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Child Welfare Issues in the 108th Congress

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Summary

Child welfare services seek to protect children who have been abused or neglected or are at risk of maltreatment. These services take many forms, ranging from counseling and other supports for parents — intended to prevent child abuse and neglect and improve child well-being — to removal of the children from home. At the most extreme, these services include termination of parental rights and placement of the children for adoption. States have the primary responsibility for designing and administering child welfare services. However, the federal government supports the services with significant funds and requires states to comply with federal standards. An estimated 903,000 children were the victims of child abuse or neglect in the year 2001. The majority of these children (59%) experienced neglect (alone or in combination with another form of maltreatment). Some children who experience maltreatment are removed from their homes with protective custody given to the state. On the last day of FY2001, an estimated 542,000 children were living in foster care (foster family, group, residential or other kind of home or placement setting).

In June 2003, Congress passed and the President signed the Keeping Children and Families Safe Act of 2003 (P.L. 108-36, S. 342), which reauthorized the Child Abuse Prevention and Treatment Act (CAPTA), and several related programs. On February 13, the House passed welfare reform legislation, H.R. 4, which includes provisions to extend and expand the authority of the Department of Health and Human Services (HHS) to approve child welfare demonstration projects.

In his FY2004 budget, President Bush proposed an “alternative financing system for child welfare,” under which participating states would “face fewer administrative burdens and would receive funds in the form of flexible grants.” The House Ways and Means Human Resources Subcommittee held a hearing on the Administration’s proposal, and additional proposals related to child welfare financing have been introduced. Proposals include allowing states to use TANF income and resource requirements to determine a child’s eligibility for federal foster care and adoption assistance or removing income eligibility criteria entirely for these programs. Other proposals would offer states new federal funds to make program improvements, enhance workforce quality, offer substance abuse treatment to families needing child welfare services, and reimburse states for kinship guardianship payments.

The Administration has also proposed to extend Adoption Incentive funding (now set to expire with FY2003) and to amend the program to especially reward adoptions of children age 9 or older; this was introduced on July 22 as S. 1439. Additional child welfare related proposals have been introduced that would offer grants to support mentoring of children in foster care, provide student loan forgiveness for court personnel and social workers who work in the child welfare field, grant tribes new authority to operate foster care and adoption assistance programs under Title IV-E of the Social Security Act, seek to improve state foster care and adoption data collection, repeal the current “sunset” provision related to the adoption tax credit; and allow penalty-free withdrawal of Individual Retirement Account (IRA) funds for some qualified adoption expenses. This report describes child welfare legislative issues in the 108th Congress and will be updated as needed.

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Child Welfare Issues in the 108th Congress

Child welfare services are intended to protect children who have been abused or neglected or are at risk of maltreatment. These services take various forms, ranging from counseling and other supports for parents — which are intended to improve child well-being and prevent child abuse and neglect — to removal of the children from their homes. At the most extreme, these services include termination of parental rights and placement of the children for adoption.

States have primary responsibility for delivering child welfare services and deciding when to intervene in a family's life to protect the children. The federal government supports these state efforts with substantial funds. In FY2002, the federal government provided close to \$7 billion in funds dedicated to child welfare services, primarily for costs related to maintaining the foster care or adoptive placements of children who have been maltreated. In exchange for this funding (mostly offered under Title IV-B and Title IV-E of the Social Security Act), states must comply with federal rules intended to protect children who are served by the child welfare system. States also draw significant federal funds for support of child welfare services from the Social Services Block Grant (SSBG, Title XX of the Social Security Act), the Temporary Assistance for Needy Families block grant (TANF, Title IV-A of the Social Security Act), and other federal programs, such as Medicaid and Supplemental Security Income (SSI).

Most child welfare and related child abuse programs are administered at the federal level by the Children's Bureau of the Department of Health and Human Services (HHS). The House Ways and Means and the Senate Finance committees have exercised jurisdiction over the majority of child welfare programs currently authorized. These include all of the programs provided for under Title IV-B and IV-E of the Social Security Act. (See **Table 1** at the back of this report for a list of these programs.) The House Education and Workforce, and Senate Health, Education, Labor, and Pensions Committees have exercised jurisdiction over the Child Abuse Prevention and Treatment Act (CAPTA). A handful of smaller programs, related primarily to the court handling of child abuse cases, are administered by the Department of Justice (DOJ), and some of these are under the jurisdiction of the House and Senate Judiciary Committees. Likewise, programs for missing and sexually exploited children are administered by the DOJ. (These Department of Justice programs are outside the scope of this report.)

