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# Child Welfare: The Family First Prevention Services Act of 2016

(name redacted)

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## Summary

The Family First Prevention Services Act of 2016 (H.R. 5456 and S. 3065) would amend the child welfare programs authorized in the Social Security Act to allow states to receive open-ended federal support under Title IV-E for time-limited services and programs that are intended to prevent the need for children to enter foster care by allowing children to remain safely at home with parents, or with kin. This change would respond to longstanding concern by state administrators, child welfare advocates, and some policymakers that federal child welfare support is largely available only after a child is placed in foster care and that little resources are provided to strengthen and stabilize families to prevent children’s removal to foster care.

At the same time, the bill would restrict the ability of states to claim support for children in foster care who are placed in group settings rather than in foster family homes. With limited exceptions, this change would restrict Title IV-E foster care maintenance payment support for children in foster care to those otherwise eligible children placed in foster family homes or those placed in a “qualified residential treatment program” that offers a “treatment model” designed to address the clinical or other needs of children with emotional or behavioral disorders. In its 2015 report on use of “congregate care” in child welfare, the federal Children’s Bureau concluded that while there is an “appropriate role for congregate care placements in the continuum of foster care settings” a child’s placement in such a setting “should be based on the specialized behavioral and mental health needs or clinical disabilities of children.”

Additionally, the bill would extend funding authority for the child and family services programs authorized in Title IV-B of the Social Security Act and it would revise the purposes of, and eligibility for, the Chafee Foster Care Independence Program (CFCIP) to make them more consistent with the goal of helping all youth who experience foster care at an older age make a successful transition to adulthood. H.R. 5456 was introduced on June 13, 2016, and was ordered reported by the House Ways and Means Committee (unanimous voice vote) on June 15, 2016 (with amendment). A companion to the bill was introduced in the Senate (S. 3065) on June 16, 2016.

Programs authorized in Title IV-B and Title IV-E of the Social Security Act are administered by the Children’s Bureau, which is an agency within the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF).

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## Introduction

The Family First Prevention Services Act of 2016 would amend the child welfare programs included in Title IV-B and Title IV-E of the Social Security Act. The bill would authorize states to receive federal support under the Title IV-E foster care and permanency program for services and programs provided to children and their families that are intended to prevent the need for children to enter foster care, by allowing them to remain safely at home with parents, or with kin. At the same time, the bill would restrict the ability of states to claim support for children in foster care who are placed in group settings rather than in foster family homes. Additionally, the bill would extend funding authority for the child and family services programs authorized in Title IV-B of the Social Security Act and it would revise the purposes of, including eligibility for, the Chafee Foster Care Independence Program (CFCIP) to make them more consistent with the goal of helping all youth who experience foster care at an older age make a successful transition to adulthood.

Programs authorized in Title IV-B and Title IV-E of the Social Security Act are administered by the Children’s Bureau, which is an agency within the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF).

This report begins with a brief overview of the Title IV-B and Title IV-E programs that would be amended by the Family First Prevention Services Act, follows with a short summary of the bill, and then provides a section-by-section description of its provisions.

## Title IV-E Foster Care and Permanency

Under Title IV-E of the Social Security Act, states, territories, and tribes with a federally approved Title IV-E plan are entitled to open-ended federal support for a part of the cost of providing assistance to each eligible children in foster care, as well as eligible children who leave foster care for new permanent homes (via adoption and, at state option, kinship guardianship), including program administration and training costs on behalf of those eligible children.<sup>1</sup> The federal share of Title IV-E program costs varies by type of cost, and for the cost of assistance payments, by state, but is never lower than 50% of program expenditures and may not be more than 83% in any case. Children may only be eligible for Title IV-E foster care assistance if they are removed from a low-income home of a parent or relative and are then placed in a licensed foster family home or child care institution. As part of ensuring a child’s Title IV-E eligibility, states must make “reasonable efforts” to prevent a child from entering foster care. However, states are prohibited from using any Title IV-E program funds to provide services, including “counseling or treatment” intended to “ameliorate or remedy personal problems, behaviors, or home conditions.”<sup>2</sup>

All 50 states, the District of Columbia, Puerto Rico, and seven tribes have an HHS-approved Title IV-E plan and may thus claim federal support under the Title IV-E program.<sup>3</sup> Funding for the

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<sup>1</sup> For more information see CRS Report R42792, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, by (name redacted).

<sup>2</sup> 45 C.F.R. §1356.60(c)(3)

<sup>3</sup> CRS Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by (name redacted).

Title IV-E program is permanently authorized. For FY2016, the federal cost of Title IV-E foster care and permanency program was expected to be \$7.6 billion, including \$4.8 billion for foster care and \$2.8 billion for adoption and guardianship.<sup>4,5</sup>

## **Title IV-B Child and Family Services**

Under Title IV-B of the Social Security Act, states, territories, and tribes with approved plans receive federal funds (distributed by formula) to provide services intended to ensure children's safety and well-being, strengthen and preserve families (including biological, adoptive, and kin families), enable children in foster care to be safely reunited with their parents, and promote and support adoption. There are no federal eligibility criteria for receipt of services under the two Title IV-B programs (Stephanie Tubbs Jones Child Welfare Services and Promoting Safe and Stable Families or PSSF). Funding is provided on both a capped mandatory and a discretionary basis. The federal share of a state's program costs is 75%—meaning a state must spend \$1 in non-federal funds for every \$3 in federal funds it receives. However, federal dollars available under Title IV-B are capped at no more than the state's total allotment of appropriated funds.<sup>6</sup>

All 50 states, the District of Columbia, Puerto Rico and four additional territories, as well as many tribes receive Title IV-B funding. For FY2016, Congress provided \$668 million under all Title IV-B funding authorities. Out of that total funding amount, \$575 million was provided via formula grants to states, territories and tribes for child and family services and \$93 million was provided for other specified programs, grants, or activities, including the Court Improvement Program (\$30 million); Regional Partnership Grants (to improve outcomes for children affected by parental substance abuse)(\$19 million); Monthly Caseworker Visit grants (\$19 million); and research, technical assistance, demonstration, and evaluation activities (including funding reserved out of the PSSF appropriation and under separate funding authorization provided in Section 426 of the Social Security Act).<sup>7</sup>

## **Chafee Foster Care Independence Program (CFCIP)**

The Chafee Foster Care Independence Program (CFCIP) is authorized under Section 477 of the Social Security Act. States, territories and tribes with approved plans receive CFCIP funds (distributed by formula) to provide services intended to help children who are expected to age out of foster care, those who aged out of foster care, and those who left foster care for adoption or

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<sup>4</sup> This funding level includes expected spending under the open-ended authorizations and does not include capped funding provided under Title IV-E for the Chafee program. For more information, see "Title IV-E of the Social Security Act," including Table 7 in CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*, by (name redacted).

