

CRS Report for Congress

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Adoption Promotion Legislation in the 105th Congress

Karen Spar
Education and Public Welfare Division

Summary

President Clinton signed the Adoption and Safe Families Act into law on November 19, 1997, after the House and Senate approved final versions of the legislation on November 13. The new law (P.L. 105-89) is intended to promote adoption or other permanent arrangements for foster children who are unable to return home, and to make general improvements in the nation's child welfare system. The legislation responds to concerns that children are remaining in foster care unnecessarily long, that their adoption rate is low, and that additional safeguards are needed to ensure their safety. The House initially passed legislation (H.R. 867) on April 30 by a vote of 416-5, and the Senate passed an amended version on November 8. A compromise version was passed on November 13, by a vote of 406-7 in the House and by unanimous consent in the Senate. This report discusses the final version of the legislation, as enacted into law.

Background

More than half a million children are currently in foster care. Although the number of foster children has almost doubled since the mid-1980s, the number of these children who are adopted each year has remained at approximately 20,000 throughout this period. Most children who enter foster care eventually return to their families, but concern has developed in recent years about the growing number of children who cannot return home. This concern prompted the 105th Congress to consider legislation with two primary goals: (1) to ensure that consideration of children's safety is paramount in child welfare decisions, so that children are not returned to unsafe homes; and (2) to ensure that necessary legal procedures occur expeditiously, so that children may be placed for adoption or another permanent arrangement quickly and do not linger in foster care.

In December 1996, President Clinton directed the Department of Health and Human Services (HHS) to develop recommendations to double the number of foster child adoptions by 2002. HHS released its report, *Adoption 2002*, on February 14, 1997 (<http://www.acf.dhhs.gov/programs/cb/special/adoption.htm>). Meanwhile, related proposals were being developed in Congress. On April 30, the House passed the Adoption Promotion Act (H.R. 867) by a vote of 416-5, and a bipartisan group of

Senators introduced the Safe Adoptions and Family Environments (SAFE) Act in March (S. 511). The SAFE Act was superseded by another bipartisan package that was introduced in the Senate on September 18, called the Promotion of Adoption, Safety, and Support for Abused and Neglected Children (PASS) Act (S. 1195). The PASS Act, with some changes from the introduced version, was approved by the full Senate on November 8, as a substitute for the House-passed version of H.R. 867. Differences between the House and Senate were resolved, and a final, amended version of H.R. 867 — renamed the Adoption and Safe Families Act of 1997 — was passed on November 13 by a vote of 406-7 in the House and by unanimous consent in the Senate. President Clinton signed the bill into law on November 19, 1997 (P.L. 105-89).

Most provisions in the new law amend Titles IV-B and IV-E of the Social Security Act, which authorize grants to states for child welfare activities, including foster care and adoption assistance. To receive federal funds (almost \$5 billion in FY1998), states must comply with requirements designed to ensure that services are provided to the families of children who are at risk, so that children can remain safely with their families or return home after they have been placed in foster care. States also must conduct administrative and court hearings on every child's case according to a prescribed timetable, and establish a permanent placement plan for each child.

Title IV-B and IV-E were enacted in their current form in 1980 (P.L. 96-272). However, concern has developed in recent years that some states and judges have interpreted the federal law as requiring family preservation and reunification at all costs, including in cases where the child's health or safety was in jeopardy. The new law is intended to clarify federal policy to ensure safety for all children who come into contact with the child welfare system, to expedite permanency for foster children, and to promote adoption for those children who cannot safely return home.

The Adoption and Safe Families Act establishes significant new procedural requirements to promote safety and expedite permanency, which the Congressional Budget Office (CBO) has estimated will save federal money by shortening the time that some children spend in foster care. At the same time, the new law also contains some spending provisions. These include financial incentive payments to states that increase their numbers of adoptions from foster care; a requirement that states provide health insurance coverage to special needs adopted children who are not eligible for federal subsidies; a provision that continues eligibility for federal subsidies to special needs children whose adoptions are disrupted; and a reauthorization and expansion of the family preservation program under Title IV-B. CBO has estimated the net cost of P.L. 105-89 at \$40 million over a 5-year period. To offset these costs, the law reduces spending for the contingency fund under the Temporary Assistance for Needy Families (TANF) block grant.

Child Safety and “Reasonable Efforts” to Preserve Families

The Adoption and Safe Families Act requires that a child's health and safety be of “paramount” concern in any efforts made by the state to preserve or reunify the child's family. States continue to be required to make “reasonable efforts” to avoid the need to place children in foster care, and to return them home if they are removed, but the new law establishes exceptions to this requirement. Specifically, states are not required to make efforts to preserve or reunify a family if a court finds that a parent had killed another

of their children, or committed felony assault against the child or a sibling, or if their parental rights to another child had previously been involuntarily terminated.