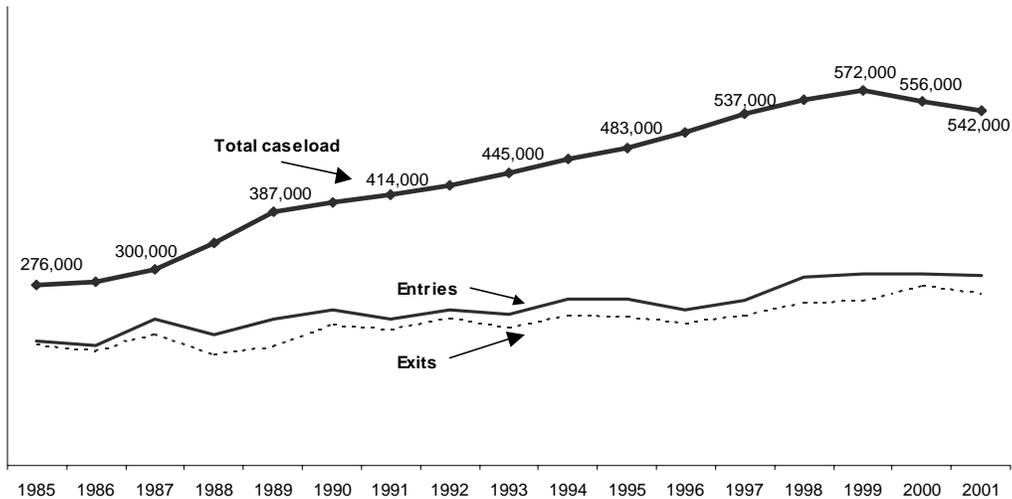
Child Maltreatment and Children in Foster Care

In 2001, an estimated 903,000 U.S. children were found to be victims of abuse or neglect. This number is above the estimated 879,000 child maltreatment victims in 2000 but below the annual estimated highs of more than 1 million child maltreatment victims recorded through the mid-1990s. For the year 2001, states

reported 59% of these victims experienced neglect, compared to 63% in 2000 and 58% in 1999. The percentage of physical abuse and sexual abuse victims has declined over the past 5 years but held fairly constant between 2000 and 2001.¹

There were an estimated 542,000 children in foster care on the last day of FY2001 compared to an estimated 572,000 in FY1999 (when the foster care caseload reached the highest-ever recorded level). The size of the foster care caseload rises or falls depending upon both the number of entries to foster care — children who are removed from their homes in a given year — and the number of exits in that same year — children reunited with their families, adopted, emancipated, or placed in another permanent setting. The number of entries to foster care has outpaced the number of exits for two decades; however, in recent years the number of entries has remained fairly stable at around 290,000 while the number of exits increased from 249,000 in FY1998 to 275,000 in FY2000, before declining to 263,000 in FY2001.²

Figure 1. Estimates of U.S. Children in Substitute Care, 1985-2001, including Entries and Exits



Source: Data from 1985 to 1996 are from the American Public Human Services Association. Data from 1997 forward are estimates by the U.S. Department of Health and Human Services based on the Adoption and Foster Care Analysis Reporting System (AFCARS). The 2000 data are interim; the 2001 data are preliminary. Both numbers may be revised.

Note: The number of children in care is shown for the last day of the given fiscal year. The number of entries and exits are cumulative totals for the given fiscal year.

¹ U.S. Department of Health and Human Services, Administration on Children Youth and Families, *Child Maltreatment 2001*, 2003, 21-42. Available on the web at [<http://www.acf.hhs.gov/programs/cb/publications/cm01/cm01.pdf>].

² For the most current adoption and foster care data go to [<http://www.acf.hhs.gov/programs/cb/dis/afcars/publications/afcars.htm>].

Child Welfare Issues in the 108th Congress

Child Abuse Prevention and Treatment Act (CAPTA). The House (by a roll call vote of 421 to 3) on June 18 and the Senate (by unanimous consent) on June 19 agreed to the conference report (H.Rept. 108-150) on reauthorization of CAPTA and several related programs; President Bush signed the bill into law on June 25 (P.L. 108-36). The Keeping Children and Families Safe Act of 2003 was introduced in the House on January 7 (as H.R. 14) and in the Senate on February 11 (S. 342). On February 12, the Senate Health, Education, Labor and Pensions Committee ordered S. 342 to be reported to the Senate without amendment (S.Rept. 108-12) and on February 13, the House Education and Workforce Committee ordered H.R. 14 to be reported to the House, as amended (H.Rept. 108-26). In March both chambers passed slightly different versions of the legislation (S. 342) by unanimous consent.

CAPTA authorizes grants and research funds designed to improve state and local child protective services, offer services aimed at preventing child abuse and neglect, and increase knowledge about ways to prevent child maltreatment or better respond to its occurrence. Although the Act had expired with FY2001, Congress appropriated \$81.6 million in FY2002 (P.L. 107-116) and \$88.9 million in FY2003 (P.L. 108-7) to continue CAPTA programs. Nearly all of the increased FY2003 funding was provided for earmarks under the discretionary grants portion of the CAPTA appropriation. For FY2004, the President's budget requests \$81.7 million for CAPTA, and the House approved that level on July 10 (H.R. 2660, H.Rept. 108-188), while the Senate Appropriations Committee has recommended \$81.4 million (S. 1356, S.Rept. 108-81).

The new CAPTA law increases the funding authorization for CAPTA's grant programs to \$200 million and extends its program authority through FY2008. It also includes provisions designed to strengthen efforts to prevent child abuse and neglect, to promote increased sharing of information and expertise between child protective service agencies and education, health, and juvenile justice systems, to encourage a variety of new training programs designed to improve child protection, and to improve communication and collaboration between child protective services workers and families who are part of a child abuse and neglect investigation. The law also includes for-profits (generally) among the groups that may seek demonstration grant funds and receive technical assistance for child maltreatment related programs.

