



U.S. Department of Health and Human Services
Assistant Secretary for Planning and Evaluation

THE FEDERAL ROLE IN FOSTER CARE:

A PAPER ON CURRENT PRIORITY ISSUE AREAS

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Office of the Assistant Secretary for Planning and Evaluation

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THE FEDERAL ROLE IN FOSTER CARE: A Paper on Current Priority Issue Areas

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The conclusions and opinions expressed in this paper are those of the researcher, and do not necessarily reflect those of the Office of the Assistant Secretary for Planning and Evaluation, or of the Department of Health and Human Services in general.

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I. SUMMARY

The foster care policy area encompasses an important set of issues which are likely to be addressed during this session of Congress. Interviews conducted with a wide range of persons concerned with the issues surrounding foster care and adoption revealed that there are likely to be committee hearings and proposed legislative changes. The primary participating groups include pertinent Congressional subcommittees, children and youth advocacy organizations, and various public interest groups.

The role of the Federal government in foster care is presently the subject of a great deal of Congressional and advocacy group criticism. With the passage of Public Law 96-272 in 1980, HHS became involved in the administration of the foster care system to an unprecedented extent. It seems unlikely that the Federal government will become less involved with the administration of foster care, but the degree of its influence, and the methods by which it will exert influence on State delivery systems, are a subject of debate.

Prior to the passage of PL 96-272 the primary debate surrounding foster care focused on the contention that an inordinate number of children were unnecessarily languishing in the system, and that often the rights of these children and their parents were being overlooked. Although the number of children in care at any one point in time has dropped since 1977, lately the number has begun to rise once again. More recently the debate has focused on the quality of care children receive while they are in the system.

Although nearly all actors involved in this issue believe that the 1980 legislation represented a step in the right direction, it is widely felt that in many areas the full intent of the law has not been met. The coming ten-year anniversary of the authorizing legislation seems to mark a point at which those with an interest in foster care will precipitate a re-evaluation of PL 96-272 concerning the following issues:

1. **Determination of the appropriate level of Federal expenditures for foster care.** Although the average monthly number of children served by title IV-E only increased from 102,991 to 111,879 during the seven fiscal years following passage of PL 96-272, title IV-E administrative and training costs have dramatically increased both in absolute terms, and in relation to the average foster care maintenance payment per child.
2. **Effective development of the adoption and foster care data collection system currently awaiting clearance from OMB.** The system will require States to report certain information about their foster care system to the Federal government. HHS has been criticized in legislative hearings for not collecting adequate information concerning the number of children in foster care nationwide, and the adequacy of this care.

3. **Methods for improving the design, implementation, and administration of the title IV-B section 427 Federal review process of States' foster care systems.** From FY 1982 to FY 1987, 152 such reviews have been conducted. During this time period 16% of the reviews resulted in a total of approximately \$13.4 million in disallowances imposed on those States that failed the review. The Department and OMB have been unable to agree on the specific review guidelines for this process.
4. **Continuation of the Federal funding of the independent Living Program on a yearly basis.** This program, which is designed to teach the skills that are necessary for foster care adolescents to function independently as adults, has received yearly congressional appropriations of \$45 million since FY 1987, despite objections from the Department.
5. **Addressing what is widely perceived as a systemic breakdown of the child welfare system.** Virtually all States are plagued by shortages in two critical areas; child welfare workers, and foster parents. These shortages are made even more acute by the significant increase in substantiated child abuse cases reported to Child Protective Services (CPS). Because of the high stress demands placed on child welfare workers, the profession has a high "burn-out" rate. Moreover, the relatively low monetary compensation received by these workers makes it difficult to recruit new personnel in this area. Therefore most child welfare workers are given responsibility for an extremely high caseload. Not only does this lead to additional burn-out, but it also drastically comprises a worker's ability to take action in each child's best interest. Moreover, individual child welfare workers responsible for action or inaction that results in harm to a child are being increasingly litigated.

The chronic shortage of available foster parents (which has worsened in recent years) is an additional systemic problem facing the foster care system. Personnel in one State asserted that because of this shortage, at times they are forced to place children with foster parents that have a history of abuse themselves. The shortage also causes children to be placed in group homes, and institutional settings.

6. **Developing strategies for addressing a number of growing social problems that challenge system effectiveness.** The systemic problems confronting the foster care system are exacerbated by a number of social problems that are leading to increased, specialized caseload demands. These include the negative effects of drug abuse, the growing incidence of children with AIDS, and the rising number of homeless families. Children placed in substitute care as a result of any one of these social problems require specialized foster care.

For example, the DC Department of Human Services reports that approximately 80% of all requests for foster care originate from homes in which there is some

kind of drug involvement. In addition, an increasing number of children are born drug-addicted, and/or suffering from related serious disabilities--such as Fetal Alcohol Syndrome--because of maternal drug and alcohol use during pregnancy. The effects of such disabilities persist throughout these childrens' developmental stages. Since the mothers of drug-addicted infants are at high risk of having inadequate parenting skills--and the infants pose difficult care problems and continuing developmental disability problems--the newborns frequently enter foster care either as "border babies," or as early CPS cases.

Proper and adequate placement facilities for foster care children infected with the AIDS virus need to be developed. As of October 10, 1988 a total of 1,198 children have been diagnosed as HIV seropositive, and this number is projected to reach 3,000 pediatric AIDS cases by 1991. Many of these children do not have mothers--or extended family--that are able to adequately care for them. Caring for these children exclusively in hospitals is often a misuse of public resources. Harlem Hospital reports an average daily cost of \$500 per child for such care.

The experiences of homeless foster children almost always result in emotional disturbances, and an array of developmental difficulties. A recent State-by-State survey conducted by the Department of Education estimated that nationwide there are 220,000 homeless school-age children, and that 65,000 of these do not attend school regularly. The National Coalition for the Homeless conducted a similar survey and estimated a total of 500,000 to 750,000 homeless children. Yet another study commissioned by the State of New Jersey found that fully 33% of the children in foster care were placed because of homelessness, or were provided services aimed at preventing homelessness. In 7 of the 21 counties this percentage was more than 50%.

7. **Encouraging the replication of successful pilot programs aimed at preventing family dysfunction and substitute care placement before it is necessary to remove children from their home.** Such programs are aimed at addressing the problems which place families at high risk of child welfare system intervention. The intent of those drafting PL 96-272 was to provide Federal funding and oversight to insure permanency planning; that children did not languish in foster care unnecessarily. As a direct result of reform the legal reasons which warrant the removal of children from their home are interpreted more conservatively, and efforts to reunite foster care children with their original parents have been enhanced. Comparatively little Federal and State emphasis has been placed on averting family dysfunction by employing preventative techniques that attempt to alleviate a family's problems. In addition, it has not been determined if the problems that caused children to be removed are often adequately resolved to make reunification effective in the majority of cases.
8. **Re-thinking the entire child welfare system in terms of system linkages.** One example of such an effort is the comprehensive child welfare program currently being piloted by the Casey Foundation. The New Futures program will

be designed to provide a common access point for youth and their families in need of services in the areas of juvenile justice, education, social services, and developmental disabilities. A social worker will be assigned to each case to determine which services are necessary for the client, act as an advocate, and garner the needed resources. Many of those involved in this issue area envision the nationwide replication of such a child welfare system in the future.

In addition to identifying and explaining key issues, this paper presents the priority policy issues of key groups that are expected to play an active role in the debate of these issues. This information was gleaned from Congressional hearings, and interviews conducted with Departmental personnel, legislative staff members, and representatives of children and youth advocacy organizations. A complete listing of these sources is included as Appendix B. Appendix A explains the array of Federal programs that comprise the foster care system.

II. SYSTEM OVERVIEW

Currently Federal financing of the foster care system is provided by titles IV-B and IV-E of the Social Security Act. In addition, each State spends a portion of its title XX funds for foster care. Foster care children qualifying for coverage under title IV-E also qualify for Medicaid benefits. According to a September, 1988 study conducted by the American Public Welfare Association (APWA) entitled "Analysis of Child Welfare Services Expenditure Data and Child Day Care Expenditure Data," in FY 1985 Federal, State, and local governments spent an estimated \$4.2 billion on the six primary child welfare service areas of adoption, substitute care, protective services, various preventative services, pregnancy/parenting services, and services for juvenile delinquents.

Ideally the foster care system can be viewed as a safety net to care for the children of dysfunctional families. Although the legal reasons which warrant the removal of children from their families are interpreted more conservatively as a direct result of reform, it is the purpose of this system to care for children that are removed by placing them with foster parents (69%), in a group home (15%), or in an institutional setting (5%) (FY 1985 percentages).¹

The intent of the current system is to provide permanency planning; that such placements are temporary lasting only until the children are re-united with their original family, or are adopted by another family, following the termination of the parental rights of the original mother and father. If parental rights are terminated and the child is not adopted, it is the system's responsibility to care for them until they turn 18 and are "emancipated" from foster care. In such cases the purpose of foster care is to provide services to these children so that they can make an effective transition to independent adult living. System administration is criticized when it is perceived that these goals are not being met in many instances.

Of the cumulative total of 452,810 children in the foster care system as of FY 1985, 177,602 (39%) left the system that year. Of those that left:

- 66% were reunited with their family;
- 8% were adopted;
- 8% were emancipated from the system (most turned 18);
- 18% either ran away, married, were discharged to another agency, were incarcerated, or had legal guardianship established.