In addition, the new law establishes that efforts to preserve or reunify a family are not required if the court finds that a parent had subjected the child to “aggravated circumstances.” Each state will define these circumstances in state law, although the Adoption and Safe Families Act cites abandonment, torture, chronic abuse, and sexual abuse as examples. Moreover, the new law does not preclude individual judges from using their discretion to protect a child’s health and safety in any case, regardless of whether the specific circumstances are cited in federal law.

To further promote safety, the new law adds references to child safety in various sections of Titles IV-B and IV-E. The legislation also requires that states conduct criminal background checks for all prospective foster or adoptive parents, and deny approval to anyone who has ever been convicted of felony child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a violent crime including rape, sexual assault, or homicide. In addition, states must deny approval to anyone with a felony conviction for physical assault, battery, or a drug-related offense, if the felony occurred within the past five years. States may opt out of the criminal record check requirement either through a letter from the Governor to the Secretary of Health and Human Services (HHS), or through legislation enacted by the state legislature.

Finally, the new law requires states to develop standards to ensure quality services that protect the health and safety of children in foster care with public and private agencies. These standards are in addition to licensing requirements already established under Title IV-E.

“Reasonable Efforts” to Promote Adoption

If efforts to preserve or reunify a family are not required because the court has found that an exception to this requirement exists, as described above, the Adoption and Safe Families Act requires that a permanency hearing (formerly called “dispositional” hearing) be held for the child within 30 days of that court finding. In these cases, or whenever a child’s permanency plan is adoption or another alternative to family reunification, the new law requires states to make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, which may include placement for adoption, with a guardian, or in another planned, permanent arrangement. States also must document specific efforts made to place the child for adoption. These provisions are intended to shorten the length of time that children spend in foster care, once a court has determined that family reunification is not feasible or likely.

The new law also specifies that efforts to preserve or reunify a family can be made concurrently with efforts to place the child for adoption or guardianship. This practice is referred to as “concurrent planning” and allows states to develop a back-up plan, to save time in case efforts to restore the original family are unsuccessful.

The Adoption and Safe Families Act also contains provisions intended to eliminate interjurisdictional issues as a potential barrier to a child’s adoption. First, the new law requires states to assure in their Title IV-B plans that they will make effective use of cross-jurisdictional resources to facilitate timely adoptions for waiting children. The law

also denies federal foster care and adoption assistance funding to any state that is found to have denied or delayed a child's adoptive placement if an approved family is available outside the child's jurisdiction, or has denied a fair hearing to anyone who alleges a violation of this provision. In addition, the Adoption and Safe Families Act directs the General Accounting Office (GAO) to conduct a study of interjurisdictional adoption issues, including the implementation of the Interstate Compact on the Placement of Children, and to report findings to Congress within a year.

Permanency Hearings and Termination of Parental Rights

Prior to enactment of the Adoption and Safe Families Act, federal law required that every foster child must have a judicial hearing, known as a "dispositional" hearing, within 18 months of their placement in care to determine their future status. The new law requires this hearing to occur within 12 months of placement, and changes the name to "permanency" hearing. The law revises the list of permanency goals (which had included long-term foster care) to include returning home, referral for adoption and termination of parental rights, guardianship, placement with a relative, or, as a last resort, another planned, permanent living arrangement. P.L. 105-89 also requires that foster parents, preadoptive parents, and relative caregivers be given notice and an opportunity to be heard at reviews and hearings.

One of the most significant provisions of the new law requires states to initiate proceedings to terminate parental rights (TPR) for certain foster children; there was no comparable provision in prior law. Specifically, P.L. 105-89 requires states to initiate TPR proceedings for children who have been in foster care for 15 of the most recent 22 months, or for infants determined under state law to be abandoned, or in any case where the court has found that a parent has killed another of their children or committed felony assault against the child or a sibling. States can opt *not* to initiate such proceedings if the child is in a relative's care, or if the state agency has documented in the child's case plan a compelling reason to determine that TPR would not be in the child's best interest, or if the state had not provided necessary services to the family.

For children entering foster care after the new law's date of enactment, states must comply with this provision no later than three months after the end of their first legislative session that begins after the date of enactment. For children who already were in care on the date of enactment, states may phase in compliance but must be in compliance for all children by no later than 18 months after the end of the legislative session. For purposes of the TPR provision and the 12-month permanency hearing, children will be considered to have entered foster care on the first date that the court finds they have been subjected to child abuse or neglect, or 60 days after their removal from home, whichever occurs first.

Adoption Incentive Payments

The Adoption and Safe Families Act intends to promote adoption by providing incentive payments to states to increase their number of foster child adoptions, with additional incentives for the adoption of foster children with special needs. As in the existing adoption assistance program, which provides ongoing subsidies to adoptive parents of special needs children, the definition of special needs is determined by each

state, and may include age, ethnic group, or membership in a sibling group, in addition to disability or a medical condition that makes a child difficult to place for adoption. This adoption incentive provision was a key recommendation in the Administration's *Adoption 2002*. Incentive payments will equal \$4,000 for each foster child whose adoption is finalized (over a certain base level) and \$6,000 for each special needs adoption above the base level. The new law authorizes \$20 million annually for these incentive payments, for FY1999 through FY2003. In addition, discretionary budget caps are adjusted to help ensure that these funds will actually be appropriated.

