96-823 EPW
October 11, 1996

Child Abuse and Child Welfare Legislation in the 104th Congress

(name redacted)
Education and Public Welfare Division

Summary

The 104th Congress considered -- and ultimately rejected -- proposals to replace most existing child abuse and child welfare programs with block grants to states. Child welfare block grants had been included in various versions of welfare reform, but were not part of the final legislation signed into law (the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193). Instead, the welfare law made relatively minor amendments to child welfare programs under the Social Security Act, and Congress subsequently passed separate legislation to reauthorize the Child Abuse Prevention and Treatment Act (CAPTA) (P.L. 104-235). This report describes the free-standing CAPTA reauthorization and the child welfare-related provisions in welfare reform. The report also briefly discusses the child welfare block grants that were considered but not enacted.

CAPTA REAUTHORIZATION

During the final days of the 104th Congress, the House and Senate passed legislation to amend and reauthorize the Child Abuse Prevention and Treatment Act through FY2001 (S. 919). President Clinton signed the bill into law on October 3 (P.L. 104-235). This legislation was originally reported by the Senate Labor and Human Resources Committee in June 1995 (S. Rept. 104-117) and passed by the full Senate in July 1996.

Federal Responsibilities. The CAPTA amendments give the Secretary of Health and Human Services (HHS) greater discretion in administering child abuse and neglect programs by repealing the mandatory National Center on Child Abuse and Neglect, and instead *allowing* the Secretary to establish an Office on Child Abuse and Neglect. Likewise, the measure allows, instead of requires, the Secretary to establish an Advisory Board on Child Abuse and Neglect.

P.L. 104-235 creates new requirements with regard to federal data collection, research and demonstration. For example, the National Clearinghouse on Child Abuse and Neglect must collect data on false, unfounded, unsubstantiated and substantiated abuse and

neglect reports, and on deaths due to child abuse or neglect. The Clearinghouse also must collect universal, case-specific data that can be integrated with case-based foster care and adoption data. States receiving CAPTA grants are required to submit annual data to HHS on: reports of abuse or neglect; reports that are substantiated, unsubstantiated, or found to be false; children that receive or do not receive services, or are removed from home; families that receive preventive services; children that die as a result of abuse or neglect, including in foster care; caseworkers responsible for intake and screening; agency response time in investigating reports of abuse or neglect, and in providing services to families after reports of abuse or neglect; caseworkers responsible for intake, assessment and investigation relative to the number of reports investigated; children who are reported for abuse or neglect, or are killed, after being reunited with their families or receiving family preservation services; and children who receive court-appointed advocates. The Secretary must issue an annual report on the data received from states.

The legislation requires HHS to conduct research on: the incidence of substantiated and unsubstantiated abuse and neglect reports; the number of substantiated cases that lead to a judicial finding of abuse or neglect or criminal conviction; the extent to which unsubstantiated or false reports hamper the ability of states to respond to serious cases; the extent to which inadequate resources and training hamper states in responding to serious cases; the number of unsubstantiated, unfounded or false reports that result in a child's placement in substitute care; the extent to which unsubstantiated cases return as more serious cases of abuse or neglect; child abuse and neglect in substitute care; and abuse allegations made in the context of divorce, custody or other family court proceedings.

New demonstrations also are authorized: triage systems for screening and assessing abuse and neglect reports; kinship care using adult relatives as preferred placements for children removed from home (in no more than 10 states); and supervised visitation centers in cases where domestic violence causes ongoing risk to a parent or child.

State Grant Requirements. CAPTA authorizes formula grants to help states support their child protective services systems. To receive these grants, which are awarded on the basis of population under age 18, states have been required to meet certain eligibility provisions and include specified information in their plans. The new law revises and consolidates these requirements into a single state plan, to be submitted to HHS every 5 years. States must inform HHS whenever they make significant changes in their programs.

In their plans, states must certify that they have procedures for reporting known or suspected cases of child abuse or neglect, for investigating such cases, and for taking immediate steps to protect children who might be in danger. The law requires states to provide immunity from prosecution for individuals who make good faith reports of suspected abuse or neglect, and to provide confidentiality of records. States also must have procedures for public disclosure of information about cases of abuse or neglect which result in a child's death or near-death. State plans must provide for cooperation with law enforcement officials, courts, and human service agencies, and must provide for the expungement of records in cases that are found to be false or unsubstantiated. Further, states must appoint a guardian *ad litem*, who may be an attorney or a court-appointed special advocate, to represent children in judicial proceedings.

P.L. 104-235 requires states to establish citizen review panels, composed of volunteer community representatives, to evaluate state and local child protection activities. States must designate at least 3 panels (at least 1 in certain small states), which can include existing entities such as child fatality or foster care review teams. Panels must meet at least 3 times a year and issue annual reports. The panels must assess the effectiveness of state and local programs in accordance with state plan requirements and child protection standards or any other criteria considered important, including the extent to which child protective services are coordinated with foster care and adoption assistance, and may review child deaths or near-deaths. States must provide panels with access to information and staff assistance if requested, although panel members and staff may not disclose any identifying information about individual cases or other unauthorized information.

