13-month) basis to seek open-ended federal reimbursement for a part of the cost of providing foster care for children who could not remain in their own homes. To be eligible for this assistance the child had to be – 1) removed (after April 30, 1961) from the home of a parent or other relative as a result of a judicial determination that staying in the home was “contrary to the welfare” of the child; 2) eligible for, and receiving – in the month of the removal proceedings – cash welfare authorized under the federal program then known as Aid to Dependent Children (ADC) (and authorized under Title IV of the Social Security Act); 3) under the placement and care responsibility of the state agency that administered the ADC program; and 4) placed in a state-licensed foster family home. States that opted to provide foster care assistance to eligible children under their ADC programs were also permitted to claim some federal reimbursement under that program for administrative costs associated with placing children in a foster family home and they were expected, to the maximum extent practicable, to use employees of the state or local agency administering the Child Welfare Services program for this purpose. Further, these states were expected to develop (and periodically review) a plan to assure that each ADC child in foster care received proper care and that services were designed to improve the child's home so he could return there or be placed with another relative.

In 1962, the *Public Welfare Amendments of 1962 (P.L. 87-543)* renamed the ADC program as the Aid to Families with Dependent Children (AFDC) program and made permanent the provision that permitted states to provide foster care assistance under their AFDC plans. The law also expanded eligibility for federal foster care support in two ways – 1) by also allowing federal foster care support for otherwise eligible children who were under the care and placement responsibility of a public agency other than the AFDC agency – provided that the other agency had an agreement with the AFDC agency, developed a plan for the child in foster care, and met other AFDC objectives; and 2) by allowing states (subject to limitations prescribed by the Secretary of HEW) to receive support for placement of otherwise eligible children in a state-licensed, public or private

non-profit child care institution. The 1962 amendments also provided that foster care payments could be made directly to a foster family or child care institution or could be paid to a public or private, non-profit child placement agency. (These eligibility changes were initially permitted on a temporary basis but both were made permanent within the decade.)

The 1962 *Public Welfare Amendments* (P.L. 87-543) also made significant changes to the Child Welfare Services program, including formally defining “child welfare services” as “public social services which supplement, or substitute for parental care and supervision for the purpose of (1) remedying or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of working mothers; and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.” The law also raised the funding authorization for Child Welfare Services from \$25 million to \$30 million for FY1963 and, in stages, to \$50 million for FY1969 and each succeeding year; it also provided that each state must receive a base allotment out of those funds of \$70,000 (provided appropriations reached a certain level). Additionally it stated that any amount of funds appropriated for the program that was above \$25 million was to be reserved to provide day care (up to a maximum of \$10 million).

The 1962 law further established several state plan requirements for the Child Welfare Services program stipulating that a state must 1) provide for coordination of services under the program with those provided under the AFDC program; 2) make a “satisfactory showing” that services of trained child welfare personnel would be extended in areas of greatest need and available to children on a statewide basis no later than July 1, 1975; and 3) provide that, with regard to day care services provided under the program, the state would make certain arrangements and put in place certain safeguards. Finally, the 1962 law expanded the purposes of the separate funding authorization for grants to support child welfare research and demonstration projects to include support for training of child welfare workers.

The *Social Security Amendments of 1965* (P.L. 89-97) established the Medicaid and Medicare programs. Eligibility for medical assistance under the Medicaid program was provided on a categorical basis to individuals receiving AFDC benefits, which included children in foster care receiving those benefits. That law also increased the authorized funding level for the Child Welfare Services program (to \$40 million for FY1965, and in stages, to \$60 million for FY1970 and each succeeding year) and it fixed the base allotment of funds to each state (regardless of appropriation level) at \$70,000. The 1965 law repealed the specific reservation of funds for day care services under the Child Welfare Services program. However, use of funds for the day care of working mothers remained a part of the definition of “child welfare services” as did certain state plan requirements related to provision of day care services under the program. Further, the 1965 law required that day care provided with Child Welfare Services funds must be

provided in a state-licensed setting, whether a private family home or other facility.

The *Social Security Amendments of 1967 (P.L. 90-248)* (enacted January 1968) required every state to provide foster care assistance as a part of its AFDC program. The law also permitted eligibility for federal foster care assistance if a child *would have been eligible for AFDC* in the month removal proceedings occurred had someone applied for those benefits or, if the child was living with a relative for no more than 6 months after leaving the home that was found “contrary to the welfare” of the child and would have been eligible for benefits. (Previously a child must have actually been receiving benefits before removal to be eligible for federal foster care assistance.)

P.L. 90-248 also moved the Child Welfare Services program (from its original location in Title V) into a new Title IV-B of the Social Security Act (and this meant that the AFDC program was now located in Title IV-A of the Act). The law also added a new state plan requirement that the same state agency that administered (or supervised administration of) the AFDC program must also administer the Child Welfare Services program. Additionally, it authorized funding for the Child Welfare Services program at \$55 million for FY1968; \$100 million for FY1969; and \$110 million for each succeeding fiscal year. Finally, the 1967 act added a state plan requirement related to providing for training and effective use of paid sub-professionals in administering the Child Welfare Services program and for use of unpaid or partially paid volunteers to provide services or assist child welfare advisory committees.