The new legislation also authorizes HHS to provide technical assistance to help states increase their number of foster child adoptions, and authorizes appropriations of \$10 million annually for each of FY1998-FY2000. HHS must use half of the funds that are appropriated to provide technical assistance to the courts.

Eligibility for Adoption and Medical Assistance

Under Title IV-E, states may receive open-ended federal entitlement funds for part of the costs of operating adoption assistance programs for special needs children. Under these programs, parents who adopt children with special needs may receive monthly adoption subsidies through agreements with their state. The federal government helps states with part of these costs, but only for children who meet certain eligibility requirements; specifically, children whose biological parents would have been eligible for the former Aid to Families with Dependent Children (AFDC) program, or who are eligible for Supplemental Security Income (SSI). Adoptive parents of children with special needs who do not meet these criteria may receive subsidies through state-funded programs.

Children who are eligible for federal adoption assistance are automatically eligible for Medicaid. However, states are not required (although they have the option) to provide Medicaid coverage to special needs adopted children who do not meet the AFDC or SSI eligibility criteria for federal adoption subsidies. The Adoption and Safe Families Act requires states to provide health insurance coverage to these children, if they have special needs for medical, mental health, or rehabilitative care. This health coverage may be through Medicaid or another program, as long as benefits are comparable. In addition, to be eligible for adoption incentive payments (described above) in FY2000 or FY2001, states must provide health coverage to any special needs child whose adoptive parents have entered into an adoption assistance agreement with any state. States also must comply with this provision to be eligible for a waiver demonstration (described below).

The Adoption and Safe Families Act also contains a provision intended to ensure that children who had once been eligible for federally subsidized adoption assistance will continue to be eligible in a subsequent adoption, if their initial adoption is disrupted or their adoptive parents die, regardless of whether they would have qualified for AFDC or SSI based on the income and assets of their first adoptive family.

Reauthorization and Renaming of Family Preservation Program

The new law reauthorizes and changes the name of the existing family preservation program, which is a capped entitlement under subpart 2 of Title IV-B and was scheduled

to expire at the end of FY1998. Under the new law, the program is renamed Promoting Safe and Stable Families. This program was funded at \$240 million in FY1997 and \$255 million in FY1998, and is reauthorized under P.L. 105-89 at: \$275 million in FY1999; \$295 million in FY2000; and \$305 million in FY2001. Prior law required states to devote significant expenditures to each of two types of services: family preservation; and community-based family support. The Adoption and Safe Families Act adds two more categories: time-limited family reunification services provided during the 15-month period after a child is removed from home; and adoption promotion and support services.

State Accountability for Performance

The Adoption and Safe Families Act also aims to increase the accountability of states for the performance of their child welfare programs. The legislation requires HHS, in consultation with public officials and child welfare advocates, to develop outcome measures in various categories (i.e., number of foster care placements and adoptions, length of stay in foster care), and to rate state performance according to these measures in an annual report. The first annual report is due by May 1, 1999.

In addition, the new law directs HHS to conduct a study and develop recommendations for a performance-based financial incentive system under Titles IV-B and IV-E. To the extent feasible, this system will be based on the annual performance report described above. HHS must submit a progress report to Congress within 6 months of the new law's enactment, and a final report within 15 months.

State Innovation and Demonstration

Under legislation enacted in 1994, HHS is authorized to approve up to 10 states to receive waivers from Title IV-B and IV-E rules in order to conduct demonstration projects. The Adoption and Safe Families Act allows HHS to approve an additional 10 demonstrations in each of FYs 1998 through 2002. Federal law does not mandate specific goals for these demonstrations. However, the new law directs the Secretary to give consideration to any applications received with the following purposes: (1) to identify and address barriers to adoption for foster children; (2) to identify and address parental substance abuse problems that result in foster care placement for children, including through placement of children together with their parents in appropriate residential treatment facilities; and (3) to address kinship care.

Kinship Care

The Adoption and Safe Families Act also requires HHS to submit a report to Congress by June 1, 1999, on the issue of kinship care, including recommendations for policy in this area. This report will be developed with the assistance of an advisory panel, which the Secretary must convene by June 1, 1998.

Additional Provisions

Additional provisions in P.L. 105-89: give child welfare agencies access to the Federal Parent Locator Service; clarify eligibility for the independent living program; establish a sense of Congress in favor of standby guardianship laws; and make a statement of intent about "reasonable" parenting. Unless specified otherwise, the new law takes

effect upon enactment, except that, where enactment of new state laws is required, states have until three months after their first legislative session to comply.