P.L. 108-36 also requires states that seek Basic State Grant Funds under CAPTA to meet a number of new "assurances" to be eligible for this funding. In requesting this funding states must assure that they will —

- require health care providers involved in delivery of an infant who was prenatally exposed to an illegal drug and is identified as being affected by this substance abuse to report this to child protective services and require that a "safe plan of care" for this newborn be developed;
- have triage procedures for the appropriate referral of children not at risk of imminent harm to a community organization or voluntary preventive service;

- disclose confidential information to federal, state, and local government entities (or their agents), if the information is needed to carry out their lawful duties to protect children;
- have provisions to ensure that alleged child maltreatment perpetrators are promptly informed of the allegations made against them;
- develop (within 2 years of legislation's enactment) provisions for criminal background checks of all adults in prospective adoptive and foster care homes;
- have provisions for improving the training, retention, and supervision of caseworkers;
- have provisions to address training of child protective service workers on their legal duties in order to protect the legal rights and safety of children and families;
- develop procedures for referral of child maltreatment victims under 3 years of age to the statewide early intervention program (for developmental assessment and services) operated under Part C of the Individuals with Disabilities Education Act (IDEA).

The new CAPTA law also reauthorizes (through FY2008) and increases the funding authority for two related and also expired programs, Adoption Opportunities and Abandoned Infants Assistance. A number of the proposed changes in the Adoption Opportunities program are intended to eliminate barriers to the adoption of children across state and other jurisdictional boundaries. Finally, the new law amends and extends (through FY2008) the authority of certain programs under the Family Violence and Prevention Services Act. As finally approved by both chambers, the new law requires HHS to reserve some portion of any funds appropriated above \$130 million for state family violence prevention grants to fund entities that provide services to children who witness domestic violence. (For more background information and discussion of issues, see CRS Report RL30923, *Child Abuse Prevention and Treatment Act: Reauthorization Proposals in the 107th Congress.*)

Since agreement was reached on the CAPTA reauthorization, two additional proposals that would amend CAPTA have been introduced. H.R. 2541 (introduced by Representative Moore on June 19) would amend CAPTA to require public disclosure of findings or information about a case of child abuse or neglect that results in the child's death, near-death, other serious injury, or a felony conviction (if such disclosure is determined appropriate by a judge and is in accordance with applicable law. H.R. 2582 (introduced by Representative Deutsch on June 24) would amend CAPTA to require that state foster care agencies report to law enforcement authorities any information they have about a missing foster child, as soon as they determine the child is missing.

Waivers. As passed by the House on February 13, H.R. 4, which primarily reauthorizes TANF, would permit HHS to approve an unlimited number of child welfare demonstration projects (often called waivers) through FY2008. It would also prohibit HHS from limiting the number of demonstrations (or waivers) approved for a single state or from denying a demonstration project simply because the policy alternative is already being tested (or may be tested) in another state. H.R. 4 also

would require HHS to streamline its child welfare waiver approval process and make evaluation reports available to states or other interested parties. (S. 5, introduced by Senator Talent on February 14, contains these same child welfare waiver provisions.)

Child welfare waivers allow states to use federal funds to test new services without meeting all of the federal child welfare requirements specified in Title IV-B and Title IV-E of the Social Security Act. The proposed demonstration program or service must be designed to accomplish the same goals as those federal child welfare programs, must be cost-neutral to the federal government, and must be formally evaluated. (Further, certain specified federal protections offered to all children in the public child welfare system may not be waived in any case.) Under amendments enacted in 1997, HHS was authorized to approve up to 10 demonstration projects (including one or more waivers of federal rules) in each of FY1998 through FY2002.³ In the past, HHS has expressed its preference for approving projects in states not previously granted authority to operate a demonstration project and for projects that test unique policy alternatives. (For more information on currently funded child welfare waivers, see CRS Report RL31964, *Child Welfare Waiver Demonstrations*.)

Financing. The President's FY2004 budget proposes to offer states an alternative method for financing their child welfare system. According to Administration budget documents, this option is intended to "serve as an incentive [for states] to create innovative child welfare plans with a strong emphasis on prevention and family support."

No specific legislative language has yet been proposed. However, the Administration indicates that under this "flexible funding" plan, states could opt to receive their foster care funding (currently an open-ended entitlement for costs incurred on behalf of eligible children) as an annual pre-established grant amount, would be able to use these funds for the full range of child welfare services — from prevention of the need for removal through foster care placement and adoption — and would no longer need to determine a child's federal foster care eligibility status in order to use federal funds on his or her behalf. At the same time states would be required to uphold existing child safety protections, agree to maintain existing levels of state investment in child welfare programs, and continue to participate in the HHS-administered Child and Family Services Reviews (to ensure compliance with federal child welfare policy). States experiencing a "severe foster care crisis" would, under certain circumstances, be able to tap TANF contingency funds to meet this unanticipated need. At a June 11, 2003 House Ways and Means Subcommittee on Human Resources hearing, Wade Horn, Assistant Secretary for the Administration of Children and Families, HHS, testified that under the alternative financing plan, states could opt to declare all foster care children eligible for Medicaid. (Current law provides automatic Medicaid eligibility to foster care children who are eligible for *federal* foster care assistance only.)⁴ Finally, the President's proposal includes a \$30

³ Congress enacted legislation on June 30, 2003, extending the authority for TANF and certain related programs, including the Secretary's authority to approve child welfare waivers, through the end of FY2003(P.L. 108-40).