## **1970s**

The *Social Security Amendments of 1972 (P.L. 92-603)* again adjusted the funding authorization for the Child Welfare Services program, raising it to \$196 million for FY1973 and, in stages, to \$266 million for FY1977 and each succeeding fiscal year.

In 1974 the *Child Abuse Prevention and Treatment Act (CAPTA) (P.L. 93-247)* was enacted. Among other things, the new law required states to have a system for receiving and responding to allegations of child abuse or neglect, and for protecting the confidentiality of related records. Further, CAPTA required that any programs or projects supported under Title IV-B (Child Welfare Services, and Child Welfare Research, Training and Demonstration) or Title IV-A (AFDC) must comply with the CAPTA provisions on receiving and responding to allegations of child abuse or neglect as well as maintaining confidentiality of related records.

As early as 1956, P.L. 84-880, Congress had authorized provision of social services under the ADC, later AFDC, program. The 1974 *Social Services Amendments (P.L. 93-647)* law moved this social services funding stream to a new title of the Social Security Act, establishing the Title XX program. One of the five purposes of the new social services program was “preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interest, or preserving, rehabilitating or reuniting families.” The 1974 law required that the same state agency that administered the new Title XX program must also administer the Child Welfare Services program.

The *Child Abuse Prevention and Treatment and Adoption Reform Act of 1978* (P.L. 95-266) required HEW (predecessor of HHS), to directly, or by grant or contract, establish and operate a national adoption and foster care data gathering and analysis system. (HEW used this authority to fund a voluntary system of reporting.) This same 1978 act established the Adoption Opportunities program, which required HEW to establish an “appropriate administrative arrangement” to provide a centralized focus for planning and coordination of all department activities related to foster care and adoption. Further, it authorized funds to support competitive grants, demonstration projects, and other activities related to removing barriers to the adoption of children with special needs (i.e., primarily those adopted from foster care).

In 1978 Congress sought to reverse the high rate at which Indian children were involuntarily separated from their tribes and families by federal, state, and private agencies. The *Indian Child Welfare Act* (P.L. 95-608) set minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes. The law provided procedural protections for parents and tribes in state court proceedings and authorized some assistance to Indian tribes in the operation of child and family services programs.

## **1980s**

A keystone of the current federal child welfare policy and financing structure, the *Adoption Assistance and Child Welfare Act of 1980* (P.L. 96-272) created the federal adoption assistance program and established independent program authority for the federal foster care program under a new Title IV-E of the Social Security Act. The Title IV-E foster care and adoption assistance program followed many of the same rules and practices that had been established under the AFDC foster care program, while adding support for adoption assistance. Funding for foster care and adoption assistance was established under Title IV-E as a permanent entitlement for assistance to eligible children. The federal share of Title IV-E program costs was changed to equal (in all states) the share a state received under the Medicaid program (i.e., the federal medical assistance percentage or FMAP). Eligibility for Title IV-E foster care assistance closely tracked provisions in the AFDC program (as established in the 1960s). However the 1980 law did permit some children who were voluntarily removed from their homes to be eligible and it stipulated that children placed in detention or related child care institutions were not eligible, and neither were those placed in *public* child care institutions that housed more than 25 children. Eligibility for Title IV-E adoption assistance largely followed the rules for Title IV-E foster care except that alternatively, children who were eligible for Supplemental Security Income (SSI, Title XVI of the Social Security Act) could also receive federal assistance provided that in either case (whether following the AFDC or SSI pathway) the child was determined to have “special needs.” The 1980 law described children with “special needs” as those for whom the state determined that the child cannot or should not be returned to his or her parents’ home; and for whom the state additionally found a special factor or condition existed that made it reasonable to conclude that the child would not be adopted without provision of adoption assistance.

The law allowed states to stipulate what the special needs factors would be but it suggested a child's age, membership in a sibling group, race/ethnicity, and emotional, physical or mental disabilities as possible factors. Finally, it added – before “special needs” status could be established – that reasonable efforts to place a child *without* adoption assistance must be made except in situations where doing this would not be in the child's best interest (e.g., because “significant emotional ties” existed between a child and his/her prospective adoptive parents due to the fact that the prospective adoptive parents were the child's foster parents).

As part of its attention to both reducing placements in foster care and establishing permanency for children who did enter care, P.L. 96-272 required states to make “reasonable efforts” to prevent a child's placement in foster care and to reunite a child who had been removed to foster care. Prior law case planning requirements were strengthened to ensure that the child's case plan was a written document and that it addressed the appropriateness of the child's foster care placement and provision of services to the child, child's parents, and foster parents to enable the child to return home or find a new permanent placement. Periodic review of the case plan was stipulated as every 6 months, and in addition to a review of the appropriateness of services provided, was to project a likely date for which the child could be returned home or placed for adoption or legal guardianship. Additionally, any child receiving Title IV-E assistance remained categorically eligible for Medicaid.

