

Frequently Asked Questions

about the foster care independence act of 1999 and
the john h. chafee foster care independence program



prepared by members of the national foster care awareness project (nfcap)

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This document was prepared by members of the National Foster Care Awareness Project (NFCAP): Children's Defense Fund (MaryLee Allen), Child Welfare League of America (Robin Nixon, Karabelle Pizzigati, and Liz Meitner), and National Association of Child Advocates (Heitzi Epstein), with support from Melissa Baker at the American Public Human Services Association. The drafters are available to discuss specific questions and answers with you and to learn about additional questions you may have. For more information on how to contact those listed above, please see Appendix A.

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Introduction

The National Foster Care Awareness Project is pleased to provide *Frequently Asked Questions About the Foster Care Independence Act and the John H. Chafee Foster Care Independence Program*. We have tried to answer many of the questions we know to be on the minds of those who are working in states to implement these new services and supports for young people transitioning from foster care. We have limited ourselves to questions that we could answer without further instruction from the U.S. Department of Health and Human Services*.

All of our organizations believe that the Foster Care Independence Act of 1999 and the John H. Chafee Foster Care Independence Program offer important opportunities for expanding activities in states and communities to help young people transitioning from foster care. An estimated 20,000 young people leave foster care at ages 18 or 19 each year with no formal connection to family. They are sorely in need of quality services and supports to assist with their education, health and mental health, employment, housing, and personal support needs.

By bringing our own members together in states and working with young people themselves and others interested in helping young people transitioning from foster care, the Act and the new Chafee Independence Program can become a catalyst for broader reforms. This is the first in a series of publications by the National Foster Care Awareness Project about the new Act and the Chafee Foster Care Independence Program and steps that can be taken across the country to maximize support for young people transitioning from foster care.

The National Foster Care Awareness Project (NFCAP) is a unique coalition of foundations, community organizations and public and private agencies working to raise awareness about foster care issues and to educate,

challenge and mobilize individuals and communities to take action to improve the lives of children and youth in the foster care system.

We encourage you to bring additional questions you may have about the act and the program to the Independent Living Exchange discussion group sponsored by the National Resource Center for Youth Services at the University of Oklahoma College of Continuing Education. This discussion group is open to both adults and young people who are interested in implementation of the new Foster Care Independence Act and the John H. Chafee Foster Care Independence Program and in improving independent living/transitional living services for adolescents in foster care. Subscribers may use this forum to exchange ideas, inquire about promising practices, and exchange innovative policies and practical programming strategies for assisting young people in their transition to adulthood.

For more information about the discussion group and how to join, visit the NRCYS website at www.nrcys.ou.edu.

These *Frequently Asked Questions* can also be found on the Benton Foundation website www.connectforkids.org, as well as on the websites of many of our participating organizations.

The National Foster Care Awareness Project is comprised of a coalition of 19 foundations, national organizations, public and private agencies, and corporations working to engage professionals, policymakers and the public to support effective practices and policies designed to help children in foster care make the transition to successful family life, careers and citizenship. The names, phone numbers, and websites of the National Foster Care Awareness Project members can be found in Appendix A.

**Please be aware that laws and regulations change and are subject to different interpretations. This publication is intended to provide the reader with helpful guidance, not legal advice. For the most current information about the status of implementation of the Act and the Program, please visit the Children's Bureau, U.S. Department of Health and Human Services website: www.acf.dhhs.gov/programs/cb.*

Frequently Asked Questions

Overview of the Foster Care Independence Act

1. What is the Foster Care Independence Act of 1999?

The Foster Care Independence Act of 1999 (H.R. 3443), passed by Congress during the last days of the 1999 session, offers important new help to young people transitioning from foster care. The Act can be an important catalyst in states and communities for broader reforms on behalf of the young people. President Clinton signed the Act into law (P.L. 106-169) on December 14, 1999. Title I of the Act, which contains the most relevant provisions for young people transitioning from foster care:

- Establishes the John H. Chafee Foster Care Independence Program (referred to hereafter as the Chafee Independence Program). The program was named in honor of the late Senator John H. Chafee of Rhode Island, one of the original Senate sponsors of the Act and a long time champion for children who have been abused and neglected
- Allows states to provide Medicaid coverage to young people between the ages of 18 and 21 who were in foster care on their 18th birthday
- Increases from \$1,000 to \$10,000 the assets that a young person in foster care can have and still maintain his or her eligibility for Title IV-E-funded foster care
- Requires states to ensure that foster parents are adequately prepared, both initially and on a continuing basis, to care for the children placed with them
- Authorizes additional funding for adoption incentive payments to the states to assist in finding permanent homes for children in foster care

The other three titles of the Act include provisions unrelated to young people in foster care, including compensation for some foreign-born veterans of World War II, amendments to the federal Child Support Enforcement Program, and amendments to the Supplemental Security Income Program that address fraud and abuse.

2. Does the Chafee Foster Care Independence Program, authorized by the Act, totally replace the former Independent Living Initiative authorized under Title IV-E of the Social Security Act?

Yes. The Chafee Independence Program, established in section 477 of the Social Security Act, replaces the former Independent Living Initiative. The former Title IV-E Independent Living Initiative (established in 1986) governed implementation of most federally-supported independent living services from 1987 until December 14, 1999, when the Foster Care Independence Act became law.

3. How does the Chafee Foster Care Independence Program improve upon the former Independent Living Initiative?

The new Chafee Independence Program:

- Increases funding for independent living activities
- Offers increased assistance, including room and board, for young people ages 18 to 21 who are leaving foster care
- Emphasizes the importance of securing permanent families for young people in foster care
- Expands the opportunity for states to offer Medicaid to young people transitioning from care
- Increases state accountability for outcomes for young people transitioning from foster care

These and other important changes are described in more detail in the table on pages 12-13 and throughout this document.

4. When does the new law take effect?

Generally, unless specified otherwise, the provisions of the new law took effect on December 14, 1999, when President Clinton signed the Foster Care Independence Act. This means that states can begin implementing the Chafee Independence Program immediately. The U.S. Department of Health and Human Services (HHS) is expected to first issue an Information Memorandum and then, probably in March, a Program Instruction.

The first will be a more general description of the new Act and the latter is expected to detail what states must do to apply for funds under the Chafee Independence Program. [See Funding Application and Allotment sections at pages 15 and 17 for further information about what states must do to apply for the new funds.]

The option to expand Medicaid for young people transitioning from care took effect on October 1, 1999. [See Medicaid section at pages 22–25 for further information about the new Medicaid option.]

5. Will my state have to make legislative, administrative, and/or programmatic changes to be in compliance with the Foster Care Independence Act?

A decision about what specific legislative, administrative, and/or programmatic changes will be necessary is largely dependent upon current policies and practices in individual states. In making this decision, it is important for a state to examine the required components of the Five-Year State Plan for the Chafee Independence Program [See the Box at page 19] and to make sure that current laws and policies are consistent with the plan requirements. For example, a state must be sure that there is nothing in current state law that would prevent it from offering assistance to young people ages 18–21 transitioning from foster care. It also is important for each state to determine what steps are necessary to ensure that state funds will be available to provide the state match for the Chafee Independence Program funds and the Medicaid funds. A state should also check with its Medicaid agency to determine what else is necessary to take advantage of the new option to provide Medicaid to young people transitioning from foster care.