⁴ Assistant Secretary Horn discussed this proposed Medicaid option as part of his oral
(continued...)

million set-aside to be available for Indian tribes (tribes are currently not eligible to directly receive federal foster care funds under Title IV-E of the Social Security Act) and a one-third of 1% set-aside for monitoring and technical assistance of state foster care programs.

Currently federal funds dedicated to child welfare (primarily under Titles IV-B and IV-E of the Social Security Act) go to states through a complex package of grants, with different allocation formulas and matching requirements. States also rely on other non-dedicated federal funds to support their child welfare programs. The 1996 welfare reform law that created TANF (P.L. 104-193) eliminated Emergency Assistance (which had been primarily used by states to support family preservation), and reduced the SSBG, also a major source of child welfare funds. However, TANF's flexible funds, combined with declining caseloads, allowed states to use TANF dollars for certain child welfare services and at least through FY2000, this provided a boost to child welfare spending. According to an Urban Institute survey, in FY2000 state child welfare agencies expended some \$2.3 billion in TANF funds (some of which were funneled through SSBG). But the continued availability of some or all of these TANF funds for child welfare purposes appears to be jeopardized by changing TANF and state budget priorities linked to economic recession.⁵

The 1996 TANF law also maintained a historic connection between federal child welfare funding and TANF's predecessor program, Aid to Families with Dependent Children (AFDC); the law continued to link a state's entitlement to federal reimbursement for foster care and adoption assistance costs to whether those costs can be tied to a child who was removed from a family that was receiving (or would have been eligible to receive) AFDC — as that program existed in a given state on July 16, 1996. The 1996 law did not provide a mechanism for adjustment of the 1996 AFDC income-eligibility rules. This concerns states who predict declining levels of federal foster care and adoption assistance funding due to inflation and the administrative complexity inherent in using eligibility rules for a program that no longer exists. Some observers also question the rationale of an income eligibility test for federal foster care and adoption assistance reimbursements and argue that a child's need for protection and care is not limited by family income.

Other financing proposals. The bulk of federal child welfare funding is available for children who have already been maltreated and have been removed from their homes. While many observers believe the current child welfare financing system is counterproductive to the interests of children and families, no consensus exists on a method of reform. Critics of the current child welfare system point out that —

⁴ (...continued)

response to questions. His written submitted testimony, and that of other witnesses at the June 11 hearing is available on the subcommittee's website [http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=71&comm=2].

⁵ Roseanna Bess, Cynthia Andrews, Amy Jantz, Victoria Russell, Rob Geen, *The Cost of Protecting Vulnerable Children III*, Urban Institute: Washington, D.C., Dec. 2002, p.18.

- The current financing structure does not encourage or allow for services intended to protect children from abuse or neglect or to enable them to receive services to remain in their homes.
- Federal dollars available for children in out-of-home placements generally pay for their maintenance only and are not permitted to be spent for other kinds of mental health or social services, which these children are likely to need.
- The current federal eligibility restriction — limiting state claims for reimbursement of costs to children who were removed from homes that would have been eligible for the Aid to Families with Dependent Children (AFDC) program as that program existed in the given state on July 16, 1996 — is outdated, burdensome to administer, and, because children may need protection regardless of the financial circumstances of their biological family, illogical.

H.R. 1534 (introduced by Representative Cardin on April 1) and S. 367 (introduced by Senator Rockefeller on February 12) would allow states to substitute their TANF rules to determine a child's eligibility for federal foster care and adoption assistance. H.R. 936 (introduced by Representative Miller on February 26) and S. 448 (introduced by Senator Dodd on February 26) are companion measures that would remove all income eligibility criteria for purposes of determining whether a state can claim federal reimbursement of foster care and adoption assistance costs. Those bills would also set the federal matching rate for all Title IV-E services (including training, administration, and data collection) at the Medicaid matching rate.⁶ S. 862 (introduced by Senator Rockefeller on April 10), would make several adjustments to eligibility rules for federal adoption assistance, including removing the current income-eligibility requirements.

H.R. 1534, H.R. 936, and S. 448 also seek a range of new mandatory federal funds that would be dedicated to child welfare services. H.R. 1534 would add several capped entitlement programs under Title IV-B of the Social Security Act. The bill would provide \$100 million in each of FY2004 to FY2008 to help states achieve required program improvements; \$100 million in each of FY2004-FY2008 for state enhancement of their child welfare workforce or coordination of services; \$100 million in FY2004 rising to \$200 million in FY2008 for coordination and provision of substance abuse treatment to families involved with the child welfare system; and it would make mandatory all of the current annual funding authority (\$505 million) under the Promoting Safe and Stable Families Program. (As authorized through FY2006, the program now receives \$305 million in mandatory funds each year and up to \$200 million in discretionary dollars.) In addition, H.R. 1534 would allow uncapped (open-ended) entitlement funding to reimburse states for ongoing payments to relatives who assume legal guardianship of children, but only if those children were previously eligible for federal foster care maintenance payments.

⁶ This Medicaid matching rate varies by state per capita income and in FY2003 ranges from 50% to 77%.

H.R. 936 and S. 448 would allow open-ended federal matching funds, under Title IV-E of the Social Security Act, for a variety of new services. These include preventive, protective and crisis services; permanency services; independent living services; and living expenses of former foster youths under the age of 22, (if they are in school or working and participating in an independent living program), substance abuse treatment for families involved with the child welfare system, and ongoing payments to relative guardians of former foster children.