The 1980 law also linked the new Title IV-E program to a revamped Child Welfare Services program (for which actual appropriations – as opposed to the discretionary funding authorization level – jumped from \$56.5 million in FY1979 to \$163 million in FY1981). The law revised the definition of “child welfare services” and required that the new Title IV-E program be administered by the same state agency that administered the Child Welfare Services (Title IV-B) program and that services provided under Title IV-B (as well as those provided under the AFDC program and Title XX) be coordinated with Title IV-E. Additionally, the 1980 law sought to encourage use of funds for preventive services. It limited states' ability to use federal Child Welfare Services funds for foster care maintenance payments (and to pay for day care of working mothers), offered increased funding (full allotment) under the Title IV-B program to states that provided pre-placement prevention services and a broader set of child protections both for those who were eligible for Title IV-E assistance and those who were not. Finally, it permitted states, under certain circumstances, to transfer “unused” Title IV-E funds for use in their Child Welfare Services (Title IV-B) program.

Separately, the 1980 law established a mandatory cap on federal reimbursement of state foster care expenditures under certain circumstances. However, the circumstances requiring a mandatory cap occurred in one fiscal year only, FY1981, and the language requiring a cap on Title IV-E funds – along with the language permitting transfer of “unused” Title IV-E funds – was repealed in 1994 (P.L. 103-432.) (For a more detailed discussion of changes made by P.L. 96-272 see the 1994 *Green Book*.)

With regard to funding services for children and their families, the 1980 *Adoption*

*Assistance and Child Welfare Act (P.L. 96-272)* also set capped entitlement funding under the Title XX Social Services program at \$2.9 billion for FY1981, rising annually until it reached \$3.3 billion for FY1985. However, the 1981 *Omnibus Budget Reconciliation Act (OBRA), P.L. 97-35*, converted Title XX into the Social Services Block Grant (SSBG) and cut the entitlement ceiling to \$2.4 billion for FY1982. (Subsequent legislation in the 1980s increased the SSBG entitlement ceiling to \$2.7 billion and by FY1990 it was back to \$2.9 billion.)

The *Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272)* authorized federal capped entitlement funds (\$45 million), under a new Section 477 of the Social Security Act, for services to help Title IV-E eligible youth in foster care, age 16 and older, transition to adulthood successfully.

As part of the *Omnibus Reconciliation Act of 1986 (P.L. 99-509)* Congress added a new Section 479 to the Social Security Act that required HHS to name an Advisory Committee charged with studying and reporting on various methods of establishing, administering, and financing a system for the collection of adoption and foster care data, and required HHS to draw on this study to promulgate final regulations for a reporting system. (Final regulations for the Adoption and Foster Care Analysis and Reporting System (AFCARS) were published in December 1993 with implementation effective October 1, 1994.)

The Title IV-E (Section 477) Independent Living Program was extended by the *Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647)*, which also expanded eligibility for services under the program to include youth age 16 or older in care who were not Title IV-E eligible as well as specified youth for up to 6 months after they left care.

The *Omnibus Reconciliation Act of 1989 (P.L. 101-239)* extended the Independent Living Program through 1992; increased its funding entitlement ceiling to \$50 million for FY1990, \$60 million for FY1991, and \$70 million for FY1992. Further, it established a state match requirement for the Independent Living Program beginning in FY1991. OBRA 1989 also increased the authorization level of the Child Welfare Services program from \$266 million to \$325 million, effective with FY1990.

## **1990**

During the second session of the 101st Congress, the *Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508)* made several minor amendments to the Child Welfare Services and Title IV-E foster care and adoption assistance programs, including requiring states to distinguish between traditional administrative costs and child placement costs. It also gave states the option of providing independent living services to youth who aged out of foster care up to age 21.

## **1993**

The 103rd Congress enacted significant child welfare amendments in the *Omnibus*

*Budget Reconciliation Act of 1993 (P.L. 103-66)*. This legislation created a new subpart 2 of Title IV-B authorizing capped entitlement funds to states for provision of “family support” and “family preservation” services to families with children (including foster, adoptive, and extended families). States were required to spend no more than 10% of federal program funds on plan administration and “significant” amounts of the remaining 90% of program funds on each of those two categories of services. Funding for the program was fixed at \$60 million for FY1994 (first year of the program) and rose each year until FY1998 when funding was to equal the greater of \$255 million or the amount provided in FY1997 (\$240 million), increased by inflation. To receive funds, states were required to make a broad plan for provision of child and family services (every five years) and to include goals. Further they were required to annually report on the services provided and progress toward the plan goals. Program funds were to be distributed based on a state’s relative share of children receiving Food Stamps (since renamed Supplemental Nutrition Assistance Program or SNAP benefits) and states were required to provide some non-federal matching funds to receive their full federal program allotment. The legislation also included an annual set-aside for grants to the highest court in each state (beginning with FY1995) for assessments and improvements of judicial child welfare proceedings (i.e., the Court Improvement Program, which was moved to Section 438 of the Social Security Act by P.L. 107-133).

Separately, P.L. 103-66 permanently authorized capped entitlement funding for the Independent Living Program; permanently authorized a 75 percent matching rate for certain state training expenses under Title IV-E; and also authorized a 3-year enhanced match to states for planning, designing, developing or installing child welfare data collection systems.

## **1994**

The *Social Security Act Amendments of 1994 (P.L. 103-432)* was enacted in the second session of the 103<sup>rd</sup> Congress. The law made provision of certain protections (e.g., case planning and case review) a state plan requirement under the Child Welfare Services program and applicable for *all* children in foster care, not just those who were Title IV-E eligible (effective no later than April 1, 1996). In addition, P.L. 103-432 authorized a new federal conformity review system (under Section 1123A of the Social Security Act) to monitor and enforce state compliance with state plan provisions under Title IV-B and Title IV-E.