<sup>5</sup> The federal share of open-ended Title IV-E costs varies by state and type of cost. Overall, and on a national basis, however it totals about 54% of foster care, adoption assistance and kinship guardianship assistance claims made by states. States use non-federal dollars to support remaining (circa 46%) of Title IV-E program costs.

<sup>6</sup> For more information see CRS Report R41860, *Child Welfare: Funding for Child and Family Services Authorized Under Title IV-B of the Social Security Act*, by (name redacted).

<sup>7</sup> Mandatory funding provided for the PSSF program is subject to sequestration on mandatory non-exempt, non-defense accounts. Funding sequestered for FY2016, was 6.8% of the mandatory funding provided (\$345 million) which reduced the actual mandatory program support provided by \$23 million. This reduction in mandatory funding is spread proportionately across each of the PSSF programs or activities for which those dollars are reserved. For more information see the sections on the "Promoting Safe and Stable Families" and "Child Welfare Research and Demonstration" in CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*, by (name redacted).

guardianship at age 16 or older to make a successful transition to adulthood. Separately, formula funds are authorized for states, territories, and tribes to provide Education and Training Vouchers (ETVs) for CFCIP-eligible youth. ETVs are intended to cover the cost of attending institutions of higher education (e.g., colleges, universities, and job training programs). Funding is authorized on a capped entitlement basis for CFCIP and on a discretionary basis for ETVs. The funding share of program costs is 80%—meaning a state must spend \$1 in non-federal funds for every \$4 in federal funds it receives. However, federal dollars available under the program (for general services and for ETVs) are capped at no more than the state’s total allotment of appropriated funds.<sup>8</sup>

All 50 states, the District of Columbia, Puerto Rico, and a small number of tribes receive CFCIP and ETV funds. In FY2016, Congress provided \$183 million in federal funding for these programs, including \$140 million for CFCIP and \$43 million for ETVs.

## **The Family First Prevention Services Act of 2016**

The Family First Prevention Services Act (H.R. 5456) was introduced in the House on June 13, 2016 by Representative Vern Buchanan with Representative Sander Levin and 11 other original co-sponsors. On June 15, 2016, the House Ways and Means Committee agreed, by unanimous voice vote, to report the bill (Chairman Brady’s Amendment in the Nature of Substitute) favorably to the full House. (The Chairman’s amendment includes a one-time, \$8 million appropriation to support competitive grants related to recruitment and retention of foster parents but was otherwise substantively the same as the introduced bill.) On June 16, 2016, Senator Hatch, with Senators Wyden, Grassley and Bennet, introduced the Senate companion (S. 3065) to the Family First Prevention Services Act, as orders reported by the House Way and Means Committee.

The bill would authorize new open-ended Title IV-E support for evidence-based mental health and substance abuse prevention and treatment services, and in-home parent skill-based programs, which would permit children to remain safely at home with their parents, or with kin. States would have the option to use Title IV-E funds (beginning with FY2020) to provide these foster care prevention activities, for up to 12 months, to any child determined at imminent risk of entering foster care, any pregnant or parenting youth in foster care, and to the parents or kin caregivers of those children. Separately, as of FY2017, the bill would newly permit states to use Title IV-E funding to support evidence-based kinship navigator programs and to provide foster care maintenance payments (for up to 12 months) on behalf of a foster child who is placed with his or her parent in a licensed family-based residential treatment facility that offers substance abuse treatment with parenting training. Unlike activities currently authorized under the Title IV-E foster care component, no income test would be applied to determine eligibility for any of these newly authorized uses of Title IV-E funding.

At the same time, the bill would restrict (as of FY2020) the availability of Title IV-E foster care maintenance payments for children placed in settings other than foster family homes, when that placement is not done to meet clinical or other treatment or service needs. With limited exceptions, federal Title IV-E foster care maintenance payment support for children placed in non-foster family home settings would be available for a maximum of two weeks, unless the child

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<sup>8</sup> For more information CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*, by (name redacted)



was placed in a “qualified residential treatment program” and a subsequent assessment and court review found this the most appropriate placement to meet the child’s needs.

Further, the bill would amend the Chafee Foster Care Independence Program to permit states that provide support to youth in foster care to age 21 to provide Chafee services up to age 23 (instead of current law age 21). It would also permit otherwise eligible youth to access post-secondary education and training vouchers up to age 26 (but for no more than a total of five years). The purposes of the Chafee program would be amended to place a new focus on serving youth who have experienced foster care at age 14 or older and to further reinforce and support the program’s focus on supporting youth in making a successful transition to adulthood.

Finally, the Family First Prevention Services Act would also extend funding authority for the Title IV-B Promoting Safe and Stable Families (PSSF) and Stephanie Tubbs Jones Child Welfare Services programs. Further, it would extend authority for Regional Partnership Grants to address the needs of children and families, where children are in, or at risk of, foster care due to parental substance abuse; extend authority for the Court Improvement Program; and extend eligibility of states to earn Adoption and Legal Guardianship Incentive Payments for increasing the rate at which children who would otherwise need to remain in foster care are placed with new permanent families via adoption or legal guardianship. Other related changes to Title IV-E and Title IV-B would also be made.

The remainder of this report provides a section-by-section discussion of H.R. 5456/S. 3065.

## **Title I—Investing in Prevention and Family Services**

### **Section 101—Purpose**

The purpose of the title is to enable states to use federal funds available under Title IV-B and Title IV-E of the Social Security Act to enhance their support to children and families and prevent foster care placements.