Because the foster care system is supposed to serve as a safety net it is subject to the impact of any number of factors that can cause family dysfunction. In the recent past the system has experienced an enormous influx of children due to changes in the

¹ An additional 6% remain in their home under supervision; 5% are in "other institutional care" which includes maternity homes, hospitals etc.; and 1% are enrolled in independent living programs.

prevalence of child abuse reporting. The Child Abuse Prevention and Treatment Act of 1974 provided funds to States that established comprehensive child abuse and neglect reporting and investigatory systems. As a result it became mandatory for physicians and social workers to report all cases of suspected child abuse. The number of reported cases of child abuse reported each year is 50 times greater than it was in 1962.

Currently most children continue to enter the system because they are victims of abuse and/or neglect from a member of their original family. During FY 1985 there were a total of 187,000 children placed in foster care nationwide. Of these placements:

- 61% resulted from abuse or neglect;
- 15% resulted from a parental condition such as illness, death, disability, or imprisonment;
- 8% resulted from status offenses (legal offenses resulting from a child's non-adult status) such as delinquency, truancy, or running away from home;
- 2% resulted from a child's disability;
- 14% either resulted from an unknown cause, because of a parent/child conflict, or because of the child's need for home maternity care etc.

III. OMINOUS TRENDS

According to those interviewed for this paper, currently the foster care system is facing new systemic crises. First, the increase in the number of reported and substantiated child abuse and neglect cases is causing a rise in the number of children entering substitute care. These demands are causing the child welfare decision process to become more complex. Second, it is perceived by some that the foster care system is ill-equipped to address this rise in cases because of a general system "break down" caused by overworked child protective service professionals, and a shortage of foster and adoptive parents. Moreover, the impact of these problems will worsen in the near future due to the impact of three social crises looming on the horizon. These are the growing negative impact of drugs on the family, the increasing prevalence of AIDS (Acquired Immunodeficiency Syndrome), and the increasing number of homeless families. Such problems represent ominous trends that will impact an already overburdened foster care system. Effective methods to plan for these challenges need to be developed.

Systemic Challenges

Increase In Substantiated Child Abuse Cases:

During the last two decades public recognition of child abuse has lead to efforts to alleviate its harmful effects. In response to a Congressional mandate contained in the Child Abuse Amendments of 1984 (PL 98-457), the "Study of National Incidence and Prevalence of Child Abuse-and Neglect" (NIS) was sponsored by the National Center on Child Abuse and Neglect (NCCAN) of Human Development Services (HDS). Completed in 1986 by WESTAT Inc., the study assessed the current national incidence of child abuse and neglect to determine changes in the severity, frequency, and character of child maltreatment from 1980 to 1986. When data from these two years are compared the primary conclusions of the study are:

- countable cases of child maltreatment increased significantly (by 66%). This increase primarily reflected a significant increase in the incidence of child abuse (74%);
- the incidence of physical abuse increased by 58%, and sexual abuse increased by more than three times;
- no reliable changes in the incidence of emotional abuse, nor any form of child neglect were discerned.

Although the prevalence of child abuse has increased significantly since 1980, the study attributed this primarily to a growth in child abuse reporting. This is a direct result of the heightened sensitization of professionals working with children to the recognition of abuse, especially in its earlier stages. Therefore, it is the contention of the

NIS that children are not more likely to be abused than they were in 1980, and that it is now more likely that their abuse will be recognized by adults in a position to report their suspicions to Child Protective Services (CPS). Currently the Office of the Assistant Secretary for Planning and Evaluation (ASPE) is conducting a re-analysis of the NIS to determine the validity of this hypothesis.

CPS professionals are charged with the responsibility of investigating all reports of child abuse and neglect to determine--according to State law--whether or not child maltreatment occurred. In those cases where abuse is substantiated, these staff are faced with a difficult decision because services and support systems for dysfunctional families are in short supply in many communities and States. The child welfare worker must weigh the prospect of leaving such children with the family while providing intensive services and treatment resources, against the option of removing these children from the abusive environment while working with the family to achieve reunification.

These decisions are always complicated as they must take into account the seriousness of abuse and/or neglect, the level of family dysfunction, and the available resources of the community to support the family with needed services. Moreover the difficulty of these decisions are worsening due to the social crises such as drug abuse and family homelessness (discussed later in this section) which are placing additional demands on the child welfare systems.

Child Welfare System Breakdown:

One disturbing finding of the NIS was that there are some large apparent gaps discerned between abuse recognized by personnel working with children, and the reporting of these cases to CPS. Therefore not all recognized cases were investigated. Perhaps this is a reflection of the widely perceived breakdown of an overburdened child protection system. This NIS finding will also be addressed in ASPE's secondary analysis of the study.

Public awareness of the problems associated with the current array of services comprising child welfare is growing. CPS and foster care only represent small elements of this range of services. A recent television documentary "Children in Crises" aired during the Summer of 1988, confirmed a number of cases in which children have been abused after they were placed in the foster care system.

In addition, the documentary focused on the acute shortage of available foster parents that compromises the effectiveness of the system. For instance, in telephone conversations for this paper personnel in one State asserted that the shortage of available foster parents forces social workers to accept some parents that have a history of abuse themselves, employing ongoing counseling in an attempt to modify their behavior. Shortages also cause foster children who might otherwise be placed in foster families, to be placed in group homes and institutional settings. The shortage of available foster parents is due partly to the low monetary reimbursement they receive,

and to a general drop in such civic activities which results from several reasons including the growing prevalence of two-worker families. This shortage has worsened in recent years.

The Association for the Children of New Jersey completed a statewide study on the effectiveness of their child welfare system in 1988 entitled "Splintered Lives, A Report on Decision-Making for Children in Foster Care." Some of the pertinent findings include the following:

- during foster care placement 40% of New Jersey children had two different caseworkers, and 26% had three or more in a 20 month period;
- each of the State's project offices had a vacancy rate of five positions at any one time. In Edison, NJ 10 - 12 positions were vacant for several months, and the office lost 50% of its staff from June, 1986 to July, 1987;
- long delays in filling these vacancies were common. On average it took 6 - 8 months to fill a vacancy when a worker resigned, and 6 - 12 months when one was promoted;
- staff vacancies resulted in increased caseload sizes. In 1987 the average actual caseload in Edison was 52, compared to an allocated level of 35 cases when all staff positions were filled.

The staff turnover represented in these statistics comprise a vicious cycle evident in many States. Because of the high vacancy rate, social workers are given too many investigatory and placement cases. This overburdening of human resources means that children in a crises situation are often not given the services they desperately need. Moreover, this leads to a high CPS personnel "burn-out" rate resulting in yet more unfilled vacancies. In addition, the pay received by social workers is usually not commiserate with the stress they encounter on the job, making it additionally hard to fill vacancies. The study attributed virtually all of the State's CPS problems to this high staff turnover phenomenon.

According to HDS, an additional problem exacerbating the situation is that child welfare workers responsible for action or inaction that results in harm to a child are being increasingly litigated. In some instances workers may be held directly liable for what in reality are system inadequacies such as poor training, excessive caseload levels, and staff shortages. If such lawsuits become widespread State and county organizations will undoubtedly have trouble recruiting new staff, and retaining current child welfare workers. Although a recent Supreme Court ruling on DeShaney v. Winnebago County absolved the State of Wisconsin in such a case, damages against welfare workers may still be sought in State courts.

Social Challenges

Drug Abuse

Drugs can cause family break-up when they are abused and/or openly sold within the family to such an extent that children are either abused, neglected, or otherwise endangered. In other instances children are placed in substitute care when they are born drug-addicted, or their parents are imprisoned on drug charges.

Locally, a newly-released survey conducted by the Metropolitan Washington Council of Governments attributed some of the recent growth in the demand for foster care placements directly to the growth in drug abuse in the metropolitan area. In the outlying area of Southern Maryland, and the counties of Arlington, Fairfax, Loudoun, Montgomery and Prince George's, requests for foster care increased on average by 71% from 1985 to 1987. Comparatively in the District of Columbia--which is currently experiencing a large growth in the illegal drug trade--the number of infants in need of foster care increased by 105%, and the increase in adolescent need was 120% during this same three-year period. The DC Department of Human Services reports that approximately 80% of all requests for foster care originate from homes in which there is some kind of drug involvement.

In addition, an increasing number of children are born drug-addicted, and/or suffering from related serious disabilities --such as Fetal Alcohol Syndrome--because of maternal drug and alcohol use during pregnancy. Since these mothers are at high risk of having inadequate parenting skills (and the infants pose difficult care problems characterized by high irritability during drug withdrawal and continuing developmental disability problems) the newborns frequently enter foster care either as "border babies," or as early CPS cases.

These babies require highly specialized foster parenting skills. If they are placed with relatives there is a need for continuing support and coordination with medical services, and respite care. Moreover, research is documenting that in the long-term these children are likely to require specialized medical, mental health, and educational services.

There is some overlap between these children and those that are born HIV positive--discussed in detail below--but in most major cities the drug-addicted baby population is placing the most additional demands on the foster care system. In a September, 1988 application submitted to the Administration for Children, Youth, and Families (ACYF) the California State DSS stated that in the first half of 1988, each month 40 - 50 newborns were identified with positive toxicologies for illicit drugs--mostly cocaine--at Martin Luther King Hospital in the city of Los Angeles. This represents just 30% of that county's total such cases.