P.L. 103-432 also required states to describe measures taken to comply with the Indian Child Welfare Act in their Title IV-B state plans; and required “dispositional” hearings to be held at least every 12 months after the first such hearing; established additional case plan and case review procedures for children placed outside their home state; and established a timetable for federal review of state foster care and adoption assistance claims.

Further, the 1994 legislation authorized HHS to conduct child welfare demonstrations (a.k.a. “waiver projects”) in up to 10 states, allowing HHS to waive certain Title IV-B and Title IV-E provisions in states choosing to demonstrate alternative ways to achieve

child welfare policy goals. Finally, P.L. 103-432 established a new Section 1130A of the Social Security Act, addressing judicial review of Social Security Act provisions that are required as components of state plans. This provision was developed in response to a Supreme Court ruling in *Suter v. Artist M.*, an Illinois child welfare case.

The *Multiethnic Placement Act (MEPA)* (P.L. 103-382), prohibited any agency or entity that received federal assistance from discriminating on the basis of the child's or the potential adoptive or foster parents' race, color, or national origin. As enacted in 1994, MEPA permitted agencies to consider the child's cultural, ethnic, or racial background, and the capacity of the prospective parents to meet the child's needs, as one of the factors used to determine the child's best interest with regard to placement. The 1994 legislation also provided a right of action in U.S. district court for individuals who were aggrieved by a MEPA violation and deemed noncompliance with MEPA to be a violation of Title VI of the Civil Rights Act. In addition, MEPA amended the Child Welfare Services program (Title IV-B, Subpart 1 of the Social Security Act) to add, as a state plan requirement, that states must provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children who need homes.

## **1996**

In 1996 Congress revised the MEPA provisions as part of the *Small Business Job Protection Act* (P.L. 104-188). This 1996 law repealed the prior MEPA provision that allowed consideration of a child's cultural, ethnic, or racial background in making placement decisions. Further, the law amended Title IV-E of the Social Security Act to provide that neither the state nor any other entity that receives federal funds may discriminate in adoption or foster care placements on the basis of race, color or national origin. The law specified certain fiscal penalties for states that violate this Title IV-E plan requirement and provided that private agencies that violate the interethnic provisions must pay back any federal funds received. Also under the law, private individuals may continue to seek relief in U.S. district court, however, P.L. 104-188 provides that no action may be brought more than 2 years after the alleged violation occurs. Finally, this 1996 law stipulated that none of these interethnic placement provisions affect the application of the Indian Child Welfare Act.

Also in 1996 Congress enacted comprehensive welfare reform legislation, the *Personal Responsibility and Work Opportunity Reconciliation Act* (P.L. 104-193), which contained provisions affecting child welfare. The centerpiece of P.L. 104-193 was the repeal of AFDC and creation of a new block grant to states for Temporary Assistance for Needy Families (TANF). As a condition of receiving TANF funds, states must operate a foster care and adoption assistance program under Title IV-E of the Social Security Act. However, eligibility for Title IV-E historically had been linked to AFDC eligibility. Thus, P.L. 104-193 provided that foster or adoptive children are eligible for Title IV-E subsidies if their families would have been eligible for AFDC, as it was in effect in their state on June 1, 1995. (Technical amendments enacted in 1997, P.L. 105-33, subsequently changed this date to July 16, 1996.) Children eligible for SSI continued to be eligible for Title IV-E adoption assistance and all Title IV-E eligible foster and adoptive children continue to be categorically eligible for Medicaid.

The 1996 welfare reform legislation also amended Title IV-E to require states, as a component of their Title IV-E plans, to consider giving preference to adult relatives in determining a foster or adoptive placement for a child; enable for-profit child care institutions to participate in the federal foster care program; and extend an enhanced federal matching rate for certain data collection costs through FY1997. Separately (under Title IV-B of the Social Security Act) it required HHS to conduct a national random sample study of children at risk of abuse or neglect or who had experienced abuse or neglect (implemented as the National Survey of Child and Adolescent Wellbeing, NSCAW).

Finally, P.L. 104-193 also included funding for the prior law AFDC- Emergency Assistance (EA) program in the new TANF block grant and permitted states to use those block grant funds for purposes permitted in the state's prior law, EA program. For many states this included some provision of foster care and other child welfare-related activities, especially family preservation activities. Separately, the law lowered the entitlement cap for the Social Services Block Grant (SSBG), which is now set at \$1.7 billion annually, but it permitted states to transfer some share of their TANF funds to use for SSBG purposes. (States continue to use significant SSBG funds, including TANF transfers for child welfare purposes.)