### **Subtitle A—Prevention Activities Under Title IV-E**

#### **Section 111—Foster Care Prevention Services and Assistance**

The bill would amend the Title IV-E foster care and permanency program to give states and tribes the option to receive open-ended federal support for a part of the cost of providing services and programs that enable children to remain safely at home, or with a kin care provider. (States and tribes would not be required to use Title IV-E for these purposes but could choose to do so.) Prevention activities that would be eligible for Title IV-E support are mental health and substance abuse prevention and treatment services provided by qualified clinicians, and in-home parent skill-based programs (including parenting skills training, parent education, and individual and family counseling).

#### ***Eligibility for Title IV-E Prevention Activities; Time Limit***

Title IV-E prevention services and programs could be made available for a period of no more than 12 months to any child determined to be at imminent risk of entering (or re-entering) foster care, any pregnant or parenting youth in foster care, and the parents and/or kin caregivers of such children and youth. No income test would apply.



### ***Evidence Standards and Other Requirements for Federal Support***

Mental health and substance abuse prevention and treatment services and in-home parent skill-based programs would be eligible for Title IV-E support only if they are offered in a trauma-informed manner; specified in the child’s written “prevention plan” (before they are provided to, or on behalf of, the child); and meet the definition of a “promising,” “supported,” or “well-supported” practice given in the bill. The amount and rigor of research necessary to meet the definition for each of these categories varies; however, to be included in any of these categories, one or more reliable study must have found that the practice is superior to an appropriate comparison practice in achieving improved child and parent outcomes on matters such as child safety and well-being, mental health, and substance abuse.

Additionally, a state opting to provide these services under its Title IV-E plan would need to include a prevention component in its HHS-approved Title IV-E plan. Among other things, the prevention component would need to specify how the state will monitor and oversee the safety of children who receive Title IV-E prevention services or programs, including through periodic risk assessments for each child receiving them; describe the services and programs the state intends to provide and whether they are promising, supported, or well-supported; describe the outcomes the state intends to achieve; discuss how the state will evaluate its provision of each prevention service or program offered; describe how it will continuously monitor its provision of these prevention services and programs and use the information learned to refine and improve its practices; and describe how child welfare workers will be trained and supported to effectively carry out Title IV-E prevention services and supports. Further, the prevention component would need to be updated and resubmitted to HHS for approval every five years. The state would also need to assure that it would collect and report to HHS certain data on each child for whom, or on whose behalf, prevention services or programs are provided and, any information necessary to ensure the state meets the required maintenance of effort (MOE) spending level.

### ***Level of Federal Support***

Title IV-E support for prevention services and programs that are promising, supported, or well-supported would be available beginning with the first day of FY2020 (October 1, 2019). For each of FY2020-FY2025, this federal support would equal 50% of the total cost to the state of providing Title IV-E prevention services and programs. Beginning with FY2026 (October 1, 2025), the federal share of the total cost of providing Title IV-E prevention services and programs would be set at the state’s Federal Medical Assistance Percentage or FMAP. A state’s FMAP – sometimes referred to as its “Medicaid matching rate” – is annually recalculated by HHS and may vary from 50%-83% (with states that have lower per capita income receiving higher federal support and vice versa). There would be no income test associated with claiming federal support for providing these services to children or their parents or kin caregivers. However, in every fiscal year (beginning with FY2020), no less than one-half (50%) of a state’s Title IV-E prevention services and programs spending must be for well-supported practices in order for the spending to be eligible for federal reimbursement. Finally, federal support for program administration and training related to providing these Title IV-E prevention services and programs, including program development and data collection and report costs, would be available at 50%.

### ***State Maintenance of Effort (MOE)***

A state taking the Title IV-E prevention services and program option would be required to continue spending—outside of the Title IV-E program—no less on “foster care prevention services, and activities” than it had spent for those services and activities in FY2014. This

FY2014 spending level would be the state's required maintenance of effort (MOE) and it could not use any of this MOE spending to access federal support to provide Title IV-E prevention services and programs. To establish a state's MOE spending level, HHS would be required to determine which activities provided under the Title IV-B child welfare services program, the Temporary Assistance for Needy Families (TANF) block grant, the Social Services Block Grant (SSBG) and other state programs are "foster care prevention services and activities." A state's MOE spending level would include federal, state, and local dollars spent for those foster care prevention services and activities under those programs.

### ***Tribes***

Tribes with an approved Title IV-E plan may elect to provide prevention and services programs on generally the same basis as states with an approved Title IV-E plan. HHS would be required to specify the Title IV-E requirements and prevention performance measures applicable to a given tribe, which to the "greatest extent practicable," must be consistent with requirements and performance measures applicable to states and must permit provision of services and programs adapted to the context and culture of the tribal communities served.

### ***HHS Responsibilities***

No later than October 1, 2018, HHS would be required to issue (and update as needed) guidance to states that includes a "pre-approved" list of services and programs that meet the promising, supported, and well-supported practices criteria of the Title IV-E prevention services and programs component. Further, HHS would be required to offer technical assistance to states on implementing services and programs meeting the promising, supported, and well-supported practices criteria and must ensure establishment of a public clearinghouse to evaluate existing research and provide information on those practices and their outcomes. It may also carry out, or support, research, evaluation and data collection to assess the extent to which Title IV-E prevention services and programs reduce the likelihood of foster care placement, increase use of kinship care, and improve child well-being, and would be required to provide periodic reports to the House Ways and Means and Senate Finance committees on the provision of Title IV-E prevention services and programs. The bill would annually appropriate \$1 million to enable HHS to carry out these duties (beginning with FY2016).

Beginning with FY2021, HHS would be required to establish prevention performance measures (based on median state performance) concerning the cost of Title IV-E prevention services and programs and the percentage of children who, although were found at risk of foster care entry, did not enter care during the 12-month period in which they received or were eligible for Title IV-E prevention services and programs (and for 12 months afterwards).

### **Section 112—Foster Care Maintenance Payments for Children with Parents in a Licensed Residential Family-Based Treatment Facility for Substance Abuse**

Under current federal policy a child must be removed from the home of a parent (or relative), and after removal cannot be living with the parent (or relative), in order to be eligible for a Title IV-E foster care maintenance payment. The bill would permit Title IV-E foster care maintenance payment support, for up to 12 months, for a child in foster care who is placed with a parent in a licensed residential family-based treatment facility. To be eligible for these Title IV-E payments, the child's placement with a parent in the treatment facility must be recommended in the child's foster care case plan and the facility must incorporate trauma-informed parent education, parenting skills training, and counseling as part of its substance abuse treatment. No income test

would apply for receipt of these time-limited Title IV-E foster care maintenance payments and the federal level of support for the payments would be the same as any other Title IV-E foster care maintenance payment (based on state's FMAP, which may range from 50%-83%).

### **Section 113—IV-E Payments for Evidence-Based Kinship Navigator Programs**

Kinship navigator programs support relative and kin caregivers by helping them access resources and supports necessary to meet the needs of the children they are raising and to meet their own needs as caregivers. The bill would permit Title IV-E support for kinship navigator programs provided HHS determines that the program is operated in accordance with promising, supported, or well-supported practices (as would be defined in law for Title IV-E prevention programs), among other requirements. A state could claim this Title IV-E support for a kinship navigator program without regard to whether the children on whose behalf the service was offered were living with kin in foster care or outside of foster care and there would be no income test. The federal level of support for these services would be 50% of the state's total cost.

## **Subtitle B—Enhanced Support Under Title IV-B**

### **Section 121—Elimination of Time Limit for Family Reunification Services and Permitting Time-Limited Post Reunification-Services**

The bill would rename and redefine “time-limited family reunification services,” which is one of four categories of services that states must support under the Title IV-B Promoting Safe and Stable Families (PSSF) program. Under current law, these services are provided to enable the child to be safely and quickly reunited and may only be offered to the child and parent if the child has entered foster care within the past 15 months. The renamed service category, “family reunification services” would define these services as available to a child in foster care and his/her parents without regard to the child's length of stay in care. The bill would additionally permit spending under this service category for post-reunification services, but only for the first 15 months after the child returns home.

### **Section 122—Reducing Bureaucracy and Unnecessary Delays When Placing Children Across State Lines**

No later than October 1, 2026, the bill would require a state, territory, or tribe operating a Title IV-E program, to include use of an electronic interstate case processing system as part of the currently required Title IV-E procedures to allow timely placement of children across state lines.

The bill would additionally require HHS to reserve a total of \$5 million in FY2017 discretionary funding for the Title IV-B Promoting Safe and Stable Families Program (which would remain available for five years, FY2017-FY2021) to allow HHS to make grants to states, including tribes and territories, that successfully apply. The funds would need to be used to help grantees connect with an interstate electronic case-processing system and to enable them to achieve safe and appropriate interstate placements for children in less time and at less cost. The bill would require HHS to report to Congress (within one year of the last grant awarded for this purpose) on the progress made by states in achieving those purposes.

Finally, HHS, in consultation with states and the Secretariat for the Interstate Compact on the Placement of Children (ICPC), must assess how the electronic interstate case-processing system may be used to improve a Title IV-E agency's ability to quickly comply with required background checks for prospective foster and adoptive parents and guardians, including

completing checks of child abuse and neglect registries; connect with federal and state law enforcement agencies and judicial agencies to better protect missing or trafficked children and to simplify Title IV-E-agency reporting to federal agencies of missing and trafficked children that come to its attention (required as of September 29, 2016).

## **Section 123—Enhancements to Grants to Improve Well-Being of Families Affected by Substance Abuse**

### ***Extension of Grants; Program Focus***

The bill would require HHS to continue to award funds under the competitive grant program known as “regional partnership grants” (RPGs) for five years (FY2017-FY2021). RPGs have been authorized since FY2006 and provide funds to public and/or private agencies that establish collaborative partnerships for services and supports that improve the safety, permanency and well-being of children who, because of parental substance abuse, are in, or at risk of, placement in foster care. The bill would suggest, or encourage use of RPGs to address needs of children and families affected by heroin and opioid substance use disorders, to help implement effective Title IV-E prevention services, and to focus on improved outcomes for families, including children and their parents.

### ***Mandatory Partners***

The bill would further require that in addition to the state child welfare agency, every funded partnership must include the state agency that administers the federal substance abuse prevention and treatment block grant, and, if the partnership intends to serve children placed in out-of-home care, the court (or administrative office of the court) that handles child abuse and neglect proceedings in the region. (Partnerships led by a tribe or tribal entity may include tribal court entities in place of other judicial representatives in the collaboration and, as with current law, would be permitted, but not required, to include the state child welfare agency.)

### ***Duration and Amount of Grants; Required Planning; Application Requirements***

Grants would continue to be made for no more than five years (with possibility of two-year extension for a total of seven years). However, the bill would stipulate that grant funding must be dispersed in two phases: planning (no more than two years total) and implementation. Further, it would provide that an annual award of federal RPG funds to a grantee may not be more than \$1,000,000 nor less than \$250,000 (except that a grantee could not receive more than \$250,000 across its total planning phase).

### ***Application Requirements: Use of Funds***

The bill would revise RPG application requirements to ensure that the regional partnerships intend to focus on improving the well-being of families as a whole (parents and children) and to facilitate implementation of evidence-based prevention services under Title IV-E. Applicants would also be required to describe how they intend to sustain the work of the partnership after the end of RPG funding, including through use of Title IV-E prevention services, and the bill would permit HHS to require applicants to provide other information, as needed, to determine that activities are planned and implemented consistent with evidence-based practices. Additionally, the bill would maintain the ability of RPGs to use funds for long-term substance abuse disorder treatment and would stipulate that this may include medication-assisted treatment and in-home treatment and recovery.

### ***Establish Core Indicators; Grantee Reports***

After reviewing current performance indicators and lessons learned from prior rounds of RPG awards and after consulting with relevant agencies and stakeholders, the HHS Secretary would be required to establish a set of core performance indicators (related to child safety, parental recovery and parenting capacity, and family well-being) to assess grantee performance. Additionally, regional partnership grantees would be required to provide semi-annual reports to HHS that include information on the services and activities carried out with the funding, including the number of children, adults and families served, progress made toward meeting program goals, and other information as determined necessary by HHS, including data on performance indicators included in a grantee's evaluation.