H.R. 1534, as well as H.R. 1378 (introduced by Representative Weller on March 20), S. 669 (introduced by Senator Snowe on March 19) and H.R. 2437 (introduced by Representative Stark on June 11) each includes language that would allow states to claim federal reimbursement for the short-term training of state-licensed or approved child welfare agency staff at a matching rate of 75%. Currently states may claim reimbursement of this kind of training only at a 50% federal match, while reimbursement for costs associated with the long-term or short-term training or education of state child welfare employees (or future employees) and the short-term training of current or prospective foster or adoptive parents and for staff at state-licensed or approved child care institutions may be claimed at a 75% federal matching rate. Both H.R. 1534 and H.R. 2437 would also extend the 75% matching rate to short-term training for members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children, parents, or guardian ad litem, or other court-appointed special advocates representing children in abuse and neglect courts, and to other persons employed by state, local or nonprofit child-serving agencies that work with the state or local child welfare agency to keep children safe, provide permanent families for them and provide them with mental health services.

Financing reform proposals in the recent past included a proposal introduced late in the 106th Congress by Representative Nancy Johnson to permit “flexible funding” demonstrations, including block grants, in a limited number of states (H.R. 5292). Also in 2000, Senator Grassley (with Senators DeWine and Landrieu) announced a proposal (never formally introduced) that would have increased federal matching payments for foster care during the first 18 months of a child’s stay in care, then reduced and eventually eliminated federal matching the longer the child remained. (For more information, see CRS Report RL31082, *Child Welfare Financing: Issues and Options*.)

Student Loan Forgiveness. To encourage better trained, higher quality workers and greater longevity in the fields, S. 407 and H.R. 2437 would offer some student loan forgiveness, respectively, to attorneys who work in family law (including child abuse or neglect and adoption cases) and to social service personnel who work for child welfare agencies. S. 407 (introduced by Senator DeWine on February 13, 2003) would amend the Higher Education Act of 1965 to provide student loan forgiveness for attorneys who receive some training in family, juvenile, or domestic relations law, and who go on to represent low-income families or individuals involved in the family or domestic relations court systems. The loan forgiveness would range from 20% for attorneys who spend at least 3 consecutive years in the field to 50% for those who spend at least 5 years in this kind of employment. The bill would authorize up to \$20 million in each of five years to make these repayments. H.R. 2437 would also amend the Higher Education Act of 1965 and seeks to provide student loan forgiveness for individuals whose social work or

related higher education studies focus on serving children and families and who have been employed for at least 2 consecutive years as a child welfare worker. The loan forgiveness would range from 20% for workers with the minimum two years of service to 30% for those with four or five consecutive years of service. This bill would authorize up to \$10 million in each of five years for this purpose. Both S. 407 and H.R. 2437 would require HHS to evaluate the effectiveness of these student loan forgiveness programs.

Adoption Incentives. The 1997 Adoption and Safe Families Act (P.L. 105-89) created the Adoption Incentives program (Section 473A of the Social Security Act). Funding authorization for these incentive payments expires with FY2003 and Congress may consider reauthorization legislation in this session. As part of its FY2004 budget justification, HHS proposes to reauthorize funding for the program (through FY2008) and to amend the program to reward adoptions of foster care children age 9 or older while continuing to offer incentives to states who increase their total adoptions out of foster care. This proposal is included in legislation introduced by Senator Bunning on July 22 (S. 1439).

Currently the Adoption Incentives program authorizes funds for incentive payments to states that increased the number of adoptions out of the public foster care program in each of FY1998-FY2002. Eligible states receive \$4,000 for each foster child whose adoption is finalized above a state's specified foster child adoption baseline. States also receive an additional \$2,000 for each of those adoptions, which involved a special needs child who receives federal adoption assistance, and that are above the state-specified special needs adoption baseline. For adoptions finalized in 1998, the baselines drew on the state's average number of foster child adoptions (or special needs adoptions) in FY1995-FY1997. For adoptions finalized in FY1999-FY2002, the baselines are drawn from the year (beginning with FY1997) in which the state achieved its *highest* number of foster child adoptions (or special needs adoptions). States are permitted to use these incentive funds for any purpose authorized under Title IV-B or Title IV-E of the Social Security Act.

The Administration proposal (and S. 1439) would maintain two independent adoption baselines but would replace the current "special needs" baseline with one for children age 9 or older. For each child adopted out of the foster care system (above the state's baseline), the state would receive an incentive payment of \$4,000; for each child age 9 or older who is adopted out of the foster care system (above the state baseline for older children) the state would receive an incentive of \$6,000. According to the HHS Budget justifications, analysis of adoptions from public foster care indicate that older children remain less likely to be adopted and specifically that once a child waiting for adoption reaches 8 or 9 years of age, "the probability that the child will continue to wait in foster care exceeds the probability that the child will be adopted." In addition, HHS notes that "older children constitute an increasing proportion of the pool of children waiting for adoptive families."⁷

⁷ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2004: Justification of Estimates for Appropriations Committees*, February 2003, pp. H-82-H-83.

As originally enacted, the law authorized \$20 million annually. However, states have increased adoptions at a rate far greater than this funding level. (There were some 26,000 adoptions out of the public child welfare system in FY1995 compared to an estimated 51,000 in FY2000 and an estimated 50,000 in FY2001.) HHS estimates a total of 238,000 adoptions from the public child welfare system were completed in the 5 years (FY1998-FY2002) in which the Adoption Incentives program has authorized rewards for increased adoptions. Along with its reauthorization request the Department proposes to set a new goal of 300,000 adoptions over 5 years (FY2004-FY2008).

Through FY2002, Congress appropriated a total of \$147.7 million for Adoption Incentive payments of which states have (for adoptions through FY2001) earned \$144.7 million. All states, the District of Columbia, and Puerto Rico have earned an adoption incentive award in at least 1 year. For adoptions finalized in FY1998, states earned \$42.5 million; for FY1999 adoptions, \$51.5 million; for FY2000 adoptions, \$33.2 million and for FY2001 adoptions, \$17.5 million.⁸ President Bush requested \$43 million in FY2003 funding for this program, this is equal to the program's FY2002 funding level and to the amount of Adoption Incentives funding (before the 0.65% funding rescission) included in FY2003 omnibus spending measure (P.L. 107-8). The President's FY2004 budget request again includes \$43 million for Adoption Incentives.

Adoption Tax Credit. H.R. 336, introduced on January 27 by Representative Camp and H.R. 1057 introduced by Representative DeMint on March 4 would make the current adoption tax credit fully permanent. As a part of the Economic Growth and Tax Reconciliation Act of 2001 (P.L. 107-16), Congress expanded the adoption tax credit and made it a "permanent" part of the tax code. However, P.L. 107-16 provides that the tax changes it contains must expire (or "sunset") in 2010. H.R. 336 would exempt the adoption tax credit from this sunset provision. The 107th Congress considered identical legislation (H.R. 4800, S. 2643). Although the House passed H.R. 4800, the full Senate did not act on this matter, and the proposals died with the 107th Congress.

In 2001 Congress doubled the existing credit (from \$5,000 to \$10,000), made the full credit available to families with incomes up to \$150,000 (previously the phase-out began at \$75,000), and provided for a cost-of-living inflation adjustment of this credit. As of the 2002 tax year, adoptive parents may claim the \$10,000 credit up to the full amount of their qualified adoption expenses; beginning with tax year 2003, parents who finalize the adoption of children with special needs will be able to claim this entire credit amount regardless of their actual adoption expenses.

As introduced by Representative Peter King, on February 5, H.R. 584 would further amend the Internal Revenue Code to ensure that adoptive parents who withdrew funds from an Individual Retirement Account (IRA) in order to finance an adoption could do so without penalty. In general individuals would be allowed to

⁸ For more information on Adoption Incentives, a list of the FY2001 adoption baseline and FY1998-FY2001 incentive awards by state, see CRS Report RL30759 *Child Welfare: Implementation of the Adoption and Safe Families Act*, by Karen Spar and Matthew Shuman.

withdraw up to \$10,000 for certain adoption expenses (generally those “qualified adoption expenses” not already covered by the adoption tax credit). Parents who adopt a “special needs” child could make penalty-free withdrawals on a somewhat broader basis.

Tribal Child Welfare Issues. As noted above, tribes are currently not eligible to directly receive federal foster care and adoption assistance funds under Title IV-E of the Social Security Act, and the President’s FY2004 budget request proposes to set-aside \$30 million for tribes out of an optional child welfare financing system. On January 29, Representative Camp introduced H.R. 443, and on February 6, Senator Daschle (with eight bipartisan cosponsors) introduced S. 331; the bills are identical and would grant new authority to tribes to operate foster care and adoption assistance programs on the same general financing basis currently available to states. The bill provides that tribal programs would define the service area where their plan is in effect and would be able to grant approval of foster care homes based on tribal standards that ensure the safety of children, but would otherwise need to comply with all federal program provisions that apply to states. (However, the HHS Secretary could waive any requirement if he found doing so would “advance the best interests and safety of the children” served by the tribal plan.) Tribes that currently have agreements with a state to receive some Title IV-E reimbursement could continue those agreements.

The provisions of H.R. 443 and S. 331 are similar to those reported in the 107th Congress (H.R. 4737) by the Senate Finance Committee, except that the earlier legislation included a separate definition of “tribe” for native groups in Alaska and would have required those Alaska groups to meet the same federal foster care home requirements that states must meet. The Congressional Budget Office estimated the cost of the Senate Finance Committee provisions at \$12 million for FY2004 and \$398 million over the FY2004-FY2012 period.

As noted earlier, the Administration’s child welfare financing proposal would include a \$30 million set aside for direct tribal child welfare funding. Also, as passed by the House on February 13, H.R. 4 set-asides \$2 million for demonstration projects designed to test the effectiveness of tribes in coordinating child welfare and TANF services to tribal families at risk of child abuse or neglect.

Data Collection and Reporting. Currently states receiving federal foster care funds are required to submit caseload characteristic data twice a year through the Adoption and Foster Care Analysis and Reporting System (AFCARS). The data can be used for program management to enhance state performance and is now used, in part, to determine a state’s compliance with certain federal child welfare policies. Although the data are considered improved from the first years of reporting, concerns about AFCARS data reliability persist.⁹ In addition, some states and researchers believe that the measurements currently taken may not accurately reflect the program improvements states have achieved. H.R. 1534 would require HHS to provide Congress (no later than October 2004) with recommendations on improving the

⁹ See U.S. Department of Health and Human Services, Office of Inspector General, *Adoption and Foster Care Analysis and Reporting System (AFCARS): Challenges and Limitations*, Mar. 2003, available on the web at [<http://oig.hhs.gov/oei/reports/oei-07-01-00660.pdf>].

quality and usefulness of data being collected through AFCARS. HHS would need to develop the recommendations in consultation with state child welfare agencies and other experts. It would further be required to consider modifying AFCARS to include 1) collection and analysis of data that could track a single foster care child across time (longitudinal data); 2) analysis of groups of children who enter or exit the system within the same period of time (entry and exit cohort data); and 3) a measure of adoption disruption.

On April 28, HHS published a request for comment on ways to improve AFCARS. The agency is particularly interested in obtaining input on: the specific strengths or weaknesses of AFCARS; suggestions for areas of improvement, including ideas about how the suggested improvement could be made and how the federal government could facilitate the changes; data elements currently in AFCARS that could be deleted and any elements that should be added; and strategies to improve data quality for AFCARS, including the use of incentives. Comments were also invited based on individuals' use of the current characteristic and financial data collected and on the structure of the data file and how it is submitted.¹⁰

Mentors for Foster Care Children. As introduced by Representative Millender-McDonald on March 20, H.R. 1401 would provide money to states for support of networks of public and private community entities that offer mentors to children in foster care. It would authorize funding of \$15 million for this purpose in each of FY2004 and FY2005, and such sums as necessary in succeeding years. In addition, it would allow HHS to award a grant for establishment of a National Hotline Service or Web site to provide information to individuals who are interested in becoming mentors to youth in foster care. Funding for this grant would be authorized at \$4 million for each of FY2004 and FY2005 and such sums as may be necessary for each succeeding fiscal year. An almost identical version of this bill (which would also allow direct grants to local political subdivisions) was introduced by Representative Millender-McDonald on July 24 as H.R. 2880 and by Senator Landrieu on July 16 as S. 1419.

TANF Reauthorization. When the 1996 law creating the TANF block grant was enacted, some child welfare advocates were concerned that work requirements, time limits, and other changes in the cash welfare system might harm children. Research on this issue has not been conclusive; however, concerns remain. (See CRS Report RL31508, *Child Welfare and TANF Implementation: Recent Findings.*) The TANF reauthorization debate, which began in the 107th Congress, touches on certain child welfare-related issues and some child welfare-related measures are included in the comprehensive TANF reauthorization legislation passed by the House on February 13 (H.R. 4). These are discussed below. (As of August 2003, the Senate Finance Committee has not reported TANF reauthorization legislation in the 108th Congress.)

¹⁰ U.S. Department of Health and Human Services, Administration for Children and Families, "Request for Public Comment on the Improvement of the Adoption and Foster Care Analysis and Reporting System (AFCARS)," 69 *Federal Register* 22386, April 28, 2003.

Improve Child Well-Being and Reduce Child Poverty. The 107th Congress considered several proposals to amend the purposes and/or practice of TANF to explicitly address the issues of child well-being and child poverty. Because a majority of children who enter the public child welfare system come from poor families and a major goal of the system is to ensure and improve their well-being, these issues are important to child welfare. As passed by the House, H.R. 4 would make improving child well-being the overarching goal of each of TANF's four stated purposes and would amend one of the current law goals to include reducing family poverty.

H.R. 4 would also mandate new child well-being-related research and performance measures. As passed by the House, the legislation would require HHS to develop "uniform performance measures" to gauge how well states are meeting TANF goals, and would require the Census Bureau to implement a new survey of program participation to assess outcomes of continued welfare reform on the economic and child well-being of low-income families. Further, evaluation of "fatherhood programs" authorized under H.R. 4 would need to assess program affects on a range of issues, including child well-being and child abuse and neglect.

Sanctions. Current TANF law requires states to impose a penalty on individuals who fail to meet work participation rules, and it allows states to choose between cutting a family's entire benefit or reducing some part of the benefit as a sanction for noncompliance. This means a portion of some states' caseload consists of "child-only" cases where, because of failure to meet work or other rules, a parent (or other adult) is no longer receiving benefits on their own behalf, but the child(ren) in the family continue to receive aid. As passed by the House, H.R. 4 would limit this kind of "child-only" case by requiring that after 2 months of an adult failing to meet established work requirements (without good cause), a state must end the entire benefit for the family of which the noncomplying adult is a part. Continuing benefits to the child(ren) in the family, using federal TANF or state Maintenance of Effort funds, would not be allowed. (H.R. 4 provides an exemption for states whose constitution or statute would prohibit a full family sanction, but this exemption would expire within 1 year of enactment of this provision.)

Child Welfare Funding Levels

Table 1 (below) lists final funding levels for selected child welfare programs in FY2002 and FY2003 and indicates whether the program receives mandatory or discretionary funding. The table also shows the Administration's requested funding level for FY2004 and subsequent House and Senate action. The House Appropriations Committee approved an FY2004 spending bill for HHS and related agencies on June 25 (H.R. 2660, H.Rept. 108-188), and the House subsequently passed the bill on July 10. The Senate Appropriations Committee approved its version of the FY2004 appropriations bill on June 26 (S. 1356, S.Rept. 108-81).