Eligibility

Eligible Young People

1. Who can be helped under the Chafee Foster Care Independence Program?

The Chafee Independence Program generally leaves it up to public officials, providers, and advocates to decide which young people will benefit most from its independent living services. Congress intended to give states greater flexibility in deciding who to serve under the program. It did not intend to deny eligibility to young people who were previously eligible for federally-funded independent living services. However, the Act specifies some differences between who can receive room and board and who can receive other services funded under the Chafee Independence Program.

2. Who is eligible for independent living services other than room and board?

The Chafee Independence Program gives states broad discretion to define who is eligible for services other than room and board under the program. It defines eligible children as those who are “likely to remain in foster care until age 18” and “children aging out of foster care,” regardless of whether or not they are eligible for the Title IV-E Foster Care Program.

Formerly, eligibility had been restricted to children 16 years of age and older. States now have the flexibility to define their own age guidelines for services and they may differ in various parts of the states. Under the former program, states had to serve children in Title IV-E funded foster care and also had the option of serving children in state-

Comparison of Provisions of the John H. Chafee Foster Care Independence Program* and the former Independent Living Initiative

PROVISION	JOHN H. CHAFFEE FOSTER CARE INDEPENDENCE PROGRAM	FORMER INDEPENDENT LIVING INITIATIVE	
funding	Amount	\$140 million capped entitlement	\$70 million capped entitlement
	State Match	20% state match required on total allocation	No state match required for allocation under \$45 million; 50% state match required for claims that exceed \$45 million base
	Allocation Formula	Based on the proportion of children in both Title IV-E funded and state funded foster care in the state for the most recent fiscal year; no state shall receive less than \$500,000 or its 1998 allotment, whichever is greater	Based only on the number of children in Title IV-E funded foster care in the state in 1984
	Set-aside	1.5% of authorized program funds set aside for evaluation, technical assistance, performance measurement and data collection	No set-aside provisions
eligibility	Eligible Young People	Eligible young people are those up to age 21 who are "likely to remain in foster care until age 18" and those who have aged out of foster care, without regard to their eligibility for Title IV-E funded foster care; A portion of funds must be used to serve eligible young people 18 to 21 who left foster care because they reach age 18	Eligible young people were those 16 to 18 in Title IV-E funded foster care; states also had the option to serve young people up to age 21, and young people who are or were in state-funded foster care as well as those in Title IV-E funded foster care
	Benefits to Indian Children	State must make benefits and services available to Indian children in the state on the same basis as other children	No provision
focus on young people (18-21)	Participation by young people in program design	Young people must participate directly in designing their program activities and accept personal responsibility for achieving independence	No provision
	Funding for services to young people ages 18 to 21	States must use a portion of their funds for assistance and services for young people 18 to 21 who left foster care because they reached age 18	No special targeting of funds on young people transitioning from care
	Use of funds for room and board	States may use up to 30% of their program funds for room and board for young people 18 to 21 who have left foster care because they reached age 18, but not 21	Prohibited

*The John H. Chafee Foster Care Independence Program was established in Title I of the Foster Care Independence Act (P.L. 106-169). Title I of the Act is reprinted in Appendix B

PROVISION	JOHN H. CHAFFEE FOSTER CARE INDEPENDENCE PROGRAM	FORMER INDEPENDENT LIVING INITIATIVE
Emphasis on Permanence	Clarification that independent living activities should not be seen as an alternative to permanence for children and can be provided concurrently with adoption and other permanency activities	No provision
Health Care	States given the option to extend Medicaid coverage to young people ages 18 to 21 who were in foster care on their 18th birthday, or some subset of this group; encourages such coverage	No provision
Asset Limit	Asset limit changed to allow young people to have \$10,000 (rather than \$1,000) in assets and remain eligible for Title IV-E funded foster care	Young people had to meet the \$1,000 asset limit in AFDC in order to be eligible for Title IV-E funded foster care
Training for staff and parents	States must certify that Title IV-E funds will be used to provide training to help adoptive and foster parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living	No provision
Coordination	State must certify in its plan that: State has consulted widely with public and private organizations in implementing the new program State will coordinate new program with other federal and state programs for young people State will consult and coordinate with each Indian tribe in the state	No provision
accountability	Outcome Measures	HHS, in consultation with federal, state, and local officials, advocates, youth service providers, and researchers, is required to develop outcome measures to assess state performance and the effectiveness of independent living services
	Evaluation	States required to report to HHS annually; Secretary of HHS required to evaluate program and report to Congress; no funding specified for evaluation
	Penalties	No provision
	State Application	States required to apply each year or to coordinate planning with their triennial Child and Family Services Plan

funded foster care. Now they may decide who they want to serve without regard to a young person's eligibility for Title IV-E funded foster care.

The Act makes clear that independent living services should be seen as a service to young people that will help them as they transition to adulthood, regardless of whether they end up on their own, return home, are adopted, or live in another permanent living arrangement. A decision to provide independent living services to a child does not absolve that state from continuing to make reasonable efforts toward permanence for the child. In fact, the Act states that independent living services are not an alternative to adoption for children who are eligible for them. It specifies that enrollment in independent living programs can occur concurrently with continued efforts to locate and achieve placements in adoptive families.

3. What does the phrase “likely to remain in foster care until age 18” used in the Act mean?

The Chafee Independence Program lets states define which children are “likely to remain in foster care until age 18.” The phrase is not defined in the Act.

It is clear, however, that for purposes of independent living services, not including room and board and Medicaid, the phrase does not require that the young person be in foster care on their 18th birthday. Congress was explicit in other situations when it intended such a requirement to apply.

4. Who is eligible for room and board?

For the first time, states can use federal independent living funds for room and board as well as services. Congress recognized the critical need for expanded housing options for young people transitioning from foster care. Those who are eligible for room and board are those young people age “who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.”

This includes those who age out at 18 or older up to age 21 who go directly into independent living arrangements, as well as those who age out and lose touch with the agency, but return for assistance before reaching the age of 21. The law is very clear that no child under 18 is eligible for room and board under the Chafee Independence Program. In fact, the Chief Executive Officer of a state must certify in the state's Five-Year Plan that none of the federal funds will be expended for room and board for any child under age 18.

A state may use up to 30 percent of its Chafee Independence Program allotment for room and board for eligible children and can decide how to define room and board. Under the former program, none of the funds could be used for room and board.

Eligible Providers

1. Who may provide the independent living services funded under the Chafee Foster Care Independence Program?

The Act gives states total discretion to choose providers for their independent living activities under the Chafee Independence Program. The state child welfare agency, which administers the Title IV-E Foster Care Program, applies to HHS for the funds. When the state receives the funds, it then decides who will establish and provide the services. Providers may come from the public or private sectors. In its Five-Year Plan, a state must describe how it intends to involve both the public and private sectors in helping adolescents in foster care achieve independence.

The fact that private not-for-profit and for-profit facilities are eligible to receive funds and provide services and assistance under the Chafee Independence Program is a change. Under the former program, a state agency could only choose not-for-profit providers to provide independent living services with Independent Living Initiative funds.

Funding

Funding Availability

1. When will the funds for the Chafee Foster Care Independence Program be available to states?

Even though the Chafee Independence Program took effect on December 14, 1999, FY 2000 funds are not expected to be available to the states until some time in the spring of 2000. HHS is expected to issue a Program Instruction to the states that will describe the application process for the funds.

