

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
	Administration for Children, Youth and Families	
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PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-B and Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

SUBJECT: NEW LEGISLATION -- Public Law 105-89, The Adoption and Safe Families Act of 1997

LEGAL AND RELATED REFERENCES The Adoption and Safe Families Act of 1997 (Public Law 105-89), Titles IV-B and IV-E, Section 403(b), Section 453, and Section 1130(a) of the Social Security Act

PURPOSE: The purpose of this Program Instruction (PI) is to inform States of new legislation amending titles IV-B and IV-E of the Social Security Act and provide guidance for implementing the new law. This PI also provides the effective dates for implementing Public Law 105-89 and early notification of the impact of the new law on State Automated Child Welfare Information Systems (SACWIS).

OVERVIEW: This Program Instruction transmits Public Law 105-89 and a compilation of titles IV-B and IV-E, as amended by the Adoption and Safe Families Act of 1997 (ASFA). It also provides guidance for States' early implementation of the law. The PI is divided into three parts: Part I contains principles to assist States in understanding the new provisions and integrating the law into ongoing reforms of the child welfare system; Part II stipulates the effective dates of the new legislation; and Part III discusses how the law may impact States' SACWIS and other information systems.

INFORMATION:

PART I. THE ADOPTION AND SAFE FAMILIES ACT OF 1997

On November 19, 1997, the President signed into law the Adoption and Safe Families Act of 1997. This legislation, passed by the Congress with overwhelming bipartisan support, represents an important landmark in Federal child welfare law. It establishes unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being. The passage of this new law gives us an unprecedented opportunity to build on the reforms of the child welfare system that have begun in recent years in order to make the system more responsive to the multiple, and

often complex, needs of children and families. The law reaffirms the need to forge linkages between the child welfare system and other systems of support for families, as well as between the child welfare system and the courts, to ensure the safety and well-being of children and their families. The law also gives renewed impetus to dismantle the myriad barriers that may exist between children waiting in foster care and permanency. By implementing the new law in the context of an ongoing commitment to strengthening all aspects of the child welfare system, we will make a meaningful difference in the lives of children in foster care and in the lives of children who must come into contact with the child welfare system in the future.

ASFA embodies a number of key principles that must be considered in order to implement the law:

- **The safety of children is the paramount concern that must guide all child welfare services.** The new law requires that child safety be the paramount concern when making service provision, placement and permanency planning decisions. The law reaffirms the importance of making reasonable efforts to preserve and reunify families, but also now exemplifies when States are not required to make efforts to keep children with their parents, when doing so places a child's safety in jeopardy.
- **Foster care is a temporary setting and not a place for children to grow up.** To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions that shorten the timeframe for making permanency planning decisions, and that establish a timeframe for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes.
- **Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.** The enactment of a legal framework requiring permanency decisions to be made more promptly heightens the importance of providing quality services as quickly as possible to enable families in crisis to address problems. It is only when timely and intensive services are provided to families, that agencies and courts can make informed decisions about parents' ability to protect and care for their children.
- **The child welfare system must focus on results and accountability.** The law makes it clear that it is no longer enough to ensure that procedural safeguards are met. It is critical that child welfare services lead to positive results. The law requires numerous tools for focusing attention on results, including an annual report on State performance; the creation of an adoption incentive payment for States designed to support the President's goal of doubling the annual number of children who are adopted or permanently placed by the year 2002; and a requirement for the Department to study and make recommendations regarding additional performance-based financial incentives in child welfare.
- **Innovative approaches are needed to achieve the goals of safety, permanency and well-being.** The law recognizes that we do not yet have all of the solutions to achieve our goals. By expanding the authority for child welfare demonstration waivers, the law provides a mechanism to allow States greater flexibility to develop innovative strategies to achieve positive results for children and families.

There is much to be done in the coming months as we work together to implement this multi-faceted new law. This Program Instruction is the first of the communications that the Department will send to assist the States in meeting the requirements of ASFA. We will also be consulting with State representatives and other experts in the field to help guide our work in implementing the new law. Working together, we have the opportunity to dramatically improve the lives of children and families.

PART II. EFFECTIVE DATES FOR IMPLEMENTING PUBLIC LAW 105-89:

General Effective Date of Public Law 105-89

The effective date of Public Law 105-89 is November 19, 1997. States are expected to comply with the provisions of the law as of that date, with the exceptions noted below.

Exceptions to Effective Date: Determination of Required State Legislation

A limited period of delay is permitted when the Secretary determines that a State must enact legislation to comply with certain State plan requirements. Section 501(b) of Public Law 105-89 authorizes the Secretary to determine those State plan requirements that will necessitate State legislation.

Delayed Effective Date

A "delayed effective date" will apply only to those requirements that the Secretary has determined require State legislation. The "delayed effective date" is defined in Section 501(b) as the beginning of the calendar quarter following the close of the State's first regular legislative session.