## **1997**

With the *Adoption and Safe Families Act of 1997 (P.L. 105-89)*, Congress enacted the most significant changes to Title IV-E of the Social Security Act since its 1980 creation. ASFA sought to promote adoption and ensure safety for children in foster care. The law established that a child's health and safety must be of "paramount" concern in any efforts made by the state to preserve or reunify the child's family. The law retained, but clarified the requirement that states make "reasonable efforts" to preserve or reunify a child's family, establishing exceptions to this requirement. Also to promote safety, ASFA required states to conduct criminal background checks for all prospective foster or adoptive parents, and required states to develop standards to ensure quality services that protect children's health and safety while in foster care. To promote permanency, the law required states to make reasonable efforts to place children, in a timely manner, who have permanency plans of adoption or another alternative to family reunification, and to document these efforts. Additional provisions were intended to eliminate inter-jurisdictional barriers to adoption. ASFA changed the name of dispositional hearings to "permanency" hearings, and required that they occur within 12 months of a child's placement in foster care (rather than the first 18 months). The law also revised the list of permanency goals, eliminating specific reference to long-term foster care, and required that foster parents, pre-adoptive parents, and relative care givers be given notice and opportunity to be heard at reviews and hearings. Further, the law required that states initiate or join proceedings to terminate parental rights on behalf of children who have been in foster care for 15 of the most recent 22 months, although certain exceptions are allowed.

ASFA also authorized incentive payments to states to increase the number of foster and

special-needs children who are placed for adoption (Section 473A) and it contained provisions intended to expand health insurance coverage for special-needs adoptive children who are not eligible under Title IV-E. The 1997 law also reauthorized the new program under Title IV-B, subpart 2 of the Social Security Act – renaming it the Promoting Safe and Stable Families Program – and required states to spend significant amounts of funds received under that program for “time-limited family reunification” and “adoption promotion and support services” (in addition to spending significant sums on the prior law purposes of family support and family preservation services). The law increased funding to be provided under the program, fixing its FY1998 mandatory funding level at \$255 million and providing for annual program funding increases, through FY2001, when mandatory funding would reach \$305 million. ASFA also permitted HHS to grant waivers to as many as 10 states *annually* (for each of FY1998-FY2002). Finally, it required HHS to establish child welfare outcome measures and to publish data annually on state performance compared to those measures (Sec. 479A of the Social Security Act).

## **1999**

The *Foster Care Independence Act of 1999 (P.L. 106-169)* was enacted during the 106th Congress. It revised the Independent Living Program (under Section 477) and renamed it the John H. Chafee Foster Care Independence Program in honor of the late Senator John Chafee. The legislation provided greater flexibility to states in their use of funds to help older foster children obtain the education and employment services necessary for a successful transition to adult living, doubled the entitlement ceiling for the program (from \$70 million to \$140 million), and revised the state allocation formula to use more current foster care data. The law also established an option under Medicaid for states to cover youth aged 18-20 who on their 18th birthday were in foster care under the responsibility of the state. Finally, it required HHS to develop outcome measures as well as a data collection system to quantify services provided and measure outcomes. [FY2011 was the first year of operation for the National Youth in Transition Database (NYTD), which collects demographic and outcome information on current and former foster youth.]

## **2001**

*The Promoting Safe and Stable Families Amendments of 2001 (P.L. 107-133)* (enacted January 2002) reauthorized the Promoting Safe and Stable Families program for 5 years (FY2002 through FY2006). It maintained the annual mandatory (capped entitlement) funding level of \$305 million for each of those years but authorized additional *discretionary* funds for the program of up to \$200 million annually. The 2001 amendments to the program also added strengthening parental relationships and promoting healthy marriages to the definition of “family support services” provided in the program and it added support for infant safe haven programs (established via state law) under the definition of family preservation services. It also established new program authority for HHS to fund programs that mentor children of prisoners and expanded the Chafee Foster Care Independence Program by authorizing new discretionary funds for post-secondary education and training vouchers (valued at up to \$5,000 annually).

## **2003**

The *Adoption Promotion Act of 2003 (P.L. 108-145)* extended the authorization for adoption incentive payments to states for five additional years. The law amended the awards available for increases in special needs adoption, limiting it to increases of adoptions of children under age 9 who have special needs, and it added an additional incentive for increased adoptions of foster children ages 9 or older. The law also required specific penalties for states that fail to submit AFCARS data to HHS and mandated a report by HHS on state efforts to promote adoption or other permanency options for foster children.

## **2005**

*The Fair Access to Foster Care Act of 2005 (P.L. 109-113)* permits states to claim reimbursement under Title IV-E even if an otherwise eligible child's foster care maintenance payments are provided to his or her institutional, or family, foster care provider, via a for-profit placement agency.

*The Deficit Reduction Act of 2005 (DRA, P.L. 109-171)* (enacted in February 2006) made changes to the federal Title IV-E eligibility language intended to clarify the meaning of "home of removal." The Act codified a longstanding HHS interpretation of Title IV-E eligibility language and effectively nullified the 2003 Rosales decision. P.L. 109-171 also placed limitations on the ability of states to make claims for federal reimbursement of the costs of administering their Title IV-E foster care programs, including limits on the length of time a child may be considered a "candidate" for foster care and new restrictions on administrative claims related to foster children placed in unlicensed relative homes or other settings that are "ineligible" under the federal foster care program. P.L. 109-171 also amended the confidentiality provisions of Title IV-E to assert that they did not limit a state's flexibility in determining public access to child abuse and neglect proceedings, provided that the state's policy, at a minimum must "ensure the safety and well-being of the child, parents, and family."

The DRA (P.L. 109-171) also increased the mandatory funding authorization for the Promoting Safe and Stable Families Program (Title IV-B, subpart 2) to \$345 million; amended both Child Welfare Services (Title IV-B, subpart 1) and the Court Improvement Program (Section 438) to require ongoing and meaningful collaboration between courts and child welfare agencies; authorized two new Court Improvement Program grants (related to data collection and training) and appropriated \$100 million for those grants (\$20 million in each of FY2006-FY2010). Finally, the DRA made changes to Medicaid (Title XIX), which were intended to clarify when state child welfare agencies could use targeted case management to provide certain services for children in foster care.

## **2006**

*The Safe and Timely Interstate Placement Act of 2006 (P.L. 109-239)* established a federal 60-day deadline for completing an interstate home study and a 14-day deadline for the state that requests this study to act on that information. P.L. 109-239 also

authorized \$10 million in each of FY2007 through FY2010 for incentive payments to states for every interstate home study completed in 30 days and it repealed the authority to make these incentive awards effective with the first day of FY2011. (No funds were appropriated under this authority and it is now repealed.)

Further, P.L. 109-239 prohibited states from restricting the ability of a state agency to contract with a private agency to conduct interstate home studies, and, for children in foster care who will not be reunited with their parents, the law encouraged (or in some cases requires) identification and consideration of both in-state and out-of-state placement options as part of mandatory case planning and review procedures. Separately, P.L. 109-239 required courts, as a condition of receiving certain Court Improvement Program funding, to notify any foster parent, pre-adoptive parent, or relative caregiver of a foster child of any proceedings to be held regarding the child; strengthened language requiring the child welfare agency to maintain and update a complete health and education record for each child in foster care; and required that youth leaving foster care custody because they have reached the age of majority must be given a free copy of their health and education record.

The *Adam Walsh Child Protection and Safety Act of 2006* (P.L. 109-248) required states to include fingerprint-based FBI checks as part of their criminal background checks of prospective foster and adoptive parents; eliminated the ability of additional states to opt out of the federal background checks as of September 30, 2005; required prior opt out states to comply with all federal background check procedures as of October 1, 2008; and additionally required all states to check child abuse and neglect registries for information about prospective foster or adoptive parents or any adult living in their home. (Separately, P.L. 109-248 requires HHS, in consultation with the Justice Department, to establish a national registry of substantiated cases of child abuse and neglect.)

The *Child and Family Services Improvement Act of 2006* (P.L. 109-288) replaced the permanent funding authority for the Child Welfare Services program with a five-year authority that coincides with the funding authority for the Promoting Safe and Stable Families program, and required states to establish standards that ensure children in foster care have a well-planned visit with their caseworker at least once a month; have procedures to maintain child welfare services in the wake of a disaster; and describe in their state plan how they consult with medical professionals to assess the health of and provide medical treatment to children in foster care. The law replaced the definition of “child welfare services” that had been in the law with a new purposes section and limited the use of Child Welfare Services funds, both federal and state/local matching funds, for program administrative purposes to no more than 10 percent and prohibited any use of those federal funds for adoption assistance payments or child care above the amount of federal Child Welfare Services funds spent for those purposes in FY2005. Further, it prohibited the use of both federal and state/local Child Welfare Services funds for foster care maintenance payments above the amount of those funds spent for that purpose in fiscal FY2005.

As part of reauthorizing funding for the PSSF program for FY2007 through FY2011, P.L.

109-288 mandated that states must report on their actual use of funds under Title IV-B and required HHS to annually compile both planned and actual expenditure forms required of states and to submit them to Congress. The law limited administrative spending of state matching dollars under the PSSF program to no more than 10 percent of total program expenditures (prior law providing this same restriction for federal program funds was retained as well). It also set-aside a part of the mandatory Promoting Safe and Stable Families program funding to provide targeted support to states for monthly caseworker visits (\$95 million, across FY2006 through FY2011) and to fund competitive grants to “regional partnerships” for activities that improve the outcomes for children affected by their parent/caretaker’s methamphetamine or other substance abuse (\$145 million across FY2007 through FY2011). Separately, the law increased the annual funding set-aside for tribal child and family services under the Promoting Safe and Stable Families program. The law also reauthorized the Mentoring Children of Prisoners program and authorized HHS to fund a demonstration of the effectiveness of vouchers as a way to improve the delivery of (and access to) mentoring services for children of prisoners. Finally, P.L. 109-288 amended the Title IV-E case review procedures to require that the court (or court-approved administrative body) conducting a required permanency hearing for a child in foster care consult with the child in an “age-appropriate manner” regarding the permanency plan.

The *Tax Relief and Health Care Act of 2006 (P.L. 109-432)* exempted all foster children – without regard to Title IV-E eligibility – from otherwise applicable requirements that individuals submit certain forms documenting their citizenship or nationality in order to be eligible for Medicaid. (The documentation requirements were created by the DRA (P.L. 109-171), and the amendment made by P.L. 109-432 was made effective as if it had been included in that earlier law.) P.L. 109-432 also amended Title IV-E to require states to have procedures for verifying the citizenship or immigration status of each child in foster care, whether or not the state claims Title IV-E support for the child, and it required that state compliance with this new federal requirement be checked as part of child welfare conformity reviews.

## **2007**

In the 110th Congress, *P.L. 110-275* amended Title IV-E to fix at 70 percent the federal reimbursement rate (FMAP) applicable to the District of Columbia for purposes of payments made under the Title IV-E program.

## **2008**

The 110th Congress approved an omnibus child welfare bill, the *Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)* that includes the most far-reaching changes to federal child welfare financing since the 1980 creation of Title IV-E. Among the changes in federal financing of child welfare programs, P.L. 110-351 permits states to claim federal reimbursement under Title IV-E for the cost of providing kinship guardianship assistance payments to eligible children who leave foster care for placement in legal guardianship with a relative who has been their foster parent; as of FY2010 it permits eligible tribal entities to seek direct federal reimbursement under Title IV-E, as well as direct tribal access of Chafee Foster Care Independence Program funds;

beginning with FY2010 it provides permanent annual funding of \$3 million for grants to tribes seeking to implement a tribal Title IV-E program and for technical assistance to tribes and states related to meeting requirements for cooperating to better serve Indian children; as of FY2011, defines “child” for purposes of Title IV-E and Title IV-B in a manner that will effectively permit states to continue providing federal foster care maintenance payments to otherwise eligible youth who remain in foster care up to their 21st birthday (provided they are in school, working, or engaged in an activity to remove barriers to employment or, are unable to do any of those things due to a documented medical condition); will phase in (FY2010 through FY2018) expanded eligibility for federal Title IV-E adoption assistance by removing certain income tests and other rules linked primarily to the prior law cash welfare program (AFDC); and provides \$15 million annually for Family Connection grants (FY2009 through FY2013). Finally, with regard to financing and Title IV-E eligibility, P.L. 110-351 redefines “foster care maintenance payment” to include the cost of transporting a child to his/her “school of origin” and it permits states to claim federal support for foster care maintenance payments made on behalf of youth age 18 or older who are placed in supervised independent living situations, subject to HHS regulations.

P.L. 110-351 also requires states to work with appropriate education agencies to ensure education stability for children entering and in foster care and to coordinate efforts between the state child welfare agency and the state Medicaid agency to create a plan to ensure health and mental health care for children in foster care; also requires states to assure that any child receiving Title IV-E assistance (kinship guardianship, foster care maintenance or adoption assistance) is enrolled in school, if age appropriate, or has completed high school; requires states to locate and provide notification to relatives when a child enters, or is about to enter, foster care; requires states to ensure siblings are placed in the same kinship guardianship, foster care, or adoption placement unless this is not in the interest of one of the siblings; and authorizes more direct access to federal Parent Locator Services for state child welfare agencies.

## **2009**

States are generally entitled to claim federal reimbursement for the cost of making Title IV-E foster care maintenance, adoption assistance, and kinship guardianship assistance at their federal medical assistance percentage (FMAP). State FMAPs are recalculated annually and may range from a low of 50% in states with highest per capita income (relative to the nation as a whole) to as high as 83% in states with lowest per capita income. The *American Recovery and Reinvestment Act (ARRA, P.L. 111-5)* temporarily increased the federal matching rate for Title IV-E foster care maintenance, adoption assistance, and kinship guardianship assistance payments. The law provided a general 6.2 percentage point increase in each state’s FMAP that applied from October 1, 2008 through December 2010. Further, it ensured that no state had a lower calculated FMAP (before application of the general increase) than it had in FY2008 or any subsequent year during the temporary increase period. To be eligible for the increased FMAP (for both the Title IV-E and Medicaid programs) states were required to maintain their Medicaid eligibility standards, methodologies, and procedures as they were in effect on July 1, 2008, and they were not permitted to require local governments to pay a larger part of the

state's non-federal Medicaid program costs than otherwise would have been required on September 30, 2008.

## 2010

In August 2010, Congress passed the popularly titled *Education Jobs and Medicaid* bill which was enacted as *P.L. 111-226*. That law amended ARRA to extend the temporary enhanced FMAP reimbursement, for 6 months, but at phased down levels. Specifically, it authorized a general 3.2 percentage point increase to a state's FMAP for the first three months of calendar year 2011 (i.e., the second quarter of FY2011) and 1.2 percentage points for the second three months of that calendar year. As with ARRA, the general percentage point increase was applied to a state's highest regularly calculated FMAP for any preceding year, beginning with FY2008. Further, ARRA conditions for receipt of this enhanced funding (described above) continued to apply and states were additionally required to submit a notice to HHS indicating that they would seek this enhanced funding. The level of federal participation in the Title IV-E program returned to its regular reimbursement rates beginning on July 1, 2011.

The *Patient Protection and Affordable Care Act (P.L. 111-148)* amended programs under Title IV-B and Title IV-E to ensure that youth who have aged out of care (and who are receiving services or supports) and those who are aging out of foster care have information and education about having a health care power of attorney or health care proxy and that they are provided the option to execute a document providing for this. Specifically, for any youth who is aging out of foster care, the required transition planning is amended to stipulate that youth must be informed about a health care power of attorney or health care proxy and must be given the opportunity to execute a document to assign health care decision-making. Further, as part of their Chafee Foster Care Independence Program, states must certify that any youth participating in the program (whether still in care or already aged out of care) must be educated about -- health care power of attorney, health care proxy, or an other similar document; whether such document is recognized under state law; and how to execute such a document (if the youth chooses). Finally, as part of the health care oversight plan required under the Stephanie Tubbs Jones Child Welfare Services plan, states must outline steps they will take to ensure that the health care-related transition planning provisions are carried out, including, 1) informing youth about their health insurance options; 2) informing youth about health care power of attorney, health care proxy, or other similar document; and 3) giving youth the option to execute a health care power of attorney or similar document.

The health care law (P.L. 111-248) also amended Medicaid to provide categorical eligibility for all youth under the age of 26 who have emancipated from foster care at age 18 (or whatever older age – up to age 21 – the state uses to define “child” under its Title IV-E program).

Further, P.L. 111-248, as amended by the *Health Care and Education Reconciliation Act (P.L. 111-252)* raised the federal medical assistance percentage (FMAP) for territories to 55% (from 50%) effective as of July 1, 2011. This change was made in the Medicaid part of the statute, but is applicable to the Title IV-E program as well.

## 2011

The *Continuing Appropriations Act, 2011 (P.L. 111-242)* amended the Promoting Safe and Stable Families Program to raise the mandatory funding authorization for the overall program to \$365 million for FY2011 (a \$20 million increase from previous year). That law also fixed at \$30 million, the permanent annual set-aside of mandatory Safe and Stable funds for the Court Improvement Program. (This represented a \$20 million increase from previous permanent and annual mandatory set-aside of \$10 million established as of FY1996, by P.L. 103-66.)

Enacted on September 30, 2011, the *Child and Family Services Improvement and Innovation Act (P.L. 112-34)* extended (FY2012-FY2016) the annual funding authorization for the Stephanie Tubbs Jones Child Welfare Services Program at \$325 million; and it authorized total annual funding authorized for the Promoting Safe and Stable Families Program for those same five years at \$545 million (\$345 million mandatory basis and \$200 million discretionary).

P.L. 112-34 also added new requirements to the Stephanie Tubbs Jones Child Welfare Services state plan and amended the health oversight plan requirement previously included in that plan. States are newly required to describe activities they take on behalf of children they serve who are under five years of age to 1) reduce the amount of time they are without a permanent family; and 2) address their developmental needs. Further, they are required to describe what sources are used to compile information on child deaths due to maltreatment (for purposes of reporting these data to HHS); and, if applicable, to describe why certain sources of information are not used (i.e., information from the state vital statistics department, child death review teams, law enforcement agencies or offices of medical examiners); and how the information will be included. Further, the previously existing requirement for a health oversight plan for children in foster care was amended to require state child welfare agencies to outline in this plan how they will monitor and treat trauma children experience because of abuse or neglect, or because of removal from their homes (and which is identified through screenings for health needs); and further to require states to include protocols for appropriate use and monitoring of psychotropic medication (as part of their more general oversight of prescription medications).

The *Child and Family Services Improvement and Innovation Act* extends the requirement (enacted in 2006) that a state must provide more of its own (non-federal) funds to receive its full allotment of Child Welfare Services program funds if it fails to conduct monthly caseworker visits. However, it adjusts how data are used to measure a state's compliance with this requirement and provides that every state must complete no less than 90% of its required monthly caseworker visits.

The *Child and Family Services Improvement and Innovation Act* also amended the state plan requirements for the Promoting Safe and Stable Families Program to require states to describe how they identify populations at greatest risk of maltreatment and how

services are targeted to them. Additionally the definition of “family support services” under the program was amended to specify mentoring (as a means to enhancing child development) and the definition of “time-limited family reunification services” was amended to include peer-to-peer mentoring and support groups for parents and primary caregivers and activities to aid parents and siblings in visiting children in foster care.

In addition, P.L. 112-34 extended authorization for the Court Improvement Program, adding a purpose related to improving court engagement with families, with annual mandatory funding continued at \$30 million (reserved out of mandatory Safe and Stable funds) plus 3.3% of any discretionary funding provided for the Safe and Stable Program. The 2011 law also authorized continued mandatory funding (reserved out of the mandatory funds provided for the Safe and Stable Program) for regional partnership grants to improve outcomes for children affected by parental substance abuse (special emphasis on methamphetamine abuse was removed) (\$20 million for each of FY2012-FY2016) and for grants related to monthly caseworker visits of children in foster care (use of grant funds changed to stress improved caseworker visits and planning rather than to permit workers to “access benefits of technology”) (\$20 million for each of FY2012-FY2016).

The 2011 law (P.L. 112-34) also requires HHS, with the Office of Management and Budget (OMB) in consultation with states, to issue regulations on standard data elements and standard data reporting requirements for any category of information to be reported under Title IV-B. (These requirements are placed in a new Subpart 3 of Title IV-B.)

Finally, the *Child and Family Services Improvement and Innovation Act* also renewed authority (FY2012-FY2014) for HHS to grant waivers of certain requirements under Title IV-E or Title IV-B so that as many as ten states annually may demonstrate alternative ways to achieve federal child welfare policy goals. However, states newly seeking the ability to operate a waiver project must implement no less than two of 10 specific child welfare improvement policies (no less than one of which must be implemented after application for the waiver). HHS may not give greater approval consideration to proposed projects that plan to use random assignment as part of their evaluation procedures. All waiver projects, whether initiated before or after enactment of P.L. 112-34, must cease to operate no later than September 30, 2019.