2. How much money will a state receive?

At a minimum, a state will receive each year \$500,000 or the amount it received under the Federal Independent Living Program in FY1998, whichever is greater. Most states will receive an increase over FY 1998. HHS is expected to issue an Information Memorandum that includes grant allotments by state by the end of February 2000. [see Funding Amounts and Funding Allotment sections at pages 16–17]

3. How long does a state have to expend the funds it receives under the Chafee Foster Care Independence Program?

States have two fiscal years in which to expend the funds they receive in a fiscal year under the Chafee Independence Program. This means, for example, that a state will have until September 30, 2002, to spend the funds it receives in FY 2000.

State Application for Funding

1. What must a state do to access its share of the funds under the Chafee Foster Care Independence Program?

Details of the procedure for accessing funds are not yet available. HHS is expected to publish by the end of March a Program Instruction for the Chafee Independence Program that will detail the steps states must take to access funds under the program. It is possible that HHS may outline an abbreviated application process for FY 2000 funds and another application process for the subsequent years.

The Act states that the Secretary of HHS must issue any regulations that she determines necessary for

the Chafee Independence Program no later than December 14, 2000 (12 months after enactment of the Act). However, the application process is expected to get underway before that time.

2. What type of application for funding is required by the Chafee Foster Care Independence Program?

The Foster Care Independence Act specifies that a state must apply for funding for the Chafee Independence Program by submitting an application to the Secretary of HHS for funds for a period of five consecutive fiscal years. Previously, a state had two options for applying for funds. It could submit a separate application and budget each year or it could include its application for Independent Living Initiative funds as part of its larger Child and Family Services Plan, which also operates on a five-year funding cycle.

A state's application must include a Five-Year State Plan that outlines how the state proposes to implement the new Chafee Independence Program. The plan must address a number of specific requirements and certifications in order to be approved. (For a list of these, see the "Minimum Components of the Five-Year State Plan" in the box at page 19.) HHS is expected to provide more detail on the plan and application processes in its Program Instruction for the Chafee Independence Program.

3. When is a state's application for the Chafee Foster Care Independence Program due?

The Foster Care Independence Act states that the application for five-year funding is due on or before June 30 of the calendar year in which such five year period begins.

HHS, however, is expected to specify when plans are due in its March Program Instruction. It is possible that HHS will develop instructions that give states several options for applying for the Chafee Independence Program funds. For example, it could establish a special process for states to use to apply for FY 2000 funds which already have been approved by Congress. It also could give states the option to develop a three year plan that would then bring the Chafee Independence Program planning cycle into alignment with the planning cycle for the states'

Child and Family Services Plan. States in the past have had the option to consolidate planning for the former Independent Living Initiative with the Child and Family Services Plan and about half the states already do so. HHS also could give states the option to submit a Five-Year State Plan.

4. Who is required to participate in the development of the Five-Year State Plan?

The Act requires and/or encourages that the following be involved in the development of the plan:

- Representatives of public and private organizations (A state must certify in its plan that it has consulted widely with these providers in developing the plan.)
- Representatives of other federal and state programs for young people (A state must make every effort to coordinate its new activities with other federal and state programs for young people.)
- Representatives of Indian tribes (A state must certify in its plan that it has consulted with each Indian tribe in the state about the programs to be carried out under the plan and made efforts to coordinate the programs with them)

5. Who else should participate in the development of the Five-Year State Plan?

It is consistent with the spirit of the law to include young people in developing the Five-Year State Plan for the Chafee Independence Program. The program requires that young people “participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept responsibility for living up to their part of the program.”

Young people represent a frequently untapped resource for information about what works and what does not work in preparing them for adult life. A state should include young people in the planning process who are, or who have been, served by the child welfare system to learn about their experiences and knowledge about effective programs. Many states already have established youth advisory boards to help guide the implementation of independent living services. Such boards would be an excellent resource to be involved in the development of the Five-Year State Plan.

6. What opportunity is there for public review of the Five-Year State Plan?

The state must give all interested members of the public no less than 30 days to comment on the state plan prior to its submission. States must make the full application submitted to HHS available to the public, including a brief summary of the Five-Year State Plan.

7. How can states use the development of the Five-Year State Plan to strengthen and expand services to young people transitioning from foster care to adulthood?

The development of the Five-Year State Plan offers states an important opportunity to engage young people and other critical stakeholders in activities that will get significantly more help for young people transitioning from foster care. The planning process should be used to carefully evaluate what is and what is not working for young people transitioning from foster care in the state, who is and who is not being served, what gaps in services currently exist, and what strategies will strengthen the overall program and make the most effective use of program dollars. It also is an important opportunity to engage representatives from other federal, state, and local initiatives that are currently or can become involved in helping these young people. It should be a catalyst for much broader activities in a state on behalf of these young people.

8. Who must approve the Five-Year State Plan? How can a state make changes to the plan?

The Secretary of Health and Human Services (HHS) must approve the plan. A state may amend the plan at any time provided that the amended plan would be approved under the Act. Any amendments made must be submitted to HHS.

Funding Amounts

1. How much funding is provided under the Chafee Foster Care Independence Program?

The Act authorizes funding for the Chafee Independence Program at \$140 million a year, double the \$70 million funding level approved for the former Independent Living Initiative.

2. How much funding did Congress appropriate for the Chafee Foster Care Independence Program for FY 2000?

As of the end of 1999, Congress only had appropriated \$105 million of the \$140 million for FY 2000. President Clinton's Budget Request to Congress for FY 2001 includes a supplemental request of \$35 million for FY 2000 to bring the FY 2000 appropriated funds up to the level states are entitled to under the Chafee Independence Program. Congress must approve the request before any additional funds will be available.

Funding Allotments

1. How are the funds under the Chafee Foster Care Independence Program distributed among states?

Generally, funds under the Chafee Independence Program will be distributed to each state based on its total number of children in foster care (as a proportion of the national total) for the most recent fiscal year. Allotments may vary from year to year as caseloads change. This new formula takes into account the fact that states may use the Chafee Independence Program funds for children in both federal and state funded foster care programs. It also updates the old formula, which was based on a 1984 count of the number of children in the federal foster care program. The new program also adds a "hold harmless" provision and a small state minimum to the allotment formula. These together ensure that each state will receive at least the amount it received in FY 1998 or \$500,000, whichever is greater.

In making the allotment calculations, the Secretary of HHS first will set aside 1.5 percent of the funds authorized for evaluation, research, and technical assistance. The Secretary will then divide the remainder among the states that have submitted applications for the funds. To ensure that each state receives at least what it received in FY 1998, but no less than \$500,000, allotments for other states will be ratably reduced.

2. Must states provide a match for the federal dollars they receive?

Yes. States must provide a 20 percent non-federal match to receive their full share of the funds appropriated for the Chafee Independence Program. The Act includes no detail about the nature of the match. However, general regulations governing federal funding of programs specify that the match may be in cash or in-kind, and that federal dollars cannot be used for the match. It is expected that rules about the types of contributions that can count toward the match for the federal dollars will be the same as they were for the Independent Living Initiative.

The uniform 20 percent state match rate in the new Chafee Independence Program replaces the complex two-tiered approach that was required in the former program. Formerly, states had no state match requirement for their share of the first \$45 million in federal funds but had to provide a 50 percent state match to receive their share of the remaining \$25 million.

3. Is there a provision in the Chafee Foster Care Independence Program by which to redistribute unclaimed or unspent funds to other states?

There is currently no provision in the Act for the reallocation of funds if states do not apply for them or do not use all the funds allocated to them. It is expected that supporters of expanded help for these young people will work to ensure that a reallocation provision is added to the Act so that unclaimed and unused funds will be reallocated to other states in a timely fashion.

4. Do the new rules about funding apply to all the Chafee Foster Care Independence Program funds or just the amount in excess of the \$70 million that was available in FY1999?

The new rules apply to all the federal funds states receive under the Chafee Independence Program in FY 2000 and thereafter. The Chafee Independence Program replaces the former Independent Living Initiative.

Use of Funds

1. What types of activities may the Chafee Foster Care Independence Program funds be used for?

Generally, states have significant flexibility in deciding how to use the funds to carry out the purposes of the Chafee Independence Program. They may use them differently in various parts of the state. There are two limitations on the use of funds. First, no more than 30 percent of the funds may be used for room and board, and these funds may only be used by young people ages 18 to 21. Second, in order to maximize funding for these young people, the funds cannot be used to substitute for or to supplant any other funds already being used for the same general purposes in the state.

The Act specifies that states may use the funds in “any manner that is reasonably calculated to accomplish the purposes” of the program. The Chafee Independence Program sets out five fairly broad purposes which are consistent with many of the goals of good independent living services:

1. Identify children who are expected to be in foster care to age 18 and help them make a transition to self-sufficiency
2. Help these children receive the education, training and services necessary to obtain employment
3. Help them prepare for and enter post-secondary training and education institutions
4. Provide personal and emotional support for children aging out of foster care
5. Provide a range of services and support for former foster care recipients between ages 18 and 21 to complement their own efforts to achieve self-sufficiency and to assure that the program participants recognize and accept their personal responsibility for preparing for adulthood

A state can choose a broad or narrow list of activities to help achieve these purposes for young people. Such a decision should be made as part of the planning process where there will be a look, among other things, at how other public and private

resources are being used in the state to assist young people transitioning from foster care. The Act itself lists some services that relate to the purposes of the Program, but is not intended as a restrictive list. The services specified in the Act include:

- assistance in obtaining a high school diploma
- career exploration, vocational training, job placement and retention
- training in daily living skills, training in budgeting and financial management skills
- substance abuse prevention
- preventive health activities (including smoking avoidance, nutritional education, and pregnancy prevention)
- education
- training and employment services
- preparation for postsecondary training and education
- mentors and interactions with adults
- financial, housing, counseling, employment, education, and other appropriate supports and services for young people ages 18 to 21 formerly in foster care

In addition, the Act makes it clear that a state may choose to use up to 30 percent of its Chafee Independence Program funds for room and board for young people ages 18 to 21 who were in foster care on their 18th birthday. A state also may use some of its funds to hire a coordinator for its independent living activities and to establish accountability mechanisms to help ensure high quality services and supports are developed and maintained.

2. How are “room and board” defined?

The Chafee Independence Program leaves the definition of “room and board” to each state to define. It limits the portion of the funds that can be used for this purpose to 30 percent of the state’s program funds, but it does not describe what constitutes room and board.

Minimum Components of the five-year state plan for the John H. Chafee foster care independence program*

Descriptions of how a state will:

- Administer, supervise, or oversee the programs carried out under the plan
- Design and deliver independent living services consistent with the purposes of the Chafee Independence Program
- Ensure statewide, although not necessarily uniform, coverage by the program
- Serve children at various ages and stages of development
- Involve both the public and private sectors in service delivery
- Use objective criteria for determining eligibility for and ensuring fair and equitable treatment under the program
- Cooperate in national evaluations of the effectiveness of the services in achieving the purposes of the Chafee Independence Program

Certifications by the chief executive officer of a state that the state will:

- Provide assistance and services to children who have left foster care because they have attained age 18, but not 21;
- Spend no more than 30 percent of its annual allotment for room and board for children who have left foster care because they have attained age 18, but not 21, and none of it for room and board for children under age 18
- Use its training funds authorized under Title IV-E of the Social Security Act to help foster and adoptive parents, workers in group homes, and case managers to understand and address the issues confronting adolescents preparing for independent living and where possible coordinate such training with independent living programs
- Have consulted widely with public and private organizations in developing the plan and given all interested members of the public at least 30 days to submit comments
- Make every effort to coordinate Chafee Independence Program-funded activities with other federal and state programs for youth (especially the programs funded under the federal Transitional Living Grant Program, abstinence education programs, local housing programs, programs for young people with disabilities (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies
- Consult with each Indian tribe in the state about the activities to be carried out under the plan; coordinate the programs with such tribes; and make the programs' benefits and services available to Indian children in the state on the same basis as other children
- Ensure that adolescents participate directly in designing their own independent living activities and accept responsibility for living up to their part of the program
- Have established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan

*See Section 477(b) of the John H. Chafee Foster Care Independence Program

Permanence

1. What is the new emphasis on permanence in the Chafee Foster Care Independence Program?

Consistent with the focus on safety, permanence, and well-being in the 1997 Adoption and Safe Families Act (ASFA) (P.L. 105-89), the Chafee Independence Program reinforces the importance of adoption and other permanency options for teens in foster care by:

- Stating explicitly that “enrollment in Independent Living programs can occur concurrent with continued efforts to locate and achieve placement in adoptive families for older children in foster care,” thereby clarifying that independent living services should not be seen as an alternative to adoption for teens
- Requiring states to train both foster and adoptive parents (as well as group care workers and case managers) about the issues confronting adolescents preparing for independent living
- Reinforcing the importance of providing personal and emotional support for children aging out of foster care, through the promotion of interactions with mentors and other dedicated adults
- Specifying that independent living services may be provided to young people at “various ages and various stages of achieving independence,” including children waiting for adoption or other permanent options

Help for Young People in Foster Care

1. Are the limitations on assets allowable for young people in foster care changed by the Act?

Yes. The amount of assets that a young person can have and still be eligible for the Title IV-E funded foster care program was increased from \$1,000 to \$10,000.

2. Did the Act also require additional preparation of foster parents?

Yes. The Act added a new state plan requirement to the Title IV-E Foster Care Program that addresses the preparation of foster parents. A state's Title IV-E plan must include (effective 10/1/99) a certification that before a child (of any age) under the responsibility of the state is placed with foster parents that the foster parents must be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child. The preparation also must be continued if necessary after placement. This provision can be used to strengthen the preparation of foster parents caring for adolescents.

Accountability/Reporting

1. Are there provisions in the Foster Care Independence Act to hold states accountable for the services that they provide under the Chafee Foster Care Independence Program?

Yes. The Act requires states to collect data to track:

- The number and characteristics of young people receiving services under the Chafee Independence Program
- The type and quantity of services being provided
- State performance on outcome measures developed by HHS, as elaborated upon below

Members of Congress sought better evaluation of the results for young people being served by independent living programs. The General Accounting Office also recommended in a fall 1999 report the need for increased accountability by both HHS and the states in the independent living program (see General Accounting Office, *Foster Care: Effectiveness of Independent Living Services Unknown*, Washington, D.C.: GAO, 1999)

2. What outcome measures will be used to assess state operation of independent living programs funded under the Chafee Foster Care Independence Program?