**Table 1. Proposed and Final Funding for Selected
Child Welfare Programs, FY2002-FY2004**
(\$ in millions)

Program <i>kind of funding</i>	Final funding	Proposed FY2003	Final funding	Proposed FY2004		
	FY2002	President's request	FY2003 ^a	President's request	House	Senate
Title IV-B of the Social Security Act						
Child Welfare Services <i>discretionary</i>	292	292	290	292	292	291
Child Welfare Training <i>discretionary</i>	7.5	7.5	7.4	7.5	7.5	7.5
Promoting Safe & Stable Families <i>mandatory + discretionary^b</i>	375	505	404	505	405	404
Mentoring Prisoners' Children <i>discretionary^c</i>	0	25.0	9.9	50.0	25.0	9.9
Title IV-E of the Social Security Act						
Foster Care <i>mandatory^d</i>	4,519	4,885	4,885	4,974	4,974	4,974
Adoption Assistance <i>mandatory^d</i>	1,342	1,585	1,585	1,700	1,700	1,700
Adoption Incentives <i>discretionary</i>	43	43	42.7	43	43	42.7
Foster Care Independence <i>mandatory</i>	140	140	140	140	140	140
Foster Care Independence Education and Training Vouchers ^c <i>discretionary</i>	0	60.0	41.7	60.0	45.0	41.7
Child Abuse Prevention and Treatment Act						
Basic State Grants <i>discretionary</i>	22.0	22.0	21.9	22.0	22.0	21.9
Discretionary Research and Demonstration Grants <i>discretionary</i>	26.2	26.4	33.8	26.3	26.3	26.3
Community-Based Family Resource and Support Grants <i>discretionary</i>	33.4	33.4	33.2	33.4	33.4	33.2
Children's Justice Act Grants <i>off-budget^e</i>	20.0	NA	20.0	NA	NA	NA
Other Programs (all discretionary funding)						
Abandoned Infants Assistance	12.2	12.2	12.1	12.1	12.1	12.1
Adoption Opportunities	27.4	27.4	27.2	27.3	27.3	27.2

Program <i>kind of funding</i>	Final funding	Proposed FY2003	Final funding	Proposed FY2004		
	FY2002	President's request	FY2003 ^a	President's request	House	Senate
Adoption Awareness ^f	12.9	12.9	12.8	12.9	12.9	12.8

Source: Table prepared by Congressional Research Service (CRS) based on Administration budget documents and House and Senate documents related to H.R. 2660 and S. 1356.

NA = not applicable

^a The numbers in this column reflect funding rescissions that were approved as a part of the final funding legislation (P.L. 108-7). As enacted, the funding cut equaled 0.65% on most discretionary, nonmilitary programs, including all of the discretionary funds shown in this table.

^b Before FY2002, all funding for this program was mandatory. P.L. 107-133, which reauthorized the program through FY2006, set an annual mandatory funding level of \$305 million for it and authorized additional discretionary funding up to \$200 million in each fiscal year. Out of the total final FY2003 funding shown for this program, \$100 million is discretionary and therefore subject to the legislation's funding rescission. See table note a above for more information on the funding rescission.

^c P.L. 107-133, which was signed into law in January 2002, first authorized this funding.

^d The Federal Foster Care and Adoption Assistance Programs are the only two child welfare programs funded with mandatory (or entitlement) dollars that are also on an "open-ended" basis. This means there is no annual cap on the amount of federal money that may be spent on these programs; states may claim reimbursement for a part of all eligible foster care and adoption assistance related costs. The final funding levels shown in this row are estimated federal expenditures; the proposed funding levels reflect estimates of what states are expected to claim for these programs in FY2003 and FY2004.

^e These grants are not funded out of the general treasury. Instead, P.L. 98-473 (Victims of Crime Act of 1984), as amended, provides that up to \$20 million annually is to be set-aside for these grants out of the Crime Victims Fund. That fund is composed of various criminal fines, penalties, assessments and forfeitures and is administered by the Department of Justice.

^f Appropriations shown in this row are for programs authorized under the Children's Health Act of 2000 (Sections 330F and 330G of Title III of the Public Health Service Act). Section 330F authorizes Adoption Awareness, which received \$9.9 million in both FY2001 and FY2002. Section 330G authorizes a Special Needs Adoption Program aimed at improving awareness of adoption of special needs children. This program did not receive funding in FY2001, but received \$3 million in FY2002.

For More Information

CRS Report RL30894, *Child Welfare: Reauthorization of the Promoting Safe and Stable Families Program in the 107th Congress*, by Emilie Stoltzfus and Karen Spar.

CRS Report RL31242, *Child Welfare: Federal Program Requirements for States*, by Emilie Stoltzfus.

CRS Report RS20230, *Child Welfare: The Chafee Foster Care Independence Program*, by Emilie Stoltzfus.

CRS Report RS21365, *The Missing, Exploited and Runaway Children Protection Act: Appropriations and Reauthorization*, by Edith Cooper.

CRS Report RL31655, *Missing and Exploited Children: Overview and Policy Concerns*, by Edith Cooper.

Section 11, House Ways and Means Committee *Green Book*, 2000 edition.