

assistance agreement has been entered into by a State under section 673 of this title will be adequately protected, on a reasonable and equitable basis which is approved by the Secretary, if and when the child and his or her adoptive parent (or parents) move to another State.

(Pub. L. 96-272, title I, §101(a)(4)(B), June 17, 1980, 94 Stat. 512.)

CODIFICATION

Section was enacted as part of the Adoption Assistance and Child Welfare Act of 1980, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

“Secretary of Health and Human Services” was substituted for “Secretary of Health, Education, and Welfare” in text, pursuant to Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

§ 673b. Adoption incentive payments

(a) Grant authority

Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) Incentive-eligible State

A State is an incentive-eligible State for a fiscal year if—

- (1) the State has a plan approved under this part for the fiscal year;
- (2)(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;
- (B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year; or
- (C) the State's foster child adoption rate for the fiscal year exceeds the highest ever foster child adoption rate determined for the State;
- (3) the State is in compliance with subsection (c) of this section for the fiscal year;
- (4) the State provides health insurance coverage to any child with special needs (as determined under section 673(c) of this title) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and
- (5) the fiscal year is any of fiscal years 2008 through 2012.

(c) Data requirements

(1) In general

A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

- (A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) Determination of numbers of adoptions based on AFCARS data

The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during a fiscal year, and the foster child adoption rate for the State for the fiscal year, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) No waiver of AFCARS requirements

This section shall not be construed to alter or affect any requirement of section 679 of this title or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) Adoption incentive payment

(1) In general

Except as provided in paragraphs (2) and (3), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

- (A) \$4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;
- (B) \$4,000, multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions that are not older child adoptions for the State for the fiscal year; and
- (C) \$8,000, multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year.

(2) Pro rata adjustment if insufficient funds available

For any fiscal year, if the total amount of adoption incentive payments otherwise payable under paragraph (1) for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under paragraph (1) for the fiscal year shall be—

- (A) the amount of the adoption incentive payment that would otherwise be payable to the State under paragraph (1) for the fiscal year; multiplied by
- (B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under paragraph (1) for the fiscal year.

(3) Increased incentive payment for exceeding the highest ever foster child adoption rate

(A) In general

If—

(i) for fiscal year 2009 or any fiscal year thereafter the total amount of adoption incentive payments payable under paragraph (1) of this subsection are less than the amount appropriated under subsection (h) for the fiscal year; and

(ii) a State's foster child adoption rate for that fiscal year exceeds the highest ever foster child adoption rate determined for the State,

then the adoption incentive payment otherwise determined under paragraph (1) of this subsection for the State shall be increased, subject to subparagraph (C) of this paragraph, by the amount determined for the State under subparagraph (B) of this paragraph.

(B) Amount of increase

For purposes of subparagraph (A), the amount determined under this subparagraph with respect to a State and a fiscal year is the amount equal to the product of—

(i) \$1,000; and

(ii) the excess of—

(I) the number of foster child adoptions in the State in the fiscal year; over

(II) the product (rounded to the nearest whole number) of—

(aa) the highest ever foster child adoption rate determined for the State; and

(bb) the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.

(C) Pro rata adjustment if insufficient funds available

For any fiscal year, if the total amount of increases in adoption incentive payments otherwise payable under this paragraph for a fiscal year exceeds the amount available for such increases for the fiscal year, the amount of the increase payable to each State under this paragraph for the fiscal year shall be—

(i) the amount of the increase that would otherwise be payable to the State under this paragraph for the fiscal year; multiplied by

(ii) the percentage represented by the amount so available for the fiscal year, divided by the total amount of increases otherwise payable under this paragraph for the fiscal year.

(e) 24-month availability of incentive payments

Payments to a State under this section in a fiscal year shall remain available for use by the State for the 24-month period beginning with the month in which the payments are made.

(f) Limitations on use of incentive payments

A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B of this subchapter or this part. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Fed-

eral matching payments under sections 624, 629d, and 674 of this title.

(g) Definitions

As used in this section:

(1) Foster child adoption

The term “foster child adoption” means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

(2) Special needs adoption

The term “special needs adoption” means the final adoption of a child for whom an adoption assistance agreement is in effect under section 673 of this title.