The Act requires the Secretary of HHS to develop outcome measures to assess the performance of states in operating independent living programs under the Chafee Independence Program. At a minimum, the outcome measures must include measures of:

- Educational attainment (such as high school diploma)
- Employment
- Avoidance of dependency
- Homelessness
- Nonmarital childbirth
- Incarceration
- High-risk behaviors

3. With whom must the Secretary of HHS consult in developing these outcome measures?

The Act requires the Secretary of HHS to consult with state and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers in developing these outcome measures.

4. When will HHS's plan for collecting performance data from the states be available?

Under the Act, HHS must submit a report to Congress (the House Ways and Means and Senate Finance Committees) by mid-December 2000 detailing its plans and timetable for collecting the data and developing outcome measures to assess state performance under the Chafee Independence Program. This report must include a proposal for penalties to be imposed on states that do not report the required data. HHS must implement its plan to collect the media information by October 2001.

5. Does the Foster Care Independence Act also require evaluations of the services and activities funded under the Chafee Foster Care Independence Program?

Yes. The Act requires HHS to conduct an evaluation of those state programs that it deems innovative or of potential national significance, using rigorous scientific standards. The evaluations must, at a minimum, include information on the effects of the program on education, employment, and personal development. The Act encourages the Secretary of HHS to work with state and local governments to design methods for conducting these evaluations.

In addition, the Act requires states to report to HHS about their performance on certain outcome measures in operating independent living activities, thereby encouraging states to also evaluate their own performance.

6. How will the evaluations be funded?

1.5 percent of \$140 million (the authorized funding level for the Chafee Independence Program) must be reserved each fiscal year for evaluation, technical assistance, performance measurement, and data collection activities. These activities may be carried out by HHS directly or through grants, contracts, or cooperative agreements.

7. How will HHS ensure that the services funded under the Chafee Foster Care Independence Program are operated as required by federal law?

At a minimum, HHS must enforce the following accountability provisions in the Act

- A requirement that there be a certification in a state's Five-Year Plan, by the state's chief executive officer, that the state has established and will enforce standards and procedures to prevent fraud and abuse in the programs funded under the Chafee Independence Program

- A requirement that a state describe in its Five-Year Plan how it intends to cooperate with national evaluations of the independent living programs
- A system of fiscal penalties on states for noncompliance that specifies:

A reduction of between 1–5 percent of the amount allotted to the state under the Chafee Independence Program for operating a service in a manner inconsistent with or not disclosed in the state application approved by HHS.

A reduction of between 1–5 percent of the amount allotted to the state under the Chafee Independence Program for a fiscal year for failing during the fiscal year to comply with HHS's information collection plan

(The exact amount of these penalties will be determined by HHS based on the degree of noncompliance by the state.)

Medicaid

1. How does the Foster Care Independence Act expand Medicaid eligibility for young people transitioning from foster care?

The Foster Care Independence Act gives states new flexibility to provide Medicaid for young people ages 18 to 21 who are transitioning from foster care. The Act creates a new optional Medicaid eligibility group for "independent foster care adolescents" who are young people under the age of 21 who were in foster care under the responsibility of the state on their 18th birthday. A state may provide Medicaid to all young people under the age of 21 who were in foster care on their 18th birthday or to "reasonable categories" of this group of young people.

The Act gives states discretion to define "reasonable categories" of this group of young people, but includes two examples of ways states may limit who they choose to make eligible for Medicaid:

- Only otherwise eligible young people who were receiving federal foster care payments or independent living services under Title IV-E of the Social Security Act while in foster care, and/or

- Only eligible young people with assets, resources, and income below certain levels (which may not be more restrictive than the levels currently imposed under Medicaid)

In identifying additional reasonable categories of young people, states may also choose to extend Medicaid young people of certain ages (18, 19, or 20) rather than to all eligible young people ages 18 to 21.

2. Which young people 18 years of age and older in foster care, or transitioning from foster care, were eligible for Medicaid prior to enactment of the Foster Care Independence Act?

Most young people have had health insurance coverage through the Medicaid program while in foster care. Young people eligible for the federal foster care program under Title IV-E of the Social Security Act are automatically eligible for Medicaid. In addition, most young people in state supported foster care who are not eligible for federal foster care assistance also receive Medicaid. They may be

eligible because they are eligible for SSI (the federal Supplemental Security Income Program for children with severe disabilities) or because they qualify through one of the other optional coverage categories under Medicaid. Some states also provide health coverage through Medicaid or totally state-funded assistance for young people who remain in foster care beyond age 18.

The biggest problems in obtaining health care and Medicaid occur for young people when they leave foster care, often at age 18 or in some cases 19 (if they are still in school and expected to graduate by age 19). Their health insurance coverage through Medicaid or other means often does not continue unless the state had made special accommodations for them. Even then it is up to individual workers to ensure that the young people in their caseloads are advised of these options.

It is useful to know which young people a state currently covers under Medicaid and how. The Congressional Budget Office estimated that at least 24,000 additional young people will qualify for Medicaid and that number could increase if all states take the full Medicaid option.

There are several groups of young people transitioning from foster care who already may be eligible for continuing Medicaid. If a state is currently covering one or more of these groups, determine to what age the young people are covered. Examples of groups of young people who may already be eligible for Medicaid include:

- Eighteen-year-olds who may be covered for one year if they meet the state's age and income guidelines
- Young people with serious disabilities who can qualify for SSI, and then Medicaid by virtue of their SSI eligibility
- Pregnant or parenting teens who meet the state's income eligibility guidelines
- Young people ages 18, 19, or 20 who the state has chosen to cover under the "Ribicoff" option in federal law (Generally these have to be young people who would qualify for TANF if they were "dependent children".)

Some states also choose to continue to provide health coverage to young people transitioning from foster care with funds under the State Child Health Insurance Program (SCHIP) (to age 19), or with exclusively state funds.

If there are some young people in a state who retain health insurance coverage after they leave care, it is important to understand who specifically is eligible, at what ages, how the health insurance is funded, and whether the young person would have to incur any costs to obtain the insurance. It is also important to learn more about the precise help the public agency provides to ensure that the young people take advantage of the assistance that is available. Just being eligible is not sufficient—the young people must also be enrolled in the insurance program.

3. If a state takes the full option, who will be eligible for Medicaid?

All young people who were in foster care under the responsibility of the state on their 18th birthday and who are not yet 21 will be automatically eligible for Medicaid if states take full advantage of the Medicaid option in the Foster Care Independence Act.

4. What discretion does a state have to pick and choose among eligible young people?

As mentioned above, states have a lot of discretion to decide which young people should be eligible for Medicaid as they are transitioning from care. The largest number of young people will benefit when a state decides to make all young people who were in foster care on their 18th birthday, and who are not yet age 21, eligible without regard to their income. However, the law also allows states to make only subsets of this group of young people eligible. They may restrict the group by income. If a state applies an income or resource test, then the levels and methods used cannot be more restrictive than those used for families eligible under specific Medicaid requirements in Section 1931(b) of the Social Security Act. A state also may restrict eligibility by age (e.g., providing assistance only to a portion of the 18, 19, or 20 year olds), by foster care status (e.g., only those who were eligible for the Title IV-E foster care program), or by other reasonable categories defined by the state.