AIDS:

The rise in drug-related activities has not only led to an increase in the incidence of family dysfunction caused by such factors as child abuse and neglect, but also to an increase in the number of foster care children who test positive for the AIDS virus. According to the Surgeon General's workshop, 73% of the children that acquire AIDS come from families in which at least one of the parents is an intravenous (IV) drug user.

Presently a small number of infants are abandoned in the hospital at birth by AIDS-infected mothers who are unable to care for them. These AIDS-infected "boarder babies," and older AIDS-infected children that cannot be cared for by their families are placed in the foster care system. Most estimates predict that at least half of the babies of Human Immunodeficiency Virus (HIV) positive mothers will test seropositive themselves. Although most infected babies and young children die relatively soon, some survive into adolescence.

AIDS surveillance data gathered by the Center for Disease Control (CDC) shows that as of January 2, 1989 a total of 1,681 children have been diagnosed as AIDS-infected. The CDC projects 3,000 cases of pediatric AIDS by 1991, and that 10,000 to 20,000 children and infants will be infected by that year. The Abandoned Infants Assistance Act (S 945) authorizes \$10 million for FY 1989 and \$12 million for FY 1990 for grants designed to meet a variety of the needs of boarder babies. However, no money has been appropriated under this program.

Currently the Office of the Assistant Secretary for Planning and Evaluation (ASPE) is undertaking a study to determine the number of children in foster care in each state that test HIV seropositive. The report will include eight case studies of certain States to ascertain their programmatic responses to the problem. This study will follow-up on exploratory research conducted by the office in this area that was completed on March 31, 1988 in a report entitled "AIDS Children and Child Welfare."²

Besides the lack of knowledge about the precise number of foster children infected with AIDS, the virus poses a number of additional challenges to the foster care system. First, as with drug-addicted babies, infected children require specialized attention and expensive care on a regular basis. Currently foster care payments do not provide compensation for the extensive demands placed on the caregiver, or the additional expenses incurred for regular trips to the hospital, baby sitters, and respite care. For instance, although the amounts vary according to a foster child's age and condition, in the District of Columbia a foster family receives between \$3,581 and \$5,880 per year, a Maryland family receives an annual stipend of \$3,430 - \$4,906, and in Virginia this same amount averages \$2,208.

States that are making a serious effort to increase the supply of specialized foster homes for such children offer enhanced payment rates for HIV seropositive foster children. In New York City these rates are \$13,608 annually compared with the regular

² Available at: <http://aspe.hhs.gov/daltcp/reports/aidskids.htm>.

range of \$1,980 - \$4,104. In New Jersey the enhanced annual rate is \$10,800. The actual costs for caring for such children in a foster family environment have not been determined.

Second, the recruitment and training of foster parents to care for HIV seropositive children can be difficult. Although agencies differ greatly in their efforts to recruit and train foster parents to care for AIDS-infected children, currently some have demonstrated considerable success in this area. One example is Leake and Watts in Yonkers, New York (a non-profit agency specializing in the adoption placement of foster children with AIDS) which has received funding from the State and from the Children's Bureau of HDS to recruit, train, and support foster parents. Leake and Watts, utilizes an approach that incorporates both formal and informal means, and utilizes community networking. To be recruited prospective foster parents must be well informed about the disease, not afraid of contagion, and must have some medical or nursing background. In terms of support they must be well paid for their efforts, and also have intensive medical and social service backing. In addition, the agency workers that they rely on must have a small caseload. The State of New Jersey has begun using medical social workers and nurses as case managers. While this is relatively expensive by traditional child welfare standards, the cost of one month of such care is less than two days of hospital care.

Third, the type of care that is appropriate for these children is an issue. Although HIV seropositive children are often in need of specialized care, it is not necessary, nor appropriate, that they reside in a hospital all of the time. As is the case with all children, these children are best cared for in foster family homes--as opposed to institutions--both for their own development, and to contain costs. For instance, an analysis of the cost of caring for HIV seropositive children housed in Harlem Hospital found an average daily cost of \$500 per child, with a range varying from \$300 to \$2,400. An estimated 30% of the total time such children spent in hospital care--and 20% of the total cost--were unnecessary.

However, some agencies are developing congregate care facilities for HIV seropositive children because traditional approaches to foster parent recruitment have not been successful. Although such care is less expensive than the hospital alternative, it also is not inexpensive, nor entirely appropriate. One such congregate care site in New Jersey--St. Claire's Home for Children--reports a cost of \$240 per day per child. The staff of the home view such care as only temporary because it is not a family environment that approaches normalcy, the risk of illness is too high for the children, and because such a solution implicitly condones the isolation of AIDS-infected individuals. In addition, community resistance to the placement of such homes can be quite high.

Family Homelessness:

A third social trend negatively impacting the foster care system is the growing number of homeless families with children. Homeless children pose specialized foster

care problems. Their experiences almost always result in emotional disturbances, and an array of developmental difficulties.

A recent State-by-State survey conducted by the Department of Education estimated that nationwide there are 220,000 homeless school-age children, and that 65,000 of those do not attend school regularly. The National Coalition for Homelessness conducted a similar study and estimated a total of 500,000 to 750,000 homeless children. A Child Welfare League of America (CWLA) and Traveler's Aid study completed in 1987, found that homeless children were more likely to be abused and neglected as a result of family stress; and/or parental mental illness, and behavioral problems. Other contributing factors include the fact that often these children suffer from emotional, behavioral, and developmental problems. The study concluded that fully 43% of the homeless school-aged children studied were not attending school, and that their substitute care rate was 3 to 6 times higher than the general population.

While no national statistics on the subject have been collected, a 1987 New Jersey DYFS Bureau of Research study found that at the conclusion of the previous year 33% of the children in foster care in the State were placed because of homelessness, or were provided services aimed at preventing homelessness. In 7 of the 21 counties this percentage was more than 50%.

These ominous systemic and social trends represent challenges to the incoming administration. The alleviation of these problems should be addressed before their impact on child welfare systems worsens.

IV. SUMMARY OF THE PRIMARY INTENT OF REFORM AND ITS EFFECTS

Federal involvement in the foster care system was first initiated in 1935 when services were made available to foster children and their families under the Child Welfare Services Program (now contained in title IV-B of the Social Security Act). In 1961 Congress expanded the system coverage by amending the Act to include the title IV-A Aid to Families with Dependent Children (AFDC). Under this program, maintenance payments were also made available to those AFDC children in need of foster care. This reform was followed by the 1974 enactment of the title XX Social Services amendments allowing States to expand the service scope of the foster care system to include non-AFDC children. Title XX represents the single largest source of Federal funds available for foster care. At least 20% of this \$2.5 billion Federal appropriation is spent collectively on child welfare by the States, including the provision of foster care.

The concern that foster care children were needlessly and inappropriately languishing in foster care, and that often the rights of these children and their parents were being overlooked, fueled further system reform efforts with the passage of the Adoption Assistance and Child Welfare Amendments of June 17, 1980 (PL 96-272). The passage of this legislation represents the most comprehensive foster care reform effort to date. As a direct result the Federal government became involved to an unprecedented extent in many aspects of a disparate system that continues to be administered at a State or county level. A detailed explanation of the law and its programmatic components is included in Appendix A.

A primary impetus to this reform were several critical studies authored by a number of independent researchers, individual States, the Children's Bureau of HHS, Child Welfare League of America (CWLA), the American Public Welfare Association (APWA), and the Children's Defense Fund (CDF). These studies found that the foster care system existing at that time was inadequate because:

- little was known about who was in foster care, why they were placed, where they were placed, and the length of their placement time;
- case planning and periodic reviews of children in care was virtually non-existent;
- too many children were labeled "unadoptable" for inadequate reasons;
- linkages between the child welfare, mental health, and other child-serving agencies were non-existent.

The intent of PL 96-272--through additional Federal funding and oversight--was to insure that the unnecessary placement of children in foster care was prevented, that appropriate services were made available to foster care children, and that all such children were provided with permanent homes. As a direct result of reform the legal

reasons which warrant the removal of children from their home are interpreted more conservatively, and efforts to reunite foster care children with their original parents have been enhanced. If neither option is possible, additional payments are provided to parents that adopt foster care children with "special needs" since these children stayed in foster care the longest and were the least adoptable.

Both the number of children in foster care, and the length of time they spend in the system, has declined from its peak in 1977. But as the following table show these two trends seem to be independent of the implementation of PL 96-272 in 1980. Table 1 shows the number of children residing in foster care dropped steadily from 1977 to 1983, and increased slightly in 1984 and 1985. Simultaneously, from 1977 to 1985 the median length of time that children spent in foster care has also dropped at a decreasing rate. Such comprehensive data has not been reported since 1985.

Year	Number of Children in Foster Care	Median Time in Placement
1977	502,000*	31 months
1980	302,000*	27
1982	276,000	21
1983	269,000	N/A
1984	271,000	N/A
1985	275,000	18

* Different measurement techniques may account for some of the drop in the number of children in foster care from 1977 to 1980.

Despite reform efforts, foster care continues to provide more than just temporary care for many children. However, most statistics show an improvement in this area since the late 1970's: According to a December 1987 MAXIMUS study conducted for ASPE entitled "State Child Welfare Abstracts 1980-1985,"³ in FY 1985 39% of the foster care children had been in the system for a time period that exceeded two years, and 45% of the foster care caseload was older than 13. In addition, 18% of this population had one or more "special needs" (defined in Appendix A), and 47% were minorities validating that such children are over-represented in the system in comparison to the general population. One contributing reason is that these children represent those that are the least adoptable. Of all children awaiting adoption 71% were older than six years of age, 47% were minorities, 51% had one or more special needs, and 79% had been waiting to be adopted for a time period that exceeded six months.

Furthermore it appears that the number of children in foster care has continued to rise since 1985. A January 18, 1988 background paper by Robert M. Goerge, Rosemary C. Sarri, and Friedhelm H. Wulczyn, stated that the States of New York, Illinois, and Michigan have reported substantial increases in the size of their foster care caseload. These three States ranked second, third, and fifth respectively in terms of

³ Available at: <http://aspe.hhs.gov/daltcp/reports/scwabs.htm>.

their share of the total foster care population at the conclusion of 1985. From 1984 to 1987 New York's annual count of cases increased by 18%, and from 1981 to 1987 Michigan reported that their caseload grew by 30% with the majority of that increase taking place after 1984.

V. PRIORITY AREAS OF THE PRIMARY ISSUE PARTICIPANTS

Since the passage of PL 96-272 the debate surrounding foster care issues has focused on the quality of the existing system, and the appropriate level of Federal involvement in the provision of this care. The primary issues which are a priority to the actors involved in this debate were determined by the frequency of agreement among those interviewed, the emphasis which they placed on their concerns, the policies they have forwarded in the past, and those they plan to advocate in the future. An overview of the results is included in the following brief outline.

The Department of Health and Human Services:

1. Containment of escalating administrative and training costs associated with title IV-E;
2. Encourage community--or State-wide--responses to the problems that cause family dysfunction;
3. Encourage States to develop preplacement prevention--and family treatment--programs to reduce the flow of children into foster care;
4. Continue to emphasize effective reunification strategies for those children that are removed from their original home.

Pertinent Legislative Committees:

1. Development of information systems on which to base appropriational decisions and policy reform;
2. Determination of the Federal government's long-term commitment to the Independent Living Program;
3. Improved quality of the current care system through the strengthening of the title IV-B section 427 review process in terms of content and administration.

Children and Youth Advocacy Organizations:

1. Increased Federal funding of titles IV-B, and XX;
2. Retention of title IV-E as an open-ended entitlement program;
3. Expansion of allowable title IV-E administrative and training costs;
4. Enhanced Federal support of programs to prevent family dysfunction;
5. Piloting comprehensive child welfare programs that include multiple service system linkages.

DEPARTMENT OF HEALTH & HUMAN SERVICES:

HHS offices are increasingly alarmed by the rapidly rising Federal costs associated with the title IV-E administrative and training provisions of PL 96-272. It is the Department's contention that at least some States are no longer bearing their rightful share of the program's cost by administering either inefficient programs, and/or exploiting the open-ended entitlement of title IV-E by claiming costs--or even entire programs--which these funds are not intended to cover.

1. *Cost Containment of title IV-E Administrative and Training Expenditures:*

In an attempt to study the rapidly rising title IV-E administrative and training costs, the HHS Office of the Inspector General (OIG) issued a report entitled "Foster Care Administrative Costs" that was completed in 1987. Most importantly the OIG report concluded that States were not guilty of illegal practices, but were rather attempting to maximize Federal reimbursement. The report found that Federal expenditures for title IV-E administrative costs--and training costs for State workers to administer the program--have been much greater than was expected when PL 96-272 was passed. Although it was expected that Federal costs would rise with the passage of the law, as is shown in Table 2, between FY's 1981 and 1987 these costs rose by 868.1%; from \$30.4 million to \$294.3 million. During this time the average number of title IV-E children served each month rose by only 8.6% from 102,991 to 111,879.

Another method to determine the reasonableness of this cost increase is to compare the ratio of the average title IV-E administrative and training costs to the average foster care maintenance payment per child. During the seven fiscal years following passage of PL 96-272 the value of this ratio increased from .11 to .70. This means that the cost of administration and training (at least somewhat analogous to service "overhead") in relation to maintenance payments (analogous to service provision) increased in percentage terms by 536.4%. The value of this IV-E ratio is much higher than those of other comparable programs such as Medicaid, AFDC, and Food Stamps.

However, several program-specific considerations should be taken into account when such cost measurements are made. First, the use of nationwide averages mask the fact that wide expense variations exist from State-to-State. Undoubtedly at least some of this variation appears not to be the result of State differences in relative program efficiency, but rather because of differing State strategies, or because of their relative ability to claim costs. Evidence of the former is given by the fact that the OIG report found that some States have chosen to deliberately underclaim costs in order to transfer such title IV-E "savings" to title IV-B expenditures; an allowable practice. As for the latter, some States have developed--and utilize--accounting procedures that are more proficient at charging allowable expenses to the Federal government which may unfairly shift some of the child welfare burden to the Federal government. Many of these costs apply to foster children in general, regardless of whether or not they are AFDC-

eligible. Therefore the proportion of these costs that should be charged to title IV-E is debatable.

TABLE 2. Federal Expenditures for Title IV-E Foster Care: Administrative, Training and Maintenance Costs, Average Monthly Number of Children Served and Percent Changes -- Fiscal Years 1981-1987								
	81	82	83	84	85	86	87	Percent Change 81-87
Fed Share IV-E Admin & Traing Costs (\$ M)	\$30.4	\$72.6	\$117.9	\$147.5	\$163.4	\$242.5	\$294.3	868.1%
Fed Share IV-E FC Maintenance Costs (\$ M)	\$278.4	\$301.2	\$276.9	\$297.8	\$333.6	\$404.6	\$422.0	51.6%
TOTAL	\$308.8	\$373.8	\$394.8	\$445.3	\$497.0	\$647.1	\$716.3	132.0%
Avg Moly # of Chldrn Served	102,991	100,200	98,727	100,787	108,193	110,586	111,879	8.6%
Avg FS Admin per Child	\$295	\$725	\$1,194	\$1,463	\$1,510	\$2,193	\$2,630	791.5%
Avg FS Maint per Child	\$2,703	\$3,006	\$2,805	\$2,955	\$3,083	\$3,658	\$3,772	40.0%
(Admin and Traing)/ Maint	0.11	0.24	0.43	0.50	0.49	0.60	0.70	536.4%

Second, certain precautions should be taken when the percentage change in title IV-E administrative and training cost is used to measure relative cost growth over time. For instance many States have an artificially low base in the years immediately following the implementation of PL 96-272 due both to their inability to claim all appropriate costs and because preplacement prevention services were required only after the law was amended in 1983. As States became more sophisticated in developing expense accounting procedures (such as cost allocation procedures required by PL 96-272) they became more proficient at expensing certain allowable administrative and training costs to the Federal government.

A third consideration is that Federal reimbursement for title IV-E costs include a wide variety of program and service activities that are not included in similar programs such as AFDC, Medicaid, and Food Stamps. Examples include the cost of referral to services, preparation for and participation in judicial determinations, placement in foster care, development of a case plan, and recruitment and licensing of foster care homes and institutions. Therefore comparisons to other "similar" programs are inappropriate.

In an attempt to take these program-specific considerations into account HDS sought to narrow the scope of allowable administrative and training costs by requiring that the expense of such activities be prorated on the basis of IV-E to non-IV-E children. However, a March 1987 decision concerning a case brought by the State of Missouri before the HHS Departmental Grant Appeals Board on the matter appears to have seriously limited the controlling of such costs in this manner. Staff offices within the

Department have never determined whether or not this problem could be solved by changing appropriate regulations, or requiring statutory changes.

A Departmental proposal that may be forwarded to Congress this session seeks to contain administrative costs through a legislative change that would limit the amount at which States could claim such costs. Specifically, this proposal would combine Federal title IV-E administrative and training authorizations--and the Independent Living Program--into a title IV-B Child Welfare Services State formula grant program that would require no state match. Instead States would be expected to continue their current level of service expenditures through a "maintenance of effort" provision. Non-administrative and training title IV-E foster care maintenance payments would remain open-ended.

Under this proposal the title IV-B child protections would remain in effect, and the current allowable amount of a State's allotment could be garnered in the first year following implementation of the legislation if it was determined in section 427 reviews that it did not comply with these requirements. The amount that could be garnered would subsequently increase by 20% in the third year--and an additional 20% in the fourth year--following legislative implementation. The title IV-B trigger capping mechanism of title IV-E (which only goes into effect if title IV-B is fully appropriated; see Table 3) and the ability of States to transfer unused title IV-E funds to title IV-B would be eliminated.

To control escalating Federal expenditures, allowable foster care administrative and training expenses would be frozen at current levels, adjusted each subsequent year for inflation. It is the Department's belief that the implementation of this proposal would not adversely effect children in foster care because future Federal appropriations would allow States to continue to operate the system at their current level of administration and training. This is based on the assumption that enough time has elapsed since the implementation of PL 96-272 for States to reach a sufficient level of such expenditures relative to foster care maintenance payments. In addition, title IV-E foster care maintenance payments would remain an open-ended entitlement.

Furthermore, combining title IV-E and title IV-B administrative and training expenses would make accounting procedures less burdensome to States, reducing some of their administrative costs. The proposal would also allow them a greater degree of flexibility in expending foster care finds.

Although this proposal was developed by HHS for FY 1989, due to an agreement with Congress to not submit major new legislative entitlement proposals for that year, it was never forwarded to Congress. However, it has been resubmitted to OMB for approval as part of the HHS FY 1990 budgetary proposal. As is discussed later, advocacy and key legislative personnel reactions to this proposal are not expected to be generally supportive. In particular representatives of children and youth advocacy organizations stated that such a proposal would reduce the amount of services otherwise available to foster children and their parents in the future.

Use of title IV-E Funds in non-Traditional Foster Care Systems:

A closely related problem in many States is that an increasing number of older adolescents are entering child welfare systems. These children--often adjudicated delinquent--have traditionally been placed in the juvenile justice system. Increasingly they are now being placed in foster family homes, group homes, and child care institutions. If such children are title IV-E eligible, many States are financing them with these funds. In addition, an unknown number of States appear to be utilizing title IV-E funds to finance the out-of-home care of eligible children placed in the juvenile justice system.

Because the authorizing statute does not define "out-of-home care" solely as foster care in the traditional sense, currently the practice is legal if the affected children receive such child protections as title IV-B section 427 reviews. Moreover, it is desirable that such children receive access to the same services designed for all foster care children, such as Independent Living Programs.

While it is known that this funding source is currently being utilized by the State of California, the extent to which this practice will spread to other States--and the impact that this will have on Federal expenditures--is not known. The use of foster care funds in this manner should be monitored by the incoming administration.

FY	Title IV-B Funding Levels:		Difference
	Authorized	Appropriated	
1981	\$163,550,000	\$163,550,000	\$0
1982	220,000,000	156,326,000	63,674,000
1983	266,000,000	156,326,000	109,674,000
1984	266,000,000	165,000,000	101,000,000
1985	266,000,000	200,000,000	66,000,000
1986	266,000,000	198,099,000	67,901,000
1987	266,000,000	222,500,000	43,500,000
1988	266,000,000	239,350,000	26,650,000

2. Prevention of Family Dysfunction:

Communities should be encouraged to identify families at high risk of dysfunction before the point at which the child welfare system currently intervenes. The reasons which often result in child abuse and neglect--such as drug abuse--are becoming increasingly complex and severe. By the time a child has been removed from the home the family has usually suffered severe damage, and correcting or ameliorating the situation requires the utilization of a broad range of social services over many years. Therefore, community-based strategies should be encouraged that identify high risk families before it is necessary to remove the children. Currently very few such programs exist, and none are coordinated at a State level. Successful programs would require the commitment of a broad range of social services (such as child care, parent education, respite care, and housing) that directly impact a family's ability to nurture its children.

3. *Substitute Care Placement Prevention:*

Public Law 96-272 required that States develop--and implement--preplacement preventative services for foster children financed with title IV-B funds when this funding source was fully appropriated at \$266 million. However, title IV-B funding has never reached this level (see Table 3). As of October 1, 1983, it was required that foster children financed with title IV-E funds be provided with preplacement prevention services, as well as court certification that reasonable efforts had been made to prevent out-of-home care placement. At the time PL 96-272 was drafted the exact form--and effectiveness--of such preventative programs was not known and so they were not well-defined in the legislation. Instead those that drafted the law listed a number of social service examples (such as counseling and financial assistance) that they thought would be helpful examples.

However, over the past few years a number of family-focused strategies have been developed which seem to effectively prevent the placement of high-risk children in foster care. Although the programs vary, according to the Family Preservation Network (a working group convened by CWLA to study such strategies) they share a number of the following characteristics:

- a family focus not just limited to the children;
- a home service delivery model;
- an ecological perspective which translates into mobilizing the provision of community services;
- the services hours are flexible including evenings, and 24 hour availability;
- case plans are developed with family involvement. These include counseling, skill training, and assisting the family obtain needed resources;
- the service provision duration is short-term, but intensive;
- the staff have small caseloads;
- the overriding commitment is to empower families, and enhance their ability to cope with the problems confronting them.

Approximately ten States have received demonstration grants from ACYF through their discretionary funding program, and the National Resource Center for Family Based Services, to develop such programs. Funded since 1985, these prevention programs are aimed at providing training, consultation, and technical assistance directly to States and communities. Two major evaluations of these programs have also been funded. ACYF estimates that currently half of the States have a least a pilot program in operation, but that only a few have such services available on a State-wide basis.

Such services are relatively expensive--estimates range from \$1,000 to \$5,000 per family--because the social workers are highly-trained and only have a small number of caseloads, and because the services provided are intensive. However, they have an

estimated success rate of 80% - 90%. Personnel from ACYF assert that these statistics show that such programs are cost effective.

4. *Continue to Emphasize Effective Reunification Strategies:*

When efforts to prevent placement are unsuccessful, children are removed from their home and placed in substitute care. Public Law 96-272 requires that States provide services aimed at improving the conditions in the original home to the parents, children, and foster parents, thereby facilitating the reunification of the family. Ideally these services are provided throughout the time children are in foster care, and during the time of adjustment when they are returned to their original home. If this fails another permanent placement is arranged.

It is ACYF's assertion that several agencies have verified that intensive reunification services that utilize the same strategies as those outlined under the preceding section reduce the time children spend in substitute care, and the rate at which foster children re-enter the foster care system. This reduces future costs of out-of-home care. Because it is cost effective and beneficial to the child, States should be encouraged--and provided with incentives--to utilize title IV-B and title XX funds for such services.

CONGRESSIONAL COMMITTEES:

There are three types of Congressional committees which have taken leading roles on foster care issues in the Legislature:

- authorizing committees (House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation, and Senate Finance Subcommittee on Family Security);
- appropriational committees (House Committee on Education and Labor, and Senate Committee on Labor and Human Resources);
- select committees (House Select Committee on Children, Youth, and Families) that frequently act as a forum to advocate the majority political party's position on foster care issues.

Only House staff to the committees listed in Appendix A were interviewed for this paper, although care was taken to interview both majority and minority party staff.

1. *Lack of Foster Care System Data:*

The House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation, and the House Select Committee on Children, Youth, and Families held a joint public hearing on foster care issues in may of 1988. One of the critical points made in that hearing was the lack of information on the exact number of children in foster care, and their needs. Currently data on foster care children and

special needs adoptions is voluntarily supplied by States to the American Public Welfare Association (APWA). First funded by HHS in 1982, such information is made available by the APWA from this Voluntary Cooperative Information System (VCIS). However, the data are not reported by all States, and the States that do participate do not all utilize common definitions and cost categories.

Although it is widely agreed that the voluntary data collection system is as good as can be expected, virtually all of the legislative staff interviewed for this paper expressed frustration about the lack of appropriate foster care data that currently forces them to operate in a "information vacuum" in which they cannot be assured of program effectiveness to base appropriational, and policy decisions.

This dilemma will at least be partially rectified by legislation enacted by Congress to require the Secretary of HHS to develop a mandatory adoption and foster care data collection system. The system was to be based on the recommendations of an advisory committee composed of people involved with child welfare issues. Last year this advisory committee submitted a report containing their recommendations to the Secretary of HHS and Congress.

Currently the Secretary's Report to Congress which outlines the proposed collection system has been developed and sent to OMB for final clearance. However, due to differences in opinion concerning the data to be collected, the December 31, 1988 deadline for the promulgation of regulations authorizing the data collection will not be met.

The development of this data collection system, and its final implementation, will be a major task facing the incoming administration. The primary issues that will need to be resolved are the information that will be required of the States, and the proportion of the subsequent cost for the collection of this data that will be covered by the Federal government.

2. *Long-Term Federal Commitment to the Independent Living Program:*

Because Congressional authorizing and appropriational decisions concerning the Independent Living Program (ILP) continue to be made on a yearly basis, the future of the program is uncertain. Currently among House personnel it appears that support for this program is closely related to one's political party affiliation. During interviews conducted for this paper, majority staff of the subcommittee charged with Congressional oversight of ILP were convinced of the-need for this program and advocate its continued funding. In comparison, although minority staff have favored ILP appropriations in the past, they are increasingly unsure if they will continue to support the program in the future. They assert that the primary purpose of the ILP initiatives were to provide seed money to assist States in the design and implementation of such programs in States where they did not previously exist. It is their understanding that the program was never meant to be institutionalized at a Federal level.

Although the aim of the program is to assist adolescents in the successful transition from foster care to independent adulthood, because no follow-up data is currently collected, there is no way to determine if ILP participants are making this transition successfully. In addition, very little data is reported by the States concerning the ethnicity, gender, and disabilities of the target population served because most States do not collect this type of data.

Such data is not mandated in the ILP Report to Congress that is being prepared by HDS. This, and the recent congressional expansion of the ILP coupled with the straight-line yearly appropriations that have continued since the program's inception in FY 1987, will undoubtedly intensify the debate concerning the determination of the proper level of Federal commitment in this area.