## **Subtitle C—Miscellaneous**

### **Section 131—Reviewing and Improving Licensing Standards for Placement in a Relative Foster Family Home**

States must have licensing standards for foster family homes and have broad authority to set those standards so long as they are consistent with standards recommended by relevant national organizations.<sup>9</sup> The bill would require HHS to identify reputable model standards for licensing foster family homes not later than October 1, 2017. No later than April 1, 2018 states would be required to submit information to HHS on whether their own licensing standards are fully consistent with the model standards identified by HHS, and, if not, why this inconsistency is appropriate for the state.

States currently have the authority to waive non-safety licensing standards, on a case-by-case basis, to allow a child to live with his/her relatives.<sup>10</sup> States may define which of their standards are considered unrelated to safety (e.g., specific size of child's bedroom). No later than April 1, 2018, each state would also be required to submit information to HHS on whether it uses this authority to waive non-safety standards for relative foster family caregivers. If a state does not use this authority it would be required to give the reasons why this is the case. If the state does use this waiver authority, it would need to indicate which standards are most often waived and whether the state has developed a process or has provided tools to assist caseworkers in using this waiver authority. It would further need to describe how caseworkers are trained in using this waiver authority, including any steps taken to improve the training on the waiver process.

### **Section 132—Development of a Statewide Plan to Prevent Child Abuse and Neglect Fatalities**

Under the Title IV-B Stephanie Tubbs Jones Child Welfare Services program, the bill would require each state child welfare agency to document the steps it has taken to gather complete and accurate information (from all relevant entities and agencies) on child maltreatment deaths it is required to report to HHS; and to develop and implement a comprehensive statewide plan to prevent these fatalities. Along with the child welfare agency, the statewide plan to prevent child maltreatment fatalities would need to involve public health and law enforcement agencies, the courts, and other relevant public and private agency partners.

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<sup>9</sup> Section 471(a)(10) of the Social Security Act

<sup>10</sup> Section 471(a)(10)(D) of the Social Security Act

### **Section 133—Modernizing the Title and Purpose of Title IV-E**

The bill would rename the heading of Title IV-E as “Federal Payments for Foster Care, Prevention, and Permanency” to reflect the authorization of support (under current law) for both adoption and kinship guardianship assistance and the authorization of support (included in this bill) for prevention services and programs. The bill would include prevention services and programs as a purpose for which Title IV-E funds are authorized to be appropriated.

### **Section 134—Effective Dates**

In general the amendments made in Title I would be effective on the first day of FY2017 (October 1, 2016), except that amendments making technical changes to the title and purposes as well as the amendments regarding licensing standards for foster family homes would be effective on the date of enactment. However, any state (including the District of Columbia and Puerto Rico) for whom HHS determines legislation must be enacted to allow compliance with a new or revised Title IV-B or Title IV-E requirement (other than to appropriate funding) would not need to be in compliance with that requirement(s) until the first day of the first calendar quarter that begins after the end of the first state legislative session occurring after enactment of the bill. Further, any tribe or tribal entity that HHS determines requires time to take actions necessary to meet the new and revised requirements must be granted additional time by HHS to meet those requirements.

## **Title II—Ensuring the Necessity of a Placement that Is Not in a Foster Family Home**

### **Section 201—Limitation on Federal Financial Participation for Placements that are not in Foster Family Homes**

#### *Limitation on Federal Financial Participation*

Title IV-E foster care maintenance payments for a foster child who is not placed in a foster family home would only be available (for more than two weeks) if the child met all other Title IV-E eligibility criteria and was placed in a

- “qualified residential treatment program” (provided additional requirements are met);
- setting specializing in providing prenatal, postpartum or parenting supports for youth;
- supervised independent living setting (provided the child was at least 18 years of age); or
- licensed residential family-based treatment center (provided the child was placed with the parent and had not been in this setting for more than 12 months).

#### *Assessment to Determine Appropriateness of Placement in Qualified Residential Treatment Program*

For an otherwise Title IV-E eligible child placed in a qualified residential treatment center, Title IV-E foster care maintenance payments would remain available only if an assessment was



completed within 30 days of the child’s placement in that setting and the assessment found that placement was appropriate.

### ***Deadline for Transition Out of Placement***

Title IV-E foster care maintenance payments would remain available to an otherwise eligible child for the time it takes to transition a child from a qualified residential treatment program to a different placement, or for 30 days, whichever is shorter. This includes placement setting transitions that must occur if an assessment finds that the program is not an appropriate placement for the child *or* a court disapproves of the placement; *or* the child is found ready to move to a family setting.

### ***Definition of “Foster Family Home”***

For purposes of Title IV-E eligibility, the bill would define a “foster family home” as the home of an individual who is licensed as a foster parent, and who is residing with, and providing 24-hour substitute care, for not more than 6 children placed in foster care in the individual’s licensed home. A state would be permitted to place more than 6 children in a foster family home to allow any of the following: siblings to remain together; a parenting youth in foster care to remain with his or her child; a family with special training or skills to provide care to a child who has a severe disability, or a child with an established meaningful relationship to remain with the family.

### ***Definition of Child Care Institution***

The bill would re-organize and restate the current law definition of “child care institution” without substantive change.<sup>11</sup> A child care institution is defined, generally, as an institution that provides foster care and meets the licensing or approval standards for such institutions established by the state (or tribe where it is located). However, if a child in foster care is at least 18 years of age, he or she may be placed in a supervised independent living setting that meets standards established by the HHS Secretary (and does not have to meet state licensing rules). Additionally, a child care institution may be a private or public institution, but if it is a public institution, it may not house more than 25 children. Finally, the term child care institution must never include detention facilities, forestry camps, training schools, or any facility operated primarily for the detention of children determined to be delinquent.

### ***Definition of “Qualified Residential Treatment Program”***

For purposes of the Title IV-E program, a qualified residential treatment program means a program that meets all of the following requirements:

- has a trauma-informed treatment model designed to address the clinical or other needs of children with serious emotional or behavioral disorders or disturbances;
- is able to implement the specific treatment identified as necessary for a child placed there;
- has registered or licensed nursing and other licensed clinical staff who are onsite during business hours, available 24/7, and provide care within the scope of their practice (as defined by state law);

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<sup>11</sup> Section 472(c)(2) of the Social Security Act



- facilitates outreach to the child’s family members (including siblings) and appropriate participation and integration of family members in the child’s treatment program;
- provides post-discharge planning and family-based supports for at least six months after a child’s discharge from the treatment center;
- documents each of these outreach and treatment program activities, including how sibling connections are maintained and maintains contact information of any known biological family and fictive kin of the child; and
- is licensed (in accordance with state standards for child care institutions that provide foster care) and accredited by one of three independent and not-for-profit accrediting organizations specified in the bill (or any other independent, not-for-profit accrediting organization approved by the HHS Secretary).