5. Does a state have to impose either an income test or a resource test on the young people applying for Medicaid under this new option?

No. A state does not have to impose either an income test or a resource test on young people eligible for the new Medicaid option.

6. How can state Medicaid agencies take advantage of the new option?

The Director of the Health Care Financing Administration in HHS, in a December 14, 1999 letter to State Medicaid Directors, strongly encouraged them to take advantage of this new opportunity to provide health coverage to young people who have been in foster care (see Appendix C). To amend its Medicaid program, a state Medicaid agency must prepare an amendment to its state Medicaid plan adding this eligible group of young people and submit it to its Regional HHS Medicaid office for approval.

7. Can a state Medicaid plan amendment be submitted at any time?

Yes. A state may submit a Medicaid plan amendment at any time. A state will be able to provide Medicaid funds to these young people beginning at the start of the federal fiscal quarter in which HHS approves the plan.

8. How will the new Medicaid coverage for these young people be funded?

Federal funding is guaranteed for the provision of Medicaid for this group of young people. However, states must provide a state match that is the same as for other parts of Medicaid program. State matches range from 50 percent in most states to as high as 76.8 percent in the lowest income states. The match may be provided by either the state Medicaid agency, the child welfare agency, or the two in combination.

9. How important is it that the Medicaid and child welfare agencies work together to assist these young people transitioning from foster care?

If they do not already, it is essential that state child welfare and Medicaid agencies work together to ensure that eligible young people benefit from this new option. The child welfare agency can familiarize the Medicaid agency about the unmet health care needs of young people transitioning from foster care and the benefits of providing health care coverage for them.

10. What services will young people be eligible for under Medicaid?

The young people will be eligible for the full Medicaid benefits package. All services, including Early, Periodic Screening, Diagnostic, and Treatment (EPSDT) Services, must be available to all young people who are eligible for Medicaid. Under EPSDT, these young people will be eligible to receive any medically necessary health, mental health, or substance abuse treatment services allowable under Medicaid that were identified when the young person's health needs were assessed under EPSDT.

Appendix A

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Appendix B

The Foster Care Independence Act Legislation

Title 1: Improved Independent Living Program (p.I. 106-169)

FOSTER CARE INDEPENDENCE ACT OF 1999

Public Law 106-169

106th Congress

An Act

To amend part E of title IV of the Social Security Act to provide States with more funding and greater flexibility in carrying out programs designed to help children make the transition from foster care to self-sufficiency, and for other purposes. <<NOTE: Dec. 14, 1999 - [H.R. 3443]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress

<<NOTE: Foster Care Independence Act of 1999 assembled,

TITLE I—IMPROVED INDEPENDENT LIVING PROGRAM

Subtitle A—Improved Independent Living Program

SEC. 101. IMPROVED INDEPENDENT LIVING PROGRAM.

(a) Findings.—The Congress finds the following:

- (1) States are required to make reasonable efforts to find adoptive families for all children, including older children, for whom reunification with their biological family is not in the best interests of the child. However, some older children will continue to live in foster care. These children should be enrolled in an Independent Living program designed and conducted by State and local government to help prepare them for employment, postsecondary education, and successful management of adult responsibilities.
- (2) Older children who continue to be in foster care as adolescents may become eligible for Independent Living programs. These Independent Living programs are not an alternative to adoption for these children. Enrollment in Independent Living programs can occur concurrent with continued efforts to locate and achieve placement in adoptive families for older children in foster care.
- (3) About 20,000 adolescents leave the Nation's foster care system each year because they have reached 18 years of age and are expected to support themselves.
- (4) Congress has received extensive information that adolescents leaving foster care have significant difficulty making a successful transition to adulthood; this information shows that children aging out of foster care show high rates of homelessness, non-marital childbearing, poverty, and delinquent or criminal behavior; they are also frequently the target of crime and physical assaults.
- (5) The Nation's State and local governments, with financial support from the Federal Government, should offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program beginning several years before high school graduation and continuing, as needed, until the young adults emancipated from foster care establish independence or reach 21 years of age.

(b) Improved Independent Living Program.—Section 477 of the Social Security Act (42 U.S.C. 677) is amended to read as follows:

SEC. 477. JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM.

(a) Purpose.—The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

The full text of the Foster Care Independence Act and the John H. Chafee Program can be found on the Internet at: <http://www.access.gpo.gov/nara/publaw/106publ.html>. Once at the site, scroll down to Pub.L. 106-169 (H.R. 3443).

- (1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);
- (2) to help children who are likely to remain in foster care until 18 years of age receive the education, training, and services necessary to obtain employment;
- (3) to help children who are likely to remain in foster care until 18 years of age prepare for and enter postsecondary training and education institutions;
- (4) to provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults; and
- (5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood.

(b) Applications.—

- (1) In general.—A State may apply for funds from its allotment under subsection (c) for a period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.
- (2) State plan.—A plan meets the requirements of this paragraph if the plan specifies which State agency or agencies will administer, supervise, or oversee the programs carried out under the plan, and describes how the State intends to do the following:
 - (A) Design and deliver programs to achieve the purposes of this section.
 - (B) Ensure that all political subdivisions in the State are served by the program, though not necessarily in a uniform manner.
 - (C) Ensure that the programs serve children of various ages and at various stages of achieving independence.
 - (D) Involve the public and private sectors in helping adolescents in foster care achieve independence.

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 - (E) Use objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.
 - (F) Cooperate in national evaluations of the effects of the programs in achieving the purposes of this section.
- (3) Certifications.—The certifications required by this paragraph with respect to a plan are the following:
 - (A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.
 - (B) A certification by the chief executive officer of the State that not more than 30 percent of the amounts paid to the State from its allotment under subsection (c) for a fiscal year will be expended for room or board for children who have left foster care because they have attained 18 years of age, and who have not attained 21 years of age.
 - (C) A certification by the chief executive officer of the State that none of the amounts paid to the State from its allotment under subsection (c) will be expended for room or board for any child who has not attained 18 years of age.

- (D) A certification by the chief executive officer of the State that the State will use training funds provided under the program of Federal payments for foster care and adoption assistance to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living, and will, to the extent possible, coordinate such training with the independent living program conducted for adolescents.
- (E) A certification by the chief executive officer of the State that the State has consulted widely with public and private organizations in developing the plan and that the State has given all interested members of the public at least 30 days to submit comments on the plan.
- (F) A certification by the chief executive officer of the State that the State will make every effort to coordinate the State programs receiving funds provided from an allotment made to the State under subsection (c) with other Federal and State programs for youth (especially transitional living youth projects funded under part B of title III of the Juvenile Justice and Delinquency Prevention Act of 1974), abstinence education programs, local housing programs, programs for disabled youth (especially sheltered workshops), and school-to-work programs offered by high schools or local workforce agencies.
- (G) A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; and that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State.

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- (H) A certification by the chief executive officer of the State that the State will ensure that adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living and that the adolescents accept personal responsibility for living up to their part of the program.
- (I) A certification by the chief executive officer of the State that the State has established and will enforce standards and procedures to prevent fraud and abuse in the programs carried out under the plan.
- (4) Approval.—The Secretary shall approve an application submitted by a State pursuant to paragraph (1) for a period if—
 - (A) the application is submitted on or before June 30 of the calendar year in which such period begins; and
 - (B) the Secretary finds that the application contains the material required by paragraph (1).
- (5) Authority to implement certain amendments; notification.—A State with an application approved under paragraph (4) may implement any amendment to the plan contained in the application if the application, incorporating the amendment, would be approvable under paragraph (4). Within <<NOTE: Deadline.>> 30 days after a State implements any such amendment, the State shall notify the Secretary of the amendment.
- (6) Availability.—The State shall make available to the public any application submitted by the State pursuant to paragraph (1), and a brief summary of the plan contained in the application.

(c) Allotments to States.—

- (1) In general.—From the amount specified in subsection (h) that remains after applying subsection (g)(2) for a fiscal year, the Secretary shall allot to each State with an application approved under subsection (b) for the fiscal year the amount which bears the same ratio to such remaining amount as the number of children in foster care under a program of the State in the most recent fiscal year for which such information is available bears to the total number of children in foster care in all States for such most recent fiscal year, as adjusted in accordance with paragraph (2).
- (2) Hold harmless provision.—
 - (A) In general.—The Secretary shall allot to each State whose allotment for a fiscal year under paragraph (1) is less than the greater of \$500,000 or the amount payable to the State [[Page 113 STAT. 1827]]

under this section for fiscal year 1998, an additional amount equal to the difference between such allotment and such greater amount.

(B) Ratable reduction of certain allotments.—In the case of a State not described in subparagraph (A) of this paragraph for a fiscal year, the Secretary shall reduce the amount allotted to the State for the fiscal year under paragraph (1) by the amount that bears the same ratio to the sum of the differences determined under subparagraph (A) of this paragraph for the fiscal year as the excess of the amount so allotted over the greater of \$500,000 or the amount payable to the State under this section for fiscal year 1998 bears to the sum of such excess amounts determined for all such States.

(d) Use of Funds.—

- (1) In general.—A State to which an amount is paid from its allotment under subsection (c) may use the amount in any manner that is reasonably calculated to accomplish the purposes of this section.
- (2) No supplantation of other funds available for same general purposes.—The amounts paid to a State from its allotment under subsection (c) shall be used to supplement and not supplant any other funds which are available for the same general purposes in the State.
- (3) Two-year availability of funds.—Payments made to a State under this section for a fiscal year shall be expended by the State in the fiscal year or in the succeeding fiscal year.

(e) Penalties.—

- (1) Use of grant in violation of this part.—If the Secretary is made aware, by an audit conducted under chapter 75 of title 31, United States Code, or by any other means, that a program receiving funds from an allotment made to a State under subsection (c) has been operated in a manner that is inconsistent with, or not disclosed in the State application approved under subsection (b), the Secretary shall assess a penalty against the State in an amount equal to not less than 1 percent and not more than 5 percent of the amount of the allotment.
- (2) Failure to comply with data reporting requirement.—The Secretary shall assess a penalty against a State that fails during a fiscal year to comply with an information collection plan implemented under subsection (f) in an amount equal to not less than 1 percent and not more than 5 percent of the amount allotted to the State for the fiscal year.
- (3) Penalties based on degree of noncompliance.—The Secretary shall assess penalties under this subsection based on the degree of noncompliance.

(f) Data Collection and Performance Measurement.—

- (1) In general.—The Secretary, in consultation with State and local public officials responsible for administering independent living and other child welfare programs, child welfare advocates, Members of Congress, youth service providers, and researchers, shall—
 - (A) develop outcome measures (including measures of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors) that can be used to assess the performance of States in operating independent living programs;
 - (B) identify data elements needed to track—
 - (i) the number and characteristics of children receiving services under this section;
 - (ii) the type and quantity of services being provided; and
 - (iii) State performance on the outcome measures; and
- [[Page 113 STAT. 1828]]
- (C) develop and implement a plan to collect the needed information beginning with the second fiscal year beginning after the date of the enactment of this section.

- (2) Report <<NOTE: Deadline.>> to the congress.—Within 12 months after the date of the enactment of this section, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report detailing the plans and timetable for collecting from the States the information described in paragraph (1) and a proposal to impose penalties consistent with paragraph (e)(2) on States that do not report data.

(g) Evaluations.—

- (1) In general.—The Secretary shall conduct evaluations of such State programs funded under this section as the Secretary deems to be innovative or of potential national significance. The evaluation of any such program shall include information on the effects of the program on education, employment, and personal development. To the maximum extent practicable, the evaluations shall be based on rigorous scientific standards including random assignment to treatment and control groups. The Secretary is encouraged to work directly with State and local governments to design methods for conducting the evaluations, directly or by grant, contract, or cooperative agreement.
- (2) Funding of evaluations.—The Secretary shall reserve 1.5 percent of the amount specified in subsection (h) for a fiscal year to carry out, during the fiscal year, evaluation, technical assistance, performance measurement, and data collection activities related to this section, directly or through grants, contracts, or cooperative agreements with appropriate entities.

(h) Limitations on Authorization of Appropriations.—To carry out this section and for payments to States under section 474(a)(4), there are authorized to be appropriated to the Secretary \$140,000,000 for each fiscal year:.

(c) Payments to States.—Section 474(a)(4) of such Act (42 U.S.C. 674(a)(4)) is amended to read as follows:

4) the lesser of—

(A) 80 percent of the amount (if any) by which—

- (i) the total amount expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 477(b) for the period in which the quarter occurs (including any amendment that meets the requirements of section 477(b)(5)); exceeds
- (ii) the total amount of any penalties assessed against the State under section 477(e) during the fiscal year in which the quarter occurs; or

(B) the amount allotted to the State under section 477 for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year:.

(d) Regulations.—Not <<NOTE: Deadline. 42 USC 677 note.>> later than 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue such regulations as may be necessary to carry out the amendments made by this section.

42 USC 677 note.

[[Page 113 STAT. 1829]]

(e) Sense of the Congress.—It is the sense of the Congress that States should provide medical assistance under the State plan approved under title XIX of the Social Security Act to 18-, 19-, and 20-year-olds who have been emancipated from foster care.

Subtitle B—Related Foster Care Provision

SEC. 111. INCREASE IN AMOUNT OF ASSETS ALLOWABLE FOR CHILDREN IN FOSTER CARE.

Section 472(a) of the Social Security Act (42 U.S.C. 672(a)) is amended by adding at the end the following: "In determining whether a child would have received aid under a State plan approved under section 402 (as in

effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than \$10,000 shall be considered to be a child whose resources have a combined value of not more than \$1,000 (or such lower amount as the State may determine for purposes of such section 402(a)(7)(B)).”.

SEC. 112. PREPARATION OF FOSTER PARENTS TO PROVIDE FOR THE NEEDS OF CHILDREN IN STATE CARE.

(a) State Plan Requirement.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

- (1) by striking “and” at the end of paragraph (22);
- (2) by striking the period at the end of paragraph (23) and inserting “; and”; and
- (3) by adding at the end the following:
 - (24) include a certification that, before a child in foster care under the responsibility of the State is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child.”.

(b) Effective <<NOTE: 42 USC 671 note.>> Date.—The amendments made by subsection (a) shall take effect on October 1, 1999.

Subtitle C—Medicaid Amendments

SEC. 121. STATE OPTION OF MEDICAID COVERAGE FOR ADOLESCENTS LEAVING FOSTER CARE.

(a) In General.—Subject to subsection (c), title XIX of the Social Security Act, is amended—

(1) in section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii))—

(A) by striking “`or” at the end of subclause (XIII);

(B) by adding “`or” at the end of subclause (XIV); and

(C) by adding at the end the following new subclause:

(XV) who are independent foster care adolescents (as defined in section 1905(v)(1)), or who are within any reasonable categories of such adolescents specified by the State;” and (2) by adding at the end of section 1905 (42 U.S.C. 1396d) the following new subsection:

[[Page 113 STAT. 1830]]

(v)(1) For purposes of this title, the term “independent foster care adolescent” means an individual—

(A) who is under 21 years of age;

(B) who, on the individual's 18th birthday, was in foster care under the responsibility of a State; and

(C) whose assets, resources, and income do not exceed such levels (if any) as the State may establish consistent with paragraph (2).

(2) The levels established by a State under paragraph (1)(C) may not be less than the corresponding levels applied by the State under section 1931(b).

(3) A State may limit the eligibility of independent foster care adolescents under section 1902(a)(10)(A)(ii)(XV) to those individuals with respect to whom foster care maintenance payments or independent living services were furnished under a program funded under part E of title IV before the date the individuals attained 18 years of age.”.

(b) Effective <<NOTE: Applicability. 42 USC 1396a note.>> Date.—The amendments made by subsection (a) apply to medical assistance for items and services furnished on or after October 1, 1999.

42 USC
1396a
note.

- (c) Contingency <<NOTE: 42 USC 1396a note.>> in Enactment.—If the Ticket to Work and Work Incentives Improvement Act of 1999 is enacted (whether before, on, or after the date of the enactment of this Act)—
- (1) the amendments made by that Act shall be executed as if this Act had been enacted after the enactment of such other Act;
 - (2) with respect to subsection (a)(1)(A) of this section, any reference to subclause (XIII) is deemed a reference to subclause (XV);
 - (3) with respect to subsection (a)(1)(B) of this section, any reference to subclause (XIV) is deemed a reference to subclause (XVI);
 - (4) <<NOTE: 42 USC 1396a.>> the subclause (XV) added by subsection (a)(1)(C) of this section—
 - (A) is redesignated as subclause (XVII); and
 - (B) is amended by striking “section 1905(v)(1)” and inserting “section 1905(w)(1)”; and
 - (5) <<NOTE: 42 USC 1396d.>> the subsection (v) added by subsection (a)(2) of this section—
 - (A) is redesignated as subsection (w); and
 - (B) is amended by striking “1902(a)(10)(A)(ii)(XV)” and inserting “1902(a)(10)(A)(ii)(XVII)”.

Subtitle D—Adoption Incentive Payments

SEC. 131. INCREASED FUNDING FOR ADOPTION INCENTIVE PAYMENTS.

(a) Supplemental Grants.—Section 473A of the Social Security Act (42 U.S.C. 673b) is amended by adding at the end the following:

(j) Supplemental Grants.—

- (1) In general.—Subject to the availability of such amounts as may be provided in advance in appropriations Acts, in addition to any amount otherwise payable under this section to any State that is an incentive-eligible State for fiscal year 1998, the Secretary shall make a grant to the State in an amount equal to the lesser of—

[[Page 113 STAT. 1831]]

(A) the amount by which—

- (i) the amount that would have been payable to the State under this section during fiscal year 1999 (on the basis of adoptions in fiscal year 1998) in the absence of subsection (d)(2) if sufficient funds had been available for the payment; exceeds
- (ii) the amount that, before the enactment of this subsection, was payable to the State under this section during fiscal year 1999 (on such basis); or

(B) the amount that bears the same ratio to the dollar amount specified in paragraph (2) as the amount described by subparagraph (A) for the State bears to the aggregate of the amounts described by subparagraph (A) for all States that are incentive-eligible States for fiscal year 1998.

- (2) Funding.—“\$23,000,000 of the amounts appropriated under subsection (h)(1) for fiscal year 2000 may be used for grants under paragraph (1) of this subsection.”

(b) Limitation on Authorization of Appropriations.—Section 473A(h)(1) of the Social Security Act (42 U.S.C. 673b(h)(1)) is amended to read as follows:

- (1) In general.—For grants under subsection (a), there are authorized to be appropriated to the Secretary—
 - (A) \$20,000,000 for fiscal year 1999;
 - (B) \$43,000,000 for fiscal year 2000; and
 - (C) \$20,000,000 for each of fiscal years 2001 through 2003.”

Appendix C

DEPARTMENT OF HEALTH & HUMAN SERVICES
Health Care Financing Administration

Center for Medicaid and State Operations
7500 Security Boulevard
Baltimore, MD 21244-1850

December 14, 1999

Dear State Medicaid Director:

Since the beginning of his Administration, President Clinton has worked hard with Congress to provide health care coverage to more working families and children. As part of this effort, the President proposed new protections for children leaving foster care, and the President was pleased to sign the bipartisan Foster Care Independence Act of 1999 on December 14, 1999. This law makes critical improvements in how we serve older foster care children and in how we help them prepare for adulthood.

While the Administration for Children and Families will soon provide your State with comprehensive information on this important law, I wanted to highlight how it gives you the flexibility to provide much needed health care coverage to foster children as they make their transition to independence. The law does this by creating a new optional Medicaid eligibility group. I strongly encourage you to take advantage of this new opportunity to provide health coverage to children who have been in foster care.

Children who have "aged out" of foster care face tremendous challenges. They often find themselves fully emancipated and on their own without the family support received by most individuals entering adulthood. Also, the incidence of homelessness, substance abuse, and pregnancy can be high in this population. Clearly, these children continue to need access to medical care. And yet, upon reaching their 18th or 19th birthday, many of these children lose their Medicaid coverage that protected them as foster care children.

However, it is now possible to continue to offer these children access to health care. The Foster Care Independence Act has established a new optional Medicaid eligibility group for children who are in foster care under the responsibility of the State on their 18th birthday. There are a series of options available to your State under the law to help these children, including the flexibility to:

1. Provide eligibility for all these children until they reach age 21 or only until age 19 or 20.
2. Not apply an income or resource test for these children. If the State does apply an income or resource test, then the standards and methodologies used cannot be more restrictive than those used for the State's low-income families with children eligible under section 1931 of the Act.
3. Only make those children eligible who were furnished foster care maintenance payments or independent living services under a program funded under title IV-E of the Social Security Act.

Please note that the Congress and the President worked to ensure that these children receive the full Medicaid benefits package. All services, including Early and Periodic Screening, Diagnostic and Treatment services, must be provided to all children whom you cover under the new optional group.

Again, I urge you to elect this new option to ensure that children aging out of foster care have the health care that they need. We will issue more technical guidance on this matter through the Medicaid Manual. If you have any questions before then, please contact Cindy Mann, Director, Family and Children's Health Programs Group at 410-786-5647 if you need any assistance in establishing this eligibility group or have any questions.

Sincerely,

Timothy M. Westmoreland
Director

cc:

All HCFA Regional Administrators

All HCFA Associate Regional Administrators
for Medicaid and State Operations

Lee Partridge
Director, Health Policy Unit
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Senior Health Policy Analyst
National Governors Association

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