(3) Base number of foster child adoptions

The term “base number of foster child adoptions for a State” means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007.

(4) Base number of special needs adoptions that are not older child adoptions

The term “base number of special needs adoptions that are not older child adoptions for a State” means, with respect to any fiscal year, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2007.

(5) Base number of older child adoptions

The term “base number of older child adoptions for a State” means, with respect to any fiscal year, the number of older child adoptions in the State in fiscal year 2007.

(6) Older child adoptions

The term “older child adoptions” means the final adoption of a child who has attained 9 years of age if—

(A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or

(B) an adoption assistance agreement was in effect under section 673 of this title with respect to the child.

(7) Highest ever foster child adoption rate

The term “highest ever foster child adoption rate” means, with respect to any fiscal year, the highest foster child adoption rate determined for any fiscal year in the period that begins with fiscal year 2002 and ends with the preceding fiscal year.

(8) Foster child adoption rate

The term “foster child adoption rate” means, with respect to a State and a fiscal year, the percentage determined by dividing—

(A) the number of foster child adoptions finalized in the State during the fiscal year; by

(B) the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.

(h) Limitations on authorization of appropriations

(1) In general

For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary—

- (A) \$20,000,000 for fiscal year 1999;
- (B) \$43,000,000 for fiscal year 2000;
- (C) \$20,000,000 for each of fiscal years 2001 through 2003; and
- (D) \$43,000,000 for each of fiscal years 2004 through 2013.

(2) Availability

Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a) of this section, are authorized to remain available until expended, but not after fiscal year 2013.

(i) Technical assistance

(1) In general

The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) Description of the character of the technical assistance

The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

- (A) The development of best practice guidelines for expediting termination of parental rights.
- (B) Models to encourage the use of concurrent planning.
- (C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.
- (D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.
- (E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.
- (F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) Targeting of technical assistance to the courts

Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) Limitations on authorization of appropriations

To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed \$10,000,000 for each of fiscal years 2004 through 2006.

(Aug. 14, 1935, ch. 531, title IV, §473A, as added Pub. L. 105-89, title II, §201(a), Nov. 19, 1997, 111 Stat. 2122; amended Pub. L. 105-200, title IV, §410(f), July 16, 1998, 112 Stat. 673; Pub. L. 106-169, title I, §131, Dec. 14, 1999, 113 Stat. 1830; Pub. L. 108-145, §3(a), Dec. 2, 2003, 117 Stat. 1879; Pub. L. 109-288, §6(f)(7), Sept. 28, 2006, 120 Stat.

1248; Pub. L. 110-351, title IV, §401, Oct. 7, 2008, 122 Stat. 3973.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (f), is classified to section 620 et seq. of this title.

AMENDMENTS

2008—Subsec. (b)(2)(C). Pub. L. 110-351, §401(e)(3)(A), added subpar. (C).

Subsec. (b)(4). Pub. L. 110-351, §401(a)(1), struck out “in the case of fiscal years 2001 through 2007,” before “the State provides”.

Subsec. (b)(5). Pub. L. 110-351, §401(a)(2), substituted “2008 through 2012” for “1998 through 2007”.

Subsec. (c)(2). Pub. L. 110-351, §401(a)(3), (e)(3)(B), substituted “during a fiscal year, and the foster child adoption rate for the State for the fiscal year,” for “during each of fiscal years 2002 through 2007”.

Subsec. (d)(1). Pub. L. 110-351, §401(e)(1)(A), substituted “paragraphs (2) and (3)” for “paragraph (2)” in introductory provisions.

Subsec. (d)(1)(B). Pub. L. 110-351, §401(c)(1), substituted “\$4,000” for “\$2,000”.

Subsec. (d)(1)(C). Pub. L. 110-351, §401(c)(2), substituted “\$8,000” for “\$4,000”.

Subsec. (d)(2). Pub. L. 110-351, §401(e)(1)(B), substituted “paragraph (1)” for “this section” wherever appearing.

Subsec. (d)(3). Pub. L. 110-351, §401(e)(1)(C), added par. (3).

Subsec. (e). Pub. L. 110-351, §401(d), substituted “24-month” for “2-year” in heading and “for the 24-month period beginning with the month in which the payments are made” for “through the end of the succeeding fiscal year” in text.

Subsec. (g)(3). