



## **FEDERAL LAW PERTAINING TO ADOPTION**

### **CONTENTS**

This unit presents the 1997 Adoption and Safe Families Act which defines current child welfare policy and federal adoption law. The section includes:

- 1) An historical overview of child welfare legislation;
- 2) A summary of the Adoption and Safe Families Act provided by the Child Welfare League of America;
- 3) A copy of the actual Adoption and Safe Families Act.

### **CHILD WELFARE LAW-- HISTORICAL CONTEXT**

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The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually, and socially in a healthy and natural manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration. (Principle 2 - United Nations Declaration of the Rights of the Child, 1960)

During the 1970's a growing number of child welfare advocates, mental health practitioners, social workers, foster parents, adoptive parents, and countless others took up the cause of fixing the child welfare system. Their efforts gained the attention of the United States Congress and culminated in passage of Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980.

The theme of avoiding unnecessary delay in reaching a permanent placement for children in foster care runs throughout P.L. 96-272. Among the problems Congress intended to Act to address were:

- failure to provide case plans or periodic reviews for foster children, causing foster care to be unnecessarily prolonged;
- imposition of unnecessary barriers to adoption for children unable to return home, including financial disincentives and inappropriate classification of certain children as unadoptable"; and
- failure to collect information about the children in foster care (who they are, where they are, how long they have been there, or whether there exists a plan for permanent placement), making it difficult to monitor the progress of individual children and to evaluate progress in the entire system. (Allen, et al, p. 576)

P.L. 96-272 created enforceable substantive rights with certain procedural guarantees

for foster children. Congress intended P.L. 96-272 to prod states into ending foster care drift, stating in part:

...(6) there will be a written individualized case plan for each child placed in foster care, and a system of case review that assures that each child receives a case review at least every six months; (7) that there be a dispositional hearing by a court or court appointed administrative body within eighteen months of the child's placement; and (8) that a fair hearing be provided for any parent, foster parent, guardian or child who believes he or she has been aggrieved by any governmental action taken under this section." (House Committee on Ways and Means, Social Services and Child Welfare Amendments of 1979).

In addition to requiring periodic review aimed at lessening foster care drift, P.L. 96-272 actively promotes permanence for children in foster care. Fiscal incentives are provided to states to find adoptive homes for children when return to the biological parents is not an option. Further, every state is required to establish a program of adoption subsidies and adoption services, and federal matching funds are provided for state expenditures for adoption programs. Although reunification with the biological parent(s) is the primary initial objective, early case planning must also consider adoption as an alternative from the very beginning. Congress was clearly concerned about expediting permanency. P.L. 96-272's Foster Care and Adoption Assistance Program represents a fundamental shift in emphasis at the federal level from viewing the prospective adoptive parents as the primary beneficiaries of adoption services to seeing the child as the beneficiary of adoption services. (Cole, p. 473).

Finally, P.L. 96-272 recognizes continuity of care as being in the child's best interest. Early studies showed many children could be adopted by their current foster parents but for the loss of foster care payments. Congress intended the subsidized adoption program to be utilized for these children to encourage adoption by the foster care parents: "...an effort must be made to find adoptive parents who do not need assistance **unless it would be against the child's best interests** because there are already prospective adoptive parents with whom the child has close emotional ties, and who could adopt with assistance." [emphasis added, Official Summary, P.L. 96-272 (1980)].

This point cannot be overemphasized for local caseworkers, social workers and child advocates: the federal welfare guidelines mandate that for states to receive adoption subsidy matching funds, **the best interests of the child** take precedence. Further, permanence and continuity of care are explicitly cited as examples of a child's best interests.

In keeping with the spirit of P.L. 96-272, Wisconsin, like Kansas, has given foster parents a significant voice. Permanence was the clear intent of the Wisconsin and Kansas legislators when they guaranteed foster parents the following rights (among others) before removal of the child could take place.

If a child has been in a foster home for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child shall not be removed before the completion of a hearing...with the head of home guaranteed these due process rights

- notice
- right to be represented
- review all documents in advance

- confront and cross examine witnesses
- establish positive facts
- refute testimony or evidence

[Wisconsin statutes Annotated 48.64. Also see Kansas statutes Annotated 38-1566]

P.L. 96-272 has been the impetus for states to address the most glaring weaknesses in their foster care/adoption policies. Nevertheless more reform is needed. The Adoption and Safe Families Act of 1997 (ASFA) starts where P.L. 96-272 leaves off by providing states with a model which more clearly articulates the best interest of the child. States must now follow a new primary goal: **to expedite permanence in a child's life**. This is in contrast to the old goal under P.L. 96-272 which essentially mandated efforts at reunification with the birth parent(s) at all costs. One way the ASFA intends to expedite permanence for children in foster care is by directing federal funds for states to create model plans which emphasize the goal of permanence. Twenty million dollars per year have been allocated for the states to:

...support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

- (A) The development of best practice guidelines for expediting termination of parental rights.
- (B) Models to encourage the use of concurrent planning.
- (C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.
- (D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.
- (E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.
- (F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

## **SUMMARY OF THE ADOPTION AND SAFE FAMILIES ACT OF 1997 (P.L. 105-89)**

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On November 19, 1997, the President signed into law (P.L. 105-89) the Adoption and Safe Families Act of 1997, to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. This new law makes changes and clarifications in a wide range of policies established under the Adoption Assistance and Child Welfare Act (P.L. 96-272), the major federal law enacted in 1980 to assist the states in protecting and caring for abused and neglected children. The new law:

- **Continues and Expands the Family Preservation and Support Services Program.** The Family Preservation and Support Services Program, renamed the Promoting Safe and Stable Families Program, is reauthorized through FY 2001 at the following levels: FY 1999 at \$275 million; FY 2000 at \$295 million; and FY 2001 at \$305 million. The set-asides are

maintained for the Court Improvement Program, evaluation, research, training, technical assistance, and Indian tribes. State plans are now also required to contain assurances that in administering and conducting service programs, the safety of the children to be served will be of paramount concern.

The new law further clarifies that for the purposes of the maintenance of effort requirement in the program, “non-federal funds” may be defined as either state or state and local funds. This change is made retroactive to the enactment of the Family Preservation and Support Services Program (P.L. 103-66) on August 10, 1993.

In addition to the funds to prevent child abuse and neglect and to assist families in crisis, the program’s funds specifically include time-limited reunification services such as counseling, substance abuse treatment services, mental health services, assistance for domestic violence, temporary child care and crisis nurseries, and transportation to and from these services. Adoption promotion and support services are also included and are defined as pre- and post-adoptive services and activities designed to expedite the adoption process and support families.

- **Continues Eligibility for the Federal Title IV-E Adoption Assistance Subsidy to Children Whose Adoption is Disrupted.** Any child who was receiving a federal adoption subsidy on or after October 1, 1997, shall continue to remain eligible for the subsidy if the adoption is disrupted or if the adoptive parents die.
- **Addresses Geographic Barriers to Adoption.** States are required to assure that the state will develop plans for the effective use of cross-jurisdictional resources to facilitate timely permanent placements for children awaiting adoption. The state’s Title IV-E foster care and adoption assistance funding is conditioned on the state not denying or delaying a child’s adoptive placement, when an approved family is available outside of the jurisdiction with responsibility for the child. Funding is also conditioned upon the state granting opportunities for fair hearings for allegations of violations of the requirements. The U.S. General Accounting Office must study and report to Congress on how to improve procedures and policies to facilitate timely adoptions across state and county lines.
- **Establishes Kinship Care Advisory Panel.** HHS is required to prepare and submit, by June 1, 1999, a report for Congress on the extent of the placement of children in foster care with relatives and to convene an advisory panel on kinship care to review and comment on the report before it is submitted.
- **Issues Sense of Congress on Standby Guardianship.** It is the Sense of Congress that states should have laws and procedures to permit a parent who is chronically ill or near death to designate a standby guardian for their child, without surrendering their own parental rights. The standby guardian’s authority would take effect upon the parent’s death, mental incapacity, or physical debilitation and consent.

- **Establishes New Time Line and Conditions for Filing Termination of Parental Rights.** Federal law did not require states to initiate termination of parental rights proceedings based on a child's length of stay in foster care. Under the new law, states must file a petition to terminate parental rights and concurrently, identify, recruit, process and approve a qualified adoptive family on behalf of any child, regardless of age, that has been in foster care for *15 out of the most recent 22 months*. A child would be considered as having entered foster care on the earlier of either the date of the first judicial finding of abuse or neglect, or 60 days after the child is removed from the home.

This new requirement applies to children entering foster care in the future and to children already in care. For children already in care, states are required to phase in the filing of termination petitions beginning with children for whom the permanency plan is adoption or who have been in care the longest. One-third must be filed within six months of the end of the state's first legislative session following enactment of this law, two-thirds within 12 months and all of them within 18 months. A state must also file such a petition if a court has determined that an infant has been abandoned (as defined in state law) or if a court has determined that a parent of a child has assaulted the child, or killed or assaulted another one of their children. Exceptions can be made to these requirements if: (1) at the state's option, a child is being cared for by a relative; (2) the state agency documents in the case plan which is available for court review, a compelling reason why filing is not in the best interest of the child; or (3) the state agency has not provided to the child's family, consistent with the time period in the case plan, the services deemed necessary to return the child to a safe home.

- **Directs States to Establish Standards to Ensure Quality Services.** By January 1, 1999, states are required to develop and implement standards to ensure that children in foster care placement in public and private agencies are provided quality services that protect the safety and health of the children.
- **Requires Assessment of State Performance in Protecting Children.** HHS will develop in consultation with governors, state legislatures, state and local public officials and child welfare advocates, a set of outcome measures to be used to assess the performance of states in operating child protection and child welfare programs to ensure the safety of children and a system for rating the performance of states with respect to the outcome measures. HHS must submit an annual report to Congress on state performance including recommendations for improvement. The first report is due May 1, 1999. Outcome measures include length of stay in foster care and number of foster placement adoptions; and, to the extent possible, are to be developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS).
- **Directs Development of Performance-Based Incentive Funding System.** HHS, in consultation with public officials and child welfare advocates, is required to develop and

recommend to Congress a performance-based incentive system for providing payments under Title IV-B and Title IV-E of the Social Security Act by February 1999, and to submit a progress report on the feasibility, timetable and consultation process for conducting such a study by May 1998.

- **Expands Child Welfare Demonstration Waivers.** Under previous law, HHS has authority to approve up to ten child welfare demonstration waivers. Eight states (CA, DE, IL, IN, MD, NC, OH, OR) have received approval to date. This new law authorizes HHS to conduct up to 10 demonstration projects per year from FY 1998 through 2002. Specific types of demonstrations to be considered include: projects designed to identify and address reasons for delay in adoptive placements for foster children; projects designed to address parental substance abuse problems that endanger children and result in placement of a child in foster care; and projects designed to address kinship care. Eligibility for these waivers is not available if a state fails to provide health insurance coverage to any child with special needs for whom there is in effect an adoption assistance agreement.
- **Requires Study on the Coordination of Substance Abuse and Child Protection.** HHS will prepare 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 this population and the outcomes resulting from the provision of such services, including recommendations for legislation needed to improve coordination in providing such services.

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