Within 2 years of enactment of P.L. 104-235, states must have procedures for expedited termination of parental rights in any case of an abandoned infant, and must have procedures for individuals to appeal an official finding of abuse or neglect. Also within 2 years, states must provide that family reunification is not required for a surviving child with a parent who has committed murder or voluntary manslaughter of another of their children, or aided or abetted in such murder or manslaughter, or committed a felony assault that resulted in serious bodily injury to any of their children. States must provide that conviction of any of these felonies will constitute grounds for termination of parental rights under state law.

Finally, state plans must provide procedures for responding to medical neglect; describe services to be provided to prevent the occurrence of child abuse and neglect; describe training that will be provided to agency personnel and mandated reporters of abuse or neglect; and provide that activities funded under Title IV-B of the Social Security Act will comply with CAPTA eligibility requirements.

Community-Based Family Resource and Support. P.L. 104-235 authorizes community-based family resource and support grants under Title II of CAPTA to replace several previous programs, including a similar activity under Title II, family support centers under the McKinney Homeless Assistance Act, and temporary child care and crisis nurseries. Under the new law, federal grants will help establish and operate statewide networks of community-based, prevention-focused, family resource and support programs that coordinate a wide variety of resources within each state.

To receive funds, states must designate a lead entity to oversee the statewide network, which can be an existing public, quasi-public, or private nonprofit agency. States must submit an application to HHS that describes the lead entity, includes an inventory of family resource and support programs in the state and a description of unmet needs, and contains a budget of which at least 20% comes from nonfederal cash resources. Funds are awarded to states according to a two-part formula: 70% based on population under age 18; and 30% based on the amount of nonfederal funds raised by the state for administration by the lead entity, as compared to all other states. Of funds appropriated, 1% is reserved for grants to Indian tribes and tribal organizations and migrant programs.

Local programs in the statewide network must provide certain "core" services directly, such as parent education, outreach, referral and follow-up. Other core services, including respite care, must be provided through contracts or arrangements with other local agencies. Programs must provide access to "optional" services, such as adoption

counseling, child care, services for families with disabled children, referral to job readiness and educational services, self-sufficiency and life management training, community referral services, and peer counseling. Local programs must involve parents in their operations, show leadership in mobilizing other resources, and participate with other grantees of the statewide network.

Authorizations and Appropriations. P.L. 104-235 authorizes $100 million for Title I of CAPTA in FY1997, and such sums as necessary in FY1998-FY2001. Title I authorizes federal discretionary activities, and formula grants to states. Of amounts appropriated for Title I, the new law requires HHS to use 30% for discretionary activities, and the balance for state grants. Of the amount reserved for discretionary activities, the law further requires that no more than 40% be used for demonstration projects. In FY1997 appropriations legislation (P.L. 104-208), Congress has included $21 million for state grants and $14.2 million for discretionary activities under CAPTA.

For community-based family resource and support grants under Title II of CAPTA, P.L. 104-235 authorizes $66 million in FY1997, and such sums as necessary in FY1998-FY2001. Congress has appropriated $32.8 million for this program in FY1997.

Related Programs. In addition to amending and extending CAPTA, P.L. 104-235 reauthorizes the following through FY2001: adoption opportunities ($20 million in FY1997, such sums as necessary for FY1998-FY2001); abandoned infants assistance ($35 million in FY1997, such sums as necessary for FY1998-FY2001); and missing children's assistance (such sums as necessary). The law also authorizes such sums as necessary through FY2000 for children's advocacy centers and grants to improve the quality of criminal prosecutions in child abuse cases, under the Victims of Child Abuse Act. Finally, the new law contains several amendments to the family violence program.

FY1997 appropriations for these related programs are: adoption opportunities -- $13 million; abandoned infants -- $12.3 million; missing children's assistance -- $6 million; children's advocacy centers -- $2.5 million; grants to improve prosecutions -- $2 million; and family violence -- $62 million.

CHILD WELFARE AMENDMENTS

The following amendments to child welfare, foster care and adoption assistance programs under Title IV-B and IV-E of the Social Security Act were included in the final version of welfare reform legislation that was signed by President Clinton on August 22, 1996 (P.L. 104-193).

Foster Care Eligibility. Before enactment of the new law, states could be reimbursed under Title IV-E for the costs of foster care or adoption assistance on behalf of children whose biological families were eligible for Aid to Families with Dependent Children (AFDC) (or, in the case of adoption assistance, children who were eligible for Supplemental Security Income). However, the central feature of the new welfare law replaces AFDC with a state-administered block grant; thus, foster care eligibility criteria had to be adjusted to conform to this change. Under P.L. 104-193, foster or adoptive children will be eligible for Title IV-E subsidies if their families *would have been* eligible for AFDC, as in effect in the state on June 1, 1995. This provision takes effect on July 1, 1997. Children eligible for SSI will continue to be eligible for adoption assistance,

although the new welfare law also amends SSI eligibility criteria for children. Foster children and children receiving adoption assistance will remain eligible for Medicaid.

For-Profit Foster Care Providers. Under Title IV-E, federal reimbursement has been available for foster care provided by foster families, or public or private nonprofit institutions. Private for-profit providers have never been eligible for federal reimbursement under Title IV-E. The new law amends Title IV-E, effective upon enactment, to allow for-profit providers to participate. The conference agreement on the legislation (H.Rept. 104-725) notes that "states are responsible for ensuring that children are in safe and reliable care whether it is provided by public or private entities" and that there is no reason to "automatically refuse participation by an entire sector of the child caring community."

Enhanced Match for Data Collection. During FY1994-FY1996, states were eligible for federal reimbursement at an enhanced matching rate (75% federal, instead of the usual 50% under Title IV-E) for the costs of Statewide Automated Child Welfare Information Systems (SACWIS). This enhanced rate was scheduled to expire at the end of FY1996. However, P.L. 104-193 extends the 75% matching rate through the end of FY1997, so that states can have one additional year to complete their data collection systems.

Child Welfare Study. P.L. 104-193 amends Title IV-B to require HHS to conduct a national random sample study of children who have been abused or neglected, or who are at risk of abuse or neglect. The welfare reform law appropriated $6 million for each year from FY1996 through FY2002 for this study. However, FY1997 appropriations legislation (P.L. 104-208) rescinded these appropriations for FY1996 and FY1997.

Kinship Care. The new law amends Title IV-E, effective upon enactment, to require states to consider giving preference to an adult relative over a non-related caregiver when determining a foster or adoptive placement for a child, provided that the relative caregiver meets all relevant state child protection standards. In a related provision, P.L. 104-193 directs the Census Bureau to collect data, in connection with the decennial and mid-decade census, on grandparents who are the primary caregivers for their grandchildren.

Interaction with TANF. As stated above, the new welfare law repeals and replaces AFDC with a block grant to states for Temporary Assistance for Needy Families (TANF). States will design their own public assistance programs, subject to certain federal constraints. The law creates no entitlement for individuals to cash assistance and requires states to deny assistance to certain categories of recipients, including any adult who has received benefits for more than 2 years and is not engaged in a work activity, and anyone who has received benefits for more than 60 months in their adult lifetime.

Because foster care will continue as an open-ended entitlement to states under Title IV-E, the replacement of AFDC with a capped block grant could create an incentive for states to transfer costs from their cash assistance programs into foster care, where possible. The Congressional Budget Office (CBO) notes that in 1993, approximately 500,000 AFDC children lived in households without a parent. In the future, states could classify some of these "kinship" households as foster families and pay them foster care subsidies, if they meet eligibility requirements of Title IV-E. CBO estimates that federal foster care outlays could increase by $10 million in FY1999 and by $45 million annually by FY2002.

BLOCK GRANT PROPOSALS

Proposals in the 104th Congress to convert child welfare programs into block grants originated in the House. The original House welfare bill (H.R. 4), passed in March 1995, would have created a Child Protection Block Grant (CPBG) to states that would have replaced many existing programs (Titles IV-B and IV-E of the Social Security Act, CAPTA, adoption opportunities, abandoned infants, temporary child care and crisis nurseries, family support centers under the McKinney Act; parts of the Victims of Child Abuse Act; family unification under the Housing Act; and missing children's assistance).

As welfare reform evolved during the 104th Congress, the child welfare provisions became less sweeping. For example, the House-Senate conference version of H.R. 4, which was vetoed by President Clinton, would have created two child welfare-related block grants: the CPBG to replace Social Security Act programs, and a Child and Family Services Block Grant to replace CAPTA and related activities. Maintenance payments for foster children and adoption assistance subsidies were not included in either block grant, and would have remained open-ended entitlements as under current law. Under the next House version of welfare reform (H.R. 3734), administrative and training costs related to foster care and adoption assistance also were removed from the block grant, as were independent living services for older foster children. Ultimately, all child welfare block grant provisions were dropped from the bill, which was enacted as P.L. 104-193.

Proponents of child welfare block grants argued that consolidation of categorical programs and elimination of federal mandates could have allowed states to design more comprehensive service systems for vulnerable children and families, without the constraints of funding sources tied to specific services. States would have been required to maintain the key features of a child protection system -- such as mandatory abuse and neglect reporting and investigation, foster care, and permanency planning for foster children -- but without the existing funding structure and regulations, which were characterized as cumbersome. Accountability would have been assured through audits and penalties, data collection and reporting, and, in the original House-passed H.R. 4, citizen review panels that would have allowed the public to assess the adequacy of child protection programs.

Opponents argued that by enacting block grants, the federal government would have abdicated its leadership role in the area of child protection, which is an issue of national concern. While the legislation would have required states to certify that their programs contained certain features, the federal government would have had limited enforcement authority. With no earmarked funds for preventive and supportive services for families, the ongoing demand to investigate abuse and neglect reports and remove children from unsafe homes would have left few resources available for states to pursue less crisis-driven activities. By eliminating federal mandates, the proposal would have limited the ability of abused and neglected children to seek protection in the federal courts. Block grants also were seen as a first step toward reductions in federal spending for child welfare activities.