### ***Training for State Judges, Attorneys and Other Legal Personnel in Child Welfare Cases***

The Court Improvement Program (CIP) authorizes grants to the highest court in each state (including the District of Columbia and Puerto Rico), to assess and make improvements to how they handle child abuse and neglect proceedings.<sup>12</sup> As a condition of eligibility for CIP funds, the bill would require a highest state court to provide training for judges, attorneys and other relevant legal personnel on federal child welfare policies and payment limitations regarding placement of foster children in settings that are not foster family homes.

### ***Assurance of Non-impact on Juvenile Justice System***

The bill would require a Title IV-E agency (including the public child welfare agency in the 50 states, the District of Columbia, Puerto Rico and any tribe with an approved Title IV-E plan) to certify that the limitation on access to Title IV-E maintenance payments for children in foster care who are placed in settings other than foster family homes will not lead the state to enact or advance policies or procedures that result in a significant increase in the state’s juvenile justice system. Not later than December 31, 2023, the bill would require the U.S. Government Accountability Office (GAO) to report to Congress on the effect, if any, of limiting availability of Title IV-E for children not in a foster family home, including whether a lack of funded congregate care placements under the child welfare system contributes to placing children in juvenile justice settings.

## **Section 202 – Assessment and Documentation of the Need for Placement in a Qualified Residential Treatment Program**

### ***Assessment; Family and Permanency Team; Court Approval***

States must provide certain case review and planning procedures for children in foster care, including status reviews for children (typically every six months) and permanency hearings (required every 12 months).<sup>13</sup> For children placed in a qualified residential treatment program, these procedures would also need to include the following:

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<sup>12</sup> Section 438 of the Social Security Act.

<sup>13</sup> Section 475(5) of the Social Security Act

- Within 30 days of placement in the program, **an assessment of the child’s strengths and needs** to determine the appropriate, least restrictive placement setting for the child. The assessment must be conducted by a “qualified individual” using an evidence-based, validated functional assessment tool and must determine short- and long-term mental and behavioral health goals for the child. (If the assessment determines the child should not be placed in a family home, the qualified individual would be required to write down the reasons why this is found—a shortage or lack of foster family homes may not be given as a reason—and why the qualified residential treatment program is the most effective and appropriate placement setting for the child.)
- **Establishment of a family and permanency team** for the child, which must be composed of relatives, fictive kin and other individuals important to the child (such as teachers, clergy, mental health providers); the team must be included in the assessment activities and included in the child’s treatment plan to the extent possible and appropriate.
- Within 60 days of placement in the program, **approval or disapproval of the placement by a court or court-appointed entity**. (The court must consider the assessment previously conducted and must separately determine whether the child’s needs can be met in a foster family home or would be best met in a qualified residential treatment program.)

### ***Ongoing Case Review for Children Placed in Qualified Residential Treatment Programs; Special Procedures for Longer Stays***

The bill would further require that at each foster care status review and permanency hearing held for a child placed in a qualified residential treatment program, the state child welfare agency must (1) provide evidence that ongoing assessment of the child’s needs and strengths shows that the qualified residential treatment program continues to be the most appropriate placement setting; (2) document the specific treatment or service needs that the qualified residential treatment program will provide the child, and the length of time the child is expected to need this treatment or services; and (3) document its efforts to prepare the child to move to a family setting.

Additionally, for any child placed in a qualified residential treatment program for 12 consecutive, or 18 non-consecutive months (or if the child is 12 years of age or younger, 6 months consecutive or non-consecutive), the state agency must submit this same information, along with the signed approval of the placement by the head of the state child welfare agency, to the HHS Secretary.

### **Section 203—Protocols to Prevent Inappropriate Diagnoses**

#### ***State Plan Requirement; HHS Study on Best Practices to Prevent Inappropriate Diagnoses; Report to Congress***

Under the Title IV-B Child Welfare Services program, the state must develop a health oversight plan to meet the needs of children in foster care.<sup>14</sup> The bill would require states to include in this plan the procedures the state has established to ensure children are not inappropriately placed in a non-family setting, due to an inappropriate diagnosis of mental illness, behavioral disorders,

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<sup>14</sup> Section 422(b)(15) of the Social Security Act

medically fragile conditions, or developmental disabilities. HHS would be required to analyze state compliance with this requirement, identify best practices, and submit a report on this work to Congress no later than January 1, 2019.

### **Section 204 – Additional Data and Reports Regarding Children Placed in a Setting that Is Not a Foster Family Home**

The bill would revise current law requirements concerning state-level data that HHS must annually report to Congress (beginning with data provided for FY2016) on the types of non-family settings in which children in foster care are placed, as well as certain characteristics of foster children placed in those settings and the services they receive.<sup>15</sup> The bill would list more types of non-foster family home settings for which specific information must be included in the report and would additionally request information on the gender and race/ethnicity of children placed in these settings, as well as information on whether the non-foster family home is the first placement setting for the child or, if not, the number and type of previous placement settings.

### **Section 205 – Effective Dates**

In general, provisions limiting federal Title IV-E support based on a child’s foster care placement setting, including related definitions, procedures and requirements would be effective on the first day of FY2020 (October 1, 2019) while other provisions included in Title II would be effective on the first day of FY2017 (October 1, 2016).

Additionally, for those provisions effective on October 1, 2016 (FY2017), if HHS determines that a state needs to enact legislation (other than appropriations) to bring its Title IV-E or Title IV-B plans into compliance with a requirement(s), the state would be permitted to have additional time to do so. Specifically, the state would have until the first day of the first calendar quarter that occurs after the close of the first regular state legislative session that begins after the enactment of this act.

## **Title III – Continuing Support for Child and Family Services**

### **Section 301 – Supporting and Retaining Foster Family Homes**

#### ***Revise Definition of “Family Support Services”***

The bill would redefine “family support services,” which is one of four categories of services that states must support under the Title IV-B Promoting Safe and Stable Families program, to clarify that they may include community-based services designed to support and retain foster families so they can provide quality family-based settings for children in foster care.