3. *Improving the Quality & Administration of Title IV-B Section 427 Reviews:*

As a result of such recent television documentaries as "Children in Crises" and the Lisa Steinberg case in New York (both documented cases of children who were abused while they were in foster care) perceived deficiencies in the array of services to protect children from abuse in are receiving a higher degree of public criticism. Title IV-B section 427 reviews are intended to insure that certain Federal safeguards are adhered to when a child enters foster care, yet there is nearly universal criticism of the efficacy of these reviews.

George Miller (D-Calif.), Chairman of the Housen Select Committee on Children, Youth, and Families is especially critical of what he terms the inefficacy with which the title IV-B section 427 review process is currently administered. A member of his staff noted that these reviews have not yet taken in place in a number of States and large cities that comprise a significant share of the foster care caseload. In a recent Christian Science Monitor series on the current state of the child welfare system, Representative Miller was quoted as saying that in the future he would lobby for Federal title IV-B appropriations to be directly tied to the fulfillment of stringent section 427 compliance by the States.

It is the contention of one majority staff member of the Subcommittee on Public Assistance and Unemployment Compensation, that section 427 appropriations are not incentive-based as was the original intent of PL 96-272. Because of the back-log of section 427 reviews that need to be conducted by HDS, Federal funds for section 427 compliance are awarded to participating States before they are forced to undergo a review. When a review is conducted, currently a state is "fined" some percentage of its past appropriations based on the degree to which it was in noncompliance rather than being awarded the amount by which it jg in compliance. The situation is further complicated by the fact that a State could be penalized for past practices even if its current practices are in better compliance. Other participants in the debate state that this funding was never meant to be incentive-based, and that the original intent has not been subverted. This situation is exacerbated by the lack of regulations which, as mentioned previously, have not been cleared by OMB.

However, the majority staff member asserts that the very nature of this interaction subverts what is meant to be an incentive-based Federal-State interaction; a Federal "carrot" has been turned into a "stick." The crucial determination that needs to be made is whether or not this changed interaction effects the stringency with which section 427 reviews are conducted, and the degree with which States enforce statutory provisions.

One state has at least partially substantiated that this is the case. Personnel from the State of Ohio report that compliance with section 427 regulations is never clear, and that during section 427 reviews the State's degree of compliance (and therefore the amount of its title IV-B disallowance) isn't so much determined, as it is negotiated. In addition, State personnel claim that what is allowed, and what isn't, is not predictable from review-to-review. Specific section 427 compliance regulations have been developed by HHS, but they were not approved because OMB determined the allowable miss rate to be too high (see Appendix A).

In general, it is widely felt that the current section 427 review process is not as effective as it could be. During the next legislative session proposals to make substantive changes to these reviews may be advanced. It is the contention of some legislative staff members that the information currently collected is overwhelmingly quantitative in nature and is predominantly collected in checklist form. In addition, State personnel felt it would be much more helpful if they were able to hold frank, qualitatively-oriented discussions about their state's foster care system concerning its strengths and weaknesses, and develop strategies for improvement in a cooperative manner. In terms of service delivery they assert such an orientation would be much more effective than the current interaction which doesn't always determine the real strengths and weaknesses of a State's foster care system. However, HHS staff assert that qualitative criteria are difficult to interpret and enforce, and often lead to similar disputes between Federal and State reviewers.

Conclusion:

HHS should focus on three issues in this area. First, the Department should determine if it is possible for HDS to get current on its backlog of section 427 reviews. Second, HDS should take the initiative on developing detailed, comprehensive regulations to guide these reviews by re-proposing the original guidelines to OMB. Third, HDS should solicit suggestions on improving the current review system from State personnel during these reviews, and determine if their comments are implementable.

ADVOCACY ORGANIZATIONS:

Children and youth advocacy organizations (which for this paper include public interest groups as well) have both short-term and long-term goals. In the short-term they

advocate increased Federal funding of the foster care system, the retention of title IV-E as an open-ended entitlement, and the expansion of allowable Federally-matched title IV-E administrative and training expenses to include costs incurred by foster care parents who require additional training to care for and/or adopt special needs children. However advocacy organizations tend to view these measures as incremental, stop-gap adjustments to a well-intentioned (but flawed) system in need of comprehensive overhaul. It was repeatedly expressed in interviews that the problems with the current foster care system are substantive proof of the need to develop a comprehensive child welfare system which places an increased emphasis on services to prevent family dysfunction. Ideally, in the long-term foster care would be only a part of this system. In addition, some key members of Congress favor the implementation of such a child welfare system.

1. *Increased Funding of Titles IV-B and XX:*

As Table 3 shows, Federal appropriations for title IV-B are not equivalent to the amounts that were authorized when PL 96-272 was passed. Advocacy groups in particular anticipated that the level of Congressional appropriation would be a closer approximation of the amount initially authorized. However, not only did appropriations slightly decline from FY 1985 to 1986, but appropriated FY 1988 funding levels have still not reached an amount that was authorized for FY 1985. Advocates assert that title IV-B components function imperfectly because they were only fully funded in FY 1981. Other issue participants assert that it was never the intent that the amount appropriated should equal the amount authorized. They portray the title IV-B full authorization levels as simply the point at which title IV-E expenditures are capped.

However, during the coming legislative session children and youth advocacy organizations will undoubtedly lobby for increased Federal title IV-B appropriations. In addition, undoubtedly these organizations will continue their support of an increased Federal title XX appropriation which is used to varying degrees by the States to fund their foster care systems.

2. *Retention of title IV-E as an Entitlement Program:*

All representatives of advocacy organizations interviewed expressed skepticism of any HHS proposal which would seek to contain foster care administrative and training costs by changing the entitlement nature of title IV-E in any way. These groups assert that the implementation of such a change would work to the detriment of children in foster care. In addition, it was repeatedly argued that the current foster care system is underfunded by the Federal government, and that the administrative and training costs of title IV-E fund a host of activities not covered by other welfare programs. Those interviewed conclude that the intent of PL 96-272 was to decrease the foster care caseload by providing additional services covered by title IV-E administrative and training funds.

Rather than capping allowable title IV-E administrative and training expenditures, in general advocates favor expanding its coverage to include the training of foster--and adoptive--parents who care for special needs children. In fact, several advocates favor expanding title IV-E administrative and training expenditures to include foster children currently covered only by title IV-B Federal appropriations. Additionally, the HITS cost containment proposal is not a high priority of key house staff members among the legislative staff interviewed. Therefore, the future of this proposal that was discussed earlier is uncertain.

3. *Expansion of Allowable title IV-E Administrative and Training Costs:*

As was mentioned above, in the coming legislative session advocacy organizations may lobby for the expansion of Federally-matched title IV-E expenses to cover the training costs faced by foster care parents that care for and/or adopt special needs children (see Appendix A for a listing of covered administrative and training costs). Cases of neglect have been documented in which such parents were vastly under-prepared for the responsibilities associated with the adoption of a special needs child.

A closely related problem is foster care recidivism, caused by children re-entering the system after they have exited. Primarily this occurs because family reunification does not work, or--if the child is adopted--because the adoptive family is no longer able to care for the child who often has many physical and/or psychological disabilities. According to VCIS data, the re-entry rate of foster care children has risen since PL 96-272 was implemented. In 1983 16% of the caseload entering that year had previously been in foster care. This same percentage rose to 29% in 1984, and 30% in 1985. The reasons for foster care recidivism have not been studied at a Federal level in detail, and it is not known to what extent recidivism results from an over-reliance on family reunification, or the inadequate training of adoptive parents caring for special needs children.

According to State personnel in Ohio, there have been a number of cases in which families have been overwhelmed by the demands placed on them by special needs children a number of years after they are adopted. In such cases these now-adolescent children re-enter the foster care system. However, their title IV-E eligibility is no longer determined on the basis of their original family's income, but rather on their present adoptive family's income, even if these children still exhibit the special needs precipitating the labeling (such as ethnicity or disabilities--see Appendix A). Therefore, the child returning to the foster care system is no longer eligible for title IV-E funding, and his or her adoptive or foster parents would not receive this subsidy. The Child Welfare League of America (CWLA) is aware of this dilemma and has stated that one method of alleviating this problem would be to expand title IV-E eligibility by basing a child's eligibility solely on the original family's income, and the child's special needs condition.

4. *Enhanced Federal Support of Programs to Prevent Family Dysfunction:*

The intent of PL 96-272 was to provide Federal funding and oversight to insure permanency planning; that children did not languish in the foster care system unnecessarily. Primarily this intent has been met with a conservative interpretation of the legal reasons which warrant the removal of children from the home, and enhancing efforts to re-unite foster children with their original parents as soon as possible if removal does take place.

Advocacy groups state that although many small innovative programs throughout the country are providing family dysfunction preventative services (such as counseling to families that are especially at-risk of breaking down) such preventative services have not been institutionalized at a Federal level in legislation, or in appropriations earmarked for this purpose. Examples of such programs include Homebuilders, HELP, and Project SAFE of Youth Services Inc. Children and youth advocates agree that an enhanced Federal emphasis should be placed on children before their family's environment deteriorates to the point where they are forced to enter out-of-home care.

In an attempt to alleviate family dysfunction, for the past several years CWLA has convened a group of approximately 20 agencies called the Family Preservation Network. Funded by a grant from the Edna McConnell Clark Foundation, the purpose of the network is to identify and develop strategies of effective crises intervention to be provided when a child is at imminent risk of removal from the home. Their programmatic conclusions are listed in this section under the "Substitute Care Placement Prevention" priority issue of the Department of Health and Human Services discussed earlier in this section.