Following is a list of new or amended State plan requirements contained in titles IV-B and IV-E, as amended by ASFA:

Title IV-B, Subparts 1 and 2:

- Including safety in case plan and case review requirements [section 422(b)(10)]
- Developing plans to facilitate adoptions across State and county jurisdictions [section 422(b)(12)]
- Requiring assurances that the safety of children shall be of the paramount concern [section 432(a)(9)]

Title IV-E:

- Clarification of the reasonable efforts requirement [section 471(a)(15)]
- Criminal record checks for prospective foster and adoptive parents [section 471(a)(20)]
- Health insurance coverage for children with special needs [section 471(a)(21)]
- State standards to ensure quality services for children in foster care [section 471(a)(22)]
- State requirement to initiate or join proceedings within a specified time to terminate parental rights for certain children in foster care [section 475(5)(E) and (F)][*](#)

Transition Rule

The requirement in section 475(5)(E) and (F) of the Act to initiate proceedings to terminate parental rights (TPR) is phased in over time according to the transition rule in section 103(c) of ASFA. This

transition rule is separate from the "delayed effective date" described above. Separate guidance on implementing this transition will be forthcoming to the Regional Offices and States.

Action Required

The Administration for Children and Families (ACF) Regional Offices, on behalf of the Secretary, and based on the State certification will determine where State legislation is necessary to comply with title IV-B and title IV-E State plan requirements. States that require legislation should submit the attached certification indicating those State plan requirements that will necessitate State legislation. The certification must include the estimated "delayed effective date" in accordance with Section 501(b) of ASFA. States that do not require any legislation must also submit the certification indicating that State legislation is not necessary and that a "delayed effective date" is not applicable. All certifications must be signed by the designated State agency official and submitted to the ACF Regional Office no later than February 13, 1998.

PART III. POTENTIAL IMPACT OF PUBLIC LAW 105-89 ON SACWIS:

The intent of this section is to advise States of potential implications of ASFA on their SACWIS **and not to imply that any action must to be taken by the States at this time.** The SACWIS functional requirements delineated in ACF's Action Transmittal ACF-OISM-001 (2/24/95) remain in effect.

We strongly encourage the State program and system staff to discuss the possible implications for the State's SACWIS as the State implements ASFA.

Listed below are sections of ASFA that may have possible implications for a State's SACWIS. This list may not identify every conceivable consequence of the new law on SACWIS:

1. Section 101: SACWIS may need to be modified to appropriately record and track the "reasonable efforts" requirements identified in subsection (A), the "aggravated" or other circumstances identified in subsection (D) and the timely completion of the permanency hearing identified in subsection (E). [title IV-E, sections 471(a)(15) and 475(5)(C)]
2. Section 103: SACWIS may need to be modified to track the "total" number of months a child has been in foster care to conform with section 475(5)(E) and determine the beginning of foster care, as defined in section 475(5)(F). Also, SACWIS may need to be modified to assist the State in implementing the transition rule outlined in section 103(c). States should note that the "beginning of foster care" as defined in section 475(5)(F) should not be confused with the AFCARS data element 21, "date of latest removal from the home," which remains the same as defined in 45 CFR 1355.40, Appendix A. [title IV-E, section 475(5)(E) and (F)]
3. Section 104: The notice generation function of a State's SACWIS may need to be expanded to ensure that the applicable parties "are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child." Considering that SACWIS is currently required to generate notices, we would not expect this to cause a significant change to the design of the system. [title IV-E, section 475(5)(G)]

4. Section 105: If the State child welfare agency elects to use the Federal Parent Locator Service (FPLS) for child welfare services, it may need to modify its current interface with the State's title IV-D Child Support Enforcement system. We would expect that the benefits of pursuing this option would include enhancing a State's capacity to identify other family caretakers with whom the child could be placed, and expediting termination of parental rights when reunification is not an option and a suitable relative placement is not available. [title IV-D, section 453(a)(2),(c)]
5. Section 106: If a State chooses to conduct criminal background checks on foster and adoptive parents, and the State uses its SACWIS to process foster care or adoptive home applications, SACWIS may be modified to record the results of the background check. [title IV-E, section 471(a)(20)]
6. Section 107: In the case of a child for whom the permanency plan is adoption or placement in another permanent home, SACWIS may need to be modified to appropriately record and track "the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child ... and to finalize the adoption or legal guardianship." [title IV-E, section 475(1)(E)]
7. Section 307: SACWIS may need to be modified to maintain the prior eligibility information on behalf of children with special needs whose initial adoption has been dissolved or whose adoptive parents have died. [title IV-E, section 473(a)(2)]

INQUIRIES TO: ACF Regional Offices

/s/

James A. Harrell
Deputy Commissioner
Administration on Children, Youth, and Families

* The requirement to initiate or join proceedings to terminate parental rights is treated as a State plan requirement under section 103(c)(4) of Public Law 105-89.

Attachments:

Attachment A - The Adoption and Safe Families Act of 1997 (Public Law 105-89)
Attachment B - Compilation of Titles IV-B and IV-E of the Social Security Act
Attachment C - Certification of Required State Legislation
Attachment D - ACF Regional Office list