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<sup>15</sup> Section 479A(7) of the Social Security Act

### ***Authorize Competitive Grants***

The bill would appropriate \$8 million in FY2018 for the HHS Secretary to make competitive grants to states or tribes to increase their capacity to place children in foster care in high-quality family settings. Grants would be focused on states or tribes with the highest percentage of children in foster care living in nonfamily settings. Funding appropriated in FY2018 would remain available for five years (through FY2022).

## **Section 302—Extension of Child and Family Services Programs**

### ***Extension of Discretionary Funding Authority for the Stephanie Tubbs Jones Child Welfare Services Program, Title IV-B, Subpart 1***

Discretionary funding authority for the Title IV-B Child Welfare Services program is set to expire on September 30, 2016.<sup>16</sup> The bill would extend annual discretionary funding authority for the program for five years (each of FY2017-FY2021) at the current annual authorization level of “not more than \$325 million.” (For FY2016 Congress appropriated \$269 million for the Title IV-B Child Welfare Services Program.)

### ***Extension of Mandatory and Discretionary Funding Authorities for the Promoting Safe and Stable Families Program, Title IV-B, Subpart 2***

Both the mandatory and discretionary funding authorities for this program are set to expire on September 30, 2016.<sup>17</sup> The bill would extend both funding authorities for five years (FY2017-FY2021) and at the same annual levels authorized for FY2016. Mandatory funding authority would be set at \$345 million/fiscal year and discretionary funding authority would be \$200 million/fiscal year. (For FY2016, total funding for the Title IV-B Promoting Safe and Stable Families Program was \$381 million. This includes \$345 million in capped mandatory funds (appropriation reduced by sequestration to \$321 million) plus \$60 million in funding appropriated for the program on a discretionary basis.)

### ***Extension of Funding Reservations for Monthly Caseworker Visit and Regional Partnership Grants***

The bill would continue for five years (FY2017-FY2021) the current law requirement<sup>18</sup> that, out of the mandatory funding provided for the Title IV-B Promoting Safe and Stable Families program, HHS must annually reserve \$20 million to support Monthly Caseworker Visit grants, and a separate \$20 million to make grants to regional partnerships (to improve outcomes for children affected by parental substance abuse).

### ***Extension of Highest State Court Entitlement to Court Improvement Program (CIP) Funds; Federal Share of CIP Costs***

Under current law, HHS is required to annually (no year limit) reserve a part of the mandatory funding and a part of any discretionary funding provided for the Title IV-B Promoting Safe and

<sup>16</sup> Section 425 of the Social Security Act

<sup>17</sup> Sections 436(a) and 437(a) of the Social Security Act

<sup>18</sup> Section 436(b)(4)and(5) of the Social Security Act

Stable Families Program to make Court Improvement Program (CIP) grants.<sup>19</sup> CIP funding is distributed by formula to the highest court in each eligible state, including the 50 states, the District of Columbia, and Puerto Rico (and on a competitive basis to a handful of tribes).<sup>20</sup> The bill would extend the entitlement of each highest court in an eligible state to an allotment of this CIP program funding for five years (FY2017-FY2021). It would also extend for five years (FY2017-FY2021) the stipulation that the federal share of CIP costs must be no more than 75% (meaning a court receiving funds must provide \$1 in non-federal CIP funding for every \$3 it receives in federal CIP funds).

## **Section 303—Improvements to the John H. Chafee Foster Care Independence Program and Related Provisions**

### ***Authority to Serve Former Foster Youth Up to Age 23***

The bill would permit a state to use funding under the Chafee Foster Care Independence Program for former foster care recipients up to the age of 23, but only if the state has taken the option to extend Title IV-E foster care assistance to youth who remain in foster care up to 21 years of age or HHS determines the state uses non-IV-E dollars to provide comparable supports to youth up to age 21.

### ***Program Purposes and Target Youth Served***

The bill would rewrite a number of purpose areas given for the Chafee Foster Care Independence Program to adjust their focus from children who “are likely to remain in foster care until their 18<sup>th</sup> birthday” (as currently determined by the state) to those who “experience foster care at age 14 or older.” Children who experience foster care at age 14 or older would be eligible for most services and supports that are currently available to children likely to remain in foster care until age 18, including services and supports related to completing high school, obtaining post-secondary education, learning about and preparing for employment, preventative health and substance abuse prevention activities, and life skills training. Under the bill they would also be eligible for services related to – opportunities to practice daily living skills (such as driving instruction and financial literacy training); achieving meaningful connections with caring adults; positive youth development; and experimental learning that reflects what their peers living in intact families experience.

Children “likely to remain in foster care until age 18” would continue to be eligible for services to ensure they have regular and on-going opportunities to engage in age and developmentally appropriate activities. Services and supports to former foster care recipients who are age 18 to 21 (or 23 if state extends IV-E or comparable foster care assistance to this age) remain unchanged and include financial, housing, counseling, employment, education, and other appropriate services. Children who have left foster care at age 16 or older for kinship guardianship or adoption are eligible for these services generally.

### ***Authority to Redistribute Unspent Funds***

The bill would permit HHS to redistribute any CFCIP or related Education and Training Voucher (ETV) funds that were awarded to a state or tribe but not expended within the two-year time

<sup>19</sup> Sections 436(b)(2) and 437(b)(2) of the Social Security Act

<sup>20</sup> Section 438 of the Social Security Act

frame during which the funds must be spent. (Under current law funds, any such unexpended funds revert to the federal Treasury.) The bill would permit HHS to distribute these unexpended funds among states and tribes requesting additional payments based on the share of children in foster care in the given state or tribe among all states and tribes seeking the additional funding.

### ***Expanding and Clarifying the Use of Education and Training Vouchers***

Chafee Education and Training Vouchers (ETVs) are available to youth otherwise eligible for CFCIP services to meet the cost of post-secondary education and training programs.<sup>21</sup> The bill would extend the age at which these youth may be eligible to receive a voucher up to a youth's 26<sup>th</sup> birthday. However, no youth would be able to receive a voucher for more than five years (consecutive or non-consecutive) and a youth would need to be participating in the voucher program and satisfactorily enrolled in a post-secondary education or training program to be able to continue receiving a voucher until age 26.