Such efforts represent an attempt to identify, study, and implement effective preventative measures. Advocacy organizations are expected to lobby that in the long-run such efforts receive Federal support and/or oversight. However, it should be noted that several minority legislative staff expressed skepticism that preventative measures can work effectively. In addition, some fear that such efforts may not adequately protect children that need to be removed from their home environment.

5. *Support for Comprehensive Child Welfare Pilot Programs:*

In the long-run advocacy groups view the perceived shortcomings of the current foster care system as symptomatic of problems that are inherent to a child welfare "non-system" in which a number of child welfare subsystems (including foster care) work in isolation from each other. For instance these groups charge that the juvenile justice, mental health, developmental disabilities, and educational systems do not work in tandem, but often even operate in a manner which is detrimental to the child being served. Instead advocates argue that such systems need to be reorganized so that they become subsystems of a larger, comprehensive child welfare system. Such a system would involve the collaboration of service systems that currently operate in isolation from each other.

Although representatives from the advocacy organizations interviewed did not identify an existing program that could serve as a prototype, one such attempt to pilot a collaborative child welfare system has been undertaken by the Annie E. Casey Foundation. The New Futures program will involve substantial Foundation investment and will operate up to five years in five localities, including Prince George's county in Maryland. Efforts will be made in each of these localities to provide a common access point for at-risk youth and their families. A social worker will be assigned to each case to act as an advocate and to garner the needed resources and services for the youth.

Recently the Governor of Maryland, William Donald Schafer, announced that the State was awarded a five-year, \$7.5 million grant from the Foundation to improve family and children's services. To date Maryland and North Dakota are the only two States to receive this grant. The grant will support a demonstration interagency service delivery system for 200 underserved families in a targeted section of Prince George's County. Specifically the Secretary of the Maryland Department of Human Resources reports that efforts are being made to link the juvenile justice, education, and developmental disabilities systems into one comprehensive system. This child welfare system would necessitate the support of differing levels of government.

Children and youth advocacy organizations envision the eventual implementation of such a child welfare system nationwide. They plan to monitor pilot efforts in this area, and develop effective ways in which the implementation of such a system at a Federal level might be advocated.

VI. MAJOR ISSUES FACING THE INCOMING ADMINISTRATION

Immediate Action:

Initially the administration will be directly involved in two foster care issues during the current legislative session. These include the title IV-E cost containment proposal, and the development of the mandatory adoption and foster care data collection system. The cost containment proposal has been resubmitted to Congress for legislative approval as part of the Reagan administration's HHS FY 1990 budgetary proposal, however it is not included in the Bush administration's budget. Currently it is expected that advocacy groups will oppose the measure, and that key legislative staff will not place a high priority on the measure.

In addition, the development of the data collection system will be a major task facing the incoming Administration. The debate surrounding the inclusion of certain data elements will center directly on the appropriate Federal oversight role in foster care. Congressional pressure on the Federal government to assume a more aggressive role results from perceived inadequacies with the current foster care system. Presuming the proposed system is approved the implementation of the data collection system will be a longer-term administrative undertaking.

Due to public and legislative concern with the foster care system it is recommended that HHS focus on two issues involving title IV-B section 427 reviews. First, the Department should determine if it is possible for HDS to get current on its backlog of section 427 reviews. Second, HDS might take the initiative on developing detailed, comprehensive regulations to guide these reviews by re-proposing the original guidelines to OMB. This proposal could clearly specify the reasons that a certain allowable State miss rate is necessary. Legislative staff have stated that the Department will regain some of the stature it lost during the joint House hearings if it takes these steps.

Intermediate Action:

Issues of secondary importance are decisions concerning the Federal commitment to the Independent Living Program, the expansion of title IV-E expenses to cover the training of special needs foster--and adoptive--parents, and the retention of title IV-E eligibility of special needs children despite the failure of their foster--or adoptive--placement.

In the past--over the objections of the Administration--Congress has continued funding the ILP. In addition, the HHS Secretary's ILP Report to Congress does not

mandate the collection of data requested by Congress. This, the recent expansion of the program, and the straight-line yearly appropriations that have continued since the program's inception in FY 1987 will undoubtedly intensify the debate concerning the Federal commitment in this area. The incoming administration must decide if it will alter its commitment to the program.

During the legislative session advocacy organizations may lobby for the expansion of Federally-matched title IV-E expenses to cover the training costs faced by foster care parents that care for and/or adopt special needs children. Cases of neglect have been documented in which such parents were vastly under-prepared for the responsibilities associated with the adoption of a special needs child. Given the current nature of title IV-E (to insure that incentives exist to adopt such children), and the fact that the successful adoption of these children seems to be an administrative priority, seems to make this an area in which the Federal government should review its current policy.

Finally, the incoming Administration should review the situation in which title IV-E adoptive children lose their eligibility if they re-enter foster care because their adoptive parents decide they are no longer able to care for them. Presuming that the factors which precipitated their classification continue throughout their childhood, it seems they should not lose this eligibility.

Long-Term Action:

Throughout the next four years the Administration should assess the impact that a number of growing social problems will have on the foster care system, as well as the increasing number of substantiated child abuse cases. In addition strategies for improving the supply of foster parents and/or child welfare workers should be proposed, and the effect of certain preventative programs on family dysfunction should be studied and their replication should be advocated. Lastly the current orientation of the current child welfare system should be re-considered.

In the near future the administration needs to plan their strategy to address the significant impact that the current drug epidemic, the AIDS virus, and family homelessness will have on the foster care system. In many States existing foster care is under-equipped to address the special needs of the growing number of children that will enter the system as a result of these problems, and as a result of abuse and neglect. Therefore the appropriate Federal role in these problems needs to be delineated.

Proposals should also be developed to increase the supply of foster parents, which has dwindled in recent years. The incoming administration should also determine if the Federal government can assist localities in enhancing the child welfare profession to attract more child welfare professionals.

Although many small innovative programs throughout the country are providing family dysfunction preventative services (such as counseling to families that are especially at-risk of dysfunction) such preventative services have not been a priority of Federal child welfare appropriations. Children and youth advocates agree that increased Federal emphasis should be placed on families before they deteriorate to the point where their children are forced to enter out-of-home care. Because of some promising preliminary findings, the effectiveness of such services should be studied by the Department. As a continuing policy the administration should encourage the replication of those pilot programs it deems successful.

Finally, the administration should re-think the current child welfare system. In the long-run children and families might be better-served by a system in which juvenile justice, mental health, developmental disabilities, and educational sub-systems worked in tandem and not in isolation. The administration should consider making this a long-term evolutionary goal of the child welfare system. Continuing, marginal movements in this direction could be encouraged.

APPENDIX A. PUBLIC LAW 96-272, RECENT MODIFICATIONS, AND THE INDEPENDENT LIVING PROGRAM

Public Law 96-272 consolidated Federal foster care authorities in several titles of the Social Security Act, simultaneously increasing the amount of Federal foster care matching funds available to States. Some of the more important modifications to the system in existence prior to 1980 were the:

- inclusion of certain Federally-mandated protections for children in foster care, tied directly to part of each State's title IV-B Child Welfare Services funding;
- transfer of the foster care program provisions existing in the title IV-A AFDC program to a newly-created title IV-E of the Social Security Act;
- establishment of an adoption assistance program for AFDC children with special needs in title IV-E.

Additionally, in 1986 an Independent Living Program was established to provide older foster care children in the process of emancipation from the system with services to assist them in an effective transition to independent adulthood.

Title IV-B:

Although it was amended by PL 96-272, some form of the child welfare services--currently contained in title IV-B--have been a part of the Social Security Act since its inception in 1935. These funds cover a broad range of preventative and protective services to abused, neglected, and exploited children. Appropriations also provide for the needs of all children placed in the foster care system.

Title IV-B is a formula grant program. Each State is allotted its proportionate share of title IV-B appropriations. The Federal government reimburses 75% of a State's qualifying foster care expenses up to this allotted total.

Although the programmatic administration of foster care is the responsibility of each State, section 427 of title IV-B provides Federal oversight in the form of administrative reviews. The reviews, which encompass all of the children in a selected State's public foster care system, are conducted by Federal employees in conjunction with State personnel.

This review process includes the determination of whether a State has:

- conducted an inventory of the children in foster care;
- implemented a statewide information tracking system for each child;

- implemented a review system that includes a case review every six months, and a judicial review within six months of placement into the system;
- implemented a service program to place children back into their home, or into an adoptive home.

Although this language is included in the authorizing statute, the above points have not been elaborated in specific regulations. Therefore they serve simply as HDS guidelines during the review process. Although specific regulations were developed by HHS they were not cleared by the Office of Management and Budget --and were therefore not published--because OMB asserted that the proposed allowable "miss rate" (cases in which States did not meet the above criteria) was too high. The absence of implemented regulations may be causing some friction between the Department and State agencies responsible for administering the legislation.

Depending on the degree of a State's compliance with these objectives, it is awarded its allotment of Federal funds minus any disallowances it receives. In FY 1988 the amount that could be disallowed States was \$98 million of the total \$239 million title IV-B Federal appropriation. Since the reviews were instituted in FY 1982, a cumulative total of approximately \$13.4 million has been disallowed States.