### ***Title of Program***

Consistent with the current focus of the program and the changes that it would make, the bill would rename the program as the John H. Chafee Foster Care Program for Successful Transition to Adulthood.

### ***Certification on Training Funds***

Current law requires a state to certify it will provide training for foster and adoptive parents, group home workers, and case managers to help them understand and address issues confronting youth preparing for independent living.<sup>22</sup> The bill would strike the reference to “independent living” and would instead require that the training focus on youth development to help these same caregivers and child welfare workers understand and address issues confronting youth preparing to make both the transition to adulthood and a permanent connection with a caring adult.

### ***Report to Congress***

No later than October 1, 2017, the bill would require HHS to submit a report to the House Ways and Means and Senate Finance Committees that, among other things – (1) describes factors related to entry into foster care and experience in care for 17-year-olds compared to those same experiences for children who left care before age 17; (2) provides an analysis of any association between the type and number of placement settings and overall time spent in foster care with outcomes at age 19 and 21; (3) offers benchmarks for determining poor outcomes for youth who remain in, or have exited care, along with the plans of the Executive Branch to use those benchmarks in evaluating child welfare agency services to youth transitioning from foster care; and (4) examines whether youth granted federal foster care support beyond their 18<sup>th</sup> birthday have better outcomes at age 19 and 21 than youth who age out of care without this support. The report would need to be based on information reported by states via the National Youth in Transition Database (NYTD) or any other databases in which states report relevant outcome measures regarding children in foster care, those who have aged out of foster care, and those who have left foster care for adoption or guardianship.

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<sup>21</sup> Section 477(i) of the Social Security Act

<sup>22</sup> Section 477(b)(3)(D) of the Social Security Act



### ***Documentation Provided to Foster Youth Leaving Foster Care***

Some federal programs (e.g., Medicaid, federal financial aid) may require proof of a youth's former status as a child in foster care as part of determining program eligibility. The bill would require states to provide youth aging out of foster care official documentation necessary to prove the child was in foster care. (Specifically, this documentation would need to be provided to any youth in foster care for at least 6 months who is being formally discharged from foster care because of reaching his or her 18<sup>th</sup> birthday, or later birthday, up to 21<sup>st</sup>, if the state elects to provide Title IV-E foster care assistance to that age.)

## **Title IV—Continuing Incentives to States to Promote Adoption and Legal Guardianship**

### **Section 401—Reauthorizing Incentive Payments**

Adoption and Legal Guardianship Incentive Payments are paid to states that increase the rate at which children who cannot return home are placed in permanent families via adoption or legal guardianship.<sup>23</sup> The bill would extend for five fiscal years the authority of states to earn these incentive payments, and, to make these payments to states, would extend annual discretionary funding authority at the current law level of \$43 million for each of five fiscal years (FY2017-FY2021). Further, the bill would permit funds appropriated under this authority to remain available until expended, but not later than FY2021.

## **Title V—Technical Corrections**

### **Section 501—Technical Corrections to Data Exchange Standards to Improve Program Coordination**

The bill would revise current provisions related to development of a rule related to data exchange standards to be used by agencies operating Title IV-B programs.<sup>24</sup> It would require HHS, in consultation with an interagency work group established by the Office of Management and Budget (OMB) and considering state government perspectives, to develop regulations concerning the categories of information that state child welfare agencies must be able to exchange with another state agency, as well as federal reporting and data exchange required under applicable federal laws. HHS would need to issue a proposed rule no later than two years (24 months) after enactment of this bill that identifies federally required data exchanges and specifies state implementation options.

### **Section 502—Technical Correction to State Requirement to Address the Developmental Needs of Young Children**

The bill would clarify that a state must describe in its Title IV-B Child Welfare Services plan what it is doing to address the developmental needs of *all vulnerable children* who receive benefits or services under the Title IV-B programs (Child Welfare Services and Promoting Safe

<sup>23</sup> Section 473A of the Social Security Act

<sup>24</sup> Section 440 of the Social Security Act



and Stable Families) or the Title IV-E foster care and permanency program. (A previous interpretation of the law limited this requirement to children under age 5 who were in foster care.)

## **Title VI—Ensuring States Reinvest Savings Resulting From Increase in Adoption Assistance**

### **Section 601—Delay of Adoption Assistance Phase-in**

The bill would delay an expansion of eligibility for Title IV-E adoption assistance that was enacted as part of the Fostering Connections to Success and Increasing Adoptions Act of 2008. Under current law, any child determined by a state to have “special needs” and whose adoption assistance agreement is finalized after the child has attained four years of age may be eligible for Title IV-E adoption assistance *without application of an income test*.<sup>25</sup> (For purposes of the Title IV-E program, “special needs” generally refers to factors or conditions identified by a state, such as race/ethnicity; physical or mental disability; age or behavioral issues that make it unlikely that a child will be adopted without assistance.)<sup>26</sup> The delay would affect children with special needs who are less than four years of age when their adoption assistance agreement is finalized. Specifically, those special needs children who are between two and four years of age at the time their adoption assistance agreement is finalized would be eligible for Title IV-E adoption assistance without meeting an income test as of April 1, 2019 (instead of current law October 1, 2017); a child with special needs whose adoption assistance agreement was entered into at any age (including those under two years of age) would be eligible for Title IV-E adoption assistance, without an income test, as of April 1, 2020 (instead of current law October 1, 2017).

### **Section 602—GAO Report on State Reinvestment of Any Adoption Assistance Savings**

The GAO study would need to look at whether states are complying with the requirement that they spend, for child welfare purposes, an amount equal to the amount of savings (if any) resulting from phasing out the income eligibility requirements for federal adoption assistance and the requirement that not less than 30% of any such savings be used for post-adoption or post-guardianship services and services to support and sustain positive outcomes, and permanency, for children who might otherwise enter foster care.<sup>27</sup> The GAO would be required to submit its findings, including any recommendations to ensure compliance with the law, to the House Ways and Means and Senate Finance committees

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<sup>25</sup> Section 473(e) of the Social Security Act.

<sup>26</sup> Section 473(c) of the Social Security Act

<sup>27</sup> Section 474(b)(8) of the Social Security Act

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