Each State is to be reviewed by HDS for the first two years that they utilize their allotment of the \$98 million that causes them to be eligible for review. Subsequent reviews are to take place every third year. The miss rate allowed to each State declines with each subsequent section 427 review in which it participates, but never reaches 0% as OMB stipulates is appropriate. This stalemate concerning the appropriate rate of allowable error continues between the Department and OMB.

Currently all States except Massachusetts, Wyoming, and Puerto Rico have elected to utilize the portion of title IV-B funds subject to Federal disallowances, thereby becoming eligible for section 427 reviews. From FY 1982 to FY 1987, the Office of Human Development Services (HDS) conducted 152 such reviews and determined that in all but 25 instances (16%) the States met an allowable level of service effort. The States which did completely fail the review did so primarily because of the untimeliness with which periodic case reviews and judicial dispositional hearings were conducted for foster care children.

Title IV-E:

Unlike the formula grant title IV-B, title IV-E is an open-ended Federal entitlement which provides a State for a portion of the direct services and administrative expenses of each foster child originating from a family eligible for Aid to Families with Dependent Children (AFDC) residing in licensed or approved foster care homes or institutions. In addition, title IV-E authorizes the adoption assistance payments of foster children originating from Supplemental Security Income (SSI) eligible families. As of FY 1985, such Federal appropriations provided funding to an average of 39.2% of the children in

foster care. Thus, while title IV-B funds can be utilized by all children in need of child welfare services, title IV-E funds can only be utilized by those who are categorically eligible. The program has two primary components:

- Foster Care Maintenance payments;
- Adoption Assistance payments for "special needs" children.

The first component is the foster care Federal authorization that existed in the AFDC program prior to 1980. First authorized in 1961, foster care maintenance payments reimburse each State's proportional cost at its Medicaid match rate (which can vary from 50% to 83%) for income-eligible foster children. Fifty percent of the State administrative cost for both foster care maintenance payments, and adoption assistance payments is paid by the Federal government, as is 75% of the cost for training State workers to administer both of these programs.

The second component--adoption assistance payments--reimburses a State at the Medicaid match rate for the subsidy given parents that adopt AFDC and/or SSI children eligible that also have special needs. A state determines that these adoptive children have "special needs" if they are one of the following:

- ethnic minorities;
- older children (adolescents);
- medically impaired;
- physically disabled;
- mentally disabled or retarded;
- emotionally disturbed or maladjusted.

In FY 1987, adoption assistance payments were made for an average of 31,000 special needs children per month at an estimated total Federal cost of \$71.6 million. When the program began in FY 1981, such Federal expenditures totaled less than \$500,000 for that year.

Following the passage of PL 96-272 States became more proficient at shifting more child welfare system costs to the Federal government by charging the costs of foster care services arguably covered by the Federal government. Over time States became more knowledgeable of expenses allowed under title IV-E. Therefore administrative program costs increased exponentially. This cost increase took place (see table 1) even as both the number of children in foster care, and their length of time in the system declined (see table 2).

In response, HHS instituted title IV-E fiscal reviews to determine if appropriate foster care maintenance and adoption assistance payments, are being made to States on behalf of eligible children, and if they are paid to eligible foster homes and institutions meeting licensing standards. There are two stages to the review. Stage I consists of a review of 50 sampled payments in a selected State. If it is determined that the number of payments made in error exceeds 10t, the second stage of the review is conducted.

Stage II requires the sampling of an additional 150 to 250 randomly selected payments. The results of the two stages are added together, and the combined total is used to extrapolate the total disallowance for the State.

As a result of these fiscal reviews, disallowances totaling over \$3 million have been assessed against 26 States, and over \$16 million in disallowances is currently pending. Most disallowances result because foster children claimed under title IV-E are determined to be income-ineligible, or because they have not been properly removed from their homes according to statutory requirements.

Title IV-E continues to be fine-tuned as a result of recent changes in the tax law. On April 14, 1988 HHS published a Notice of Proposed Rulemaking (NPRM) that would amend title IV-E to require States to reimburse parents for up to \$2,000 of the nonrecurring expenses associated with adopting a special needs child. Nonrecurring expenses are "reasonable and necessary" adoption fees, court costs, attorney fees, and other expenses that are directly related to the legal adoption of a special needs child. Fifty percent of the costs incurred by States are covered by Federal matching funds as an administrative cost of title IV-E. Previously these expenses had been allowable tax deduction on the adoptive parents' income tax form as President Bush has re-proposed.

Independent Living Program:

One final programmatic element of the foster care system is the Independent Living Program (ILP), which was enacted on April 7, 1986 as a part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (PL 99-272). An annual amount of \$45 million was appropriated in FY 1987 and in FY 1988, to provide States with the resources to establish and implement services to assist AFDC eligible children age 16 and over make the transition from foster care to successful independent living at the age of 18. No state matching funds are required for the program.

Congressional passage of the ILP was precipitated by a class action lawsuit against the State of New York in which the plaintiffs' claim that the State was not adequately preparing foster care children for their emancipation was upheld. An HHS report to Congress on this program found that prior to the implementation of the ILP, 25 States provided some form of basic living skills training. Currently all 50 States are developing such programs for foster care children. In 18 of these States educational initiatives are being developed, and 15 other States are developing employment initiatives.

Approximately 40% of the children in foster care are adolescents. A 1981 study by Hornby and Collins estimated that fewer than 20% of foster care adolescents will be re-unified with their parents, and that fewer than 1-in-20 is likely to be adopted. In FY 1985, 8% (approximately 14,208) of the 177,602 children that left foster care reached the age of 18, or were otherwise emancipated from the system. According to a 1985

American Public Welfare Association (APWA) report, fewer than one-half of these youth received ILP services, which targeted over 20,000 foster care children in FY 1987.

In a paper entitled "Trends and Needs in Programming for Independent Living," WESTAT Inc. research analyst Ronna J. Cook states that:

"because [foster care] agencies are oriented towards protection and care, recommendations and decisions about youths' needs are generally made at an administrative level and through interagency agreements. This creates an environment in which adolescents perceive themselves as having diminished control over their lives, lessening the opportunity for them to learn skills necessary for daily living...Unfortunately, most youth in the foster care system do not have the option of remaining in a protected family environment until they are ready and able to live independently of a family support structure...this situation is compounded by past rejections, unstable placements, and poor interpersonal relationships."

Recently the ILP has been reauthorized, and the scope of its program components have been expanded. Following the October 21, 1988 legislative passage of the Technical and Miscellaneous Revenue Act of 1988 (HR 4333) PL 100-647 was enacted. The law's provisions regarding the ILP include the following:

- extension of the authorization of the ILP through FY 1989 at \$45 million;
- permission for States to provide ILP services to non-title IV-E eligible foster youth over the age of 16;
- permission for States to provide these services up to six months after youth are emancipated from foster care.

APPENDIX B

The following people provided invaluable information concerning their assessment of the current foster care system, their suggestions for its improvement, and their plans for facilitating these changes:

MaryLee Allen, Director of Child Welfare and Mental Health of the Children's Defense Fund (CDF) interviewed September 28, 1988.

Karen Bonner, Policy Associate of the American Public Welfare Association (APWA) interviewed September 27, 1988.

Linda Greenan, Director of Public Policy of the Child Welfare League of America (CWLA) interviewed September 21, 1988.

Ron Haskins, Minority Staff Director of the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation interviewed September 21, 1988.

Terry Heron, Legislative Support Branch Chief of the Office of Planning and Legislation for the Office of Human Development Services (HDS) who made his personal files on foster care issues and hearings available.

Alan Jensen, Staff Member of the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation interviewed September 16, 1988.

Dan Lewis, Director of the Office of Discretionary Programs of the Administration for Children, Youth, and Families (ACYF), HDS interviewed October 3, 1988.

Ruth Massinga, Secretary of Maryland Department of Human Resources interviewed October 13, 1988.

Joseph Mottola, Deputy Commissioner of ACYF, HDS who commented on a draft of the paper.

Tim O'Hanlon, Management Analyst of the Ohio Department of Human Services interviewed frequently by phone.

Bill Prosser, Director of Children, Youth, and Families for the Office of the Assistant Secretary of Planning and Evaluation (ASPE) provided frequent, direct oversight of this paper.

Jim Rich, Director of the Formula Grants Division of the Children's Bureau, ACYF interviewed October 3, 1988.

Ann Segal, Executive Assistant to the Assistant Secretary for Planning and Evaluation.

Diane Shust, Majority Staff Member of the House Select Committee on Children, Youth, and Families interviewed September 26, 1988.

Carol Statuto, Minority Deputy Staff Director of the House Select Committee on Children, Youth, and Families interviewed September 27, 1988.

Betty Stewart, Associate Commissioner of ACYF, HDS interviewed October 3, 1988.

Beverly Stubee, Director of the Program Operations Division of ACYF, HDS interviewed October 3, 1988.

Arnold Tompkins, Deputy Assistant Secretary for Social Services Policy (SSP), ASPE.

Susan Weber, Deputy Assistant Commissioner of the National Center for Child Abuse and Neglect, and the Office of Discretionary Programs of ACYF, HDS interviewed October 3, 1988.

Casey Wichlacz, Deputy Associate Commissioner of the Office of Child Welfare State Grants of ACYF, HDS interviewed October 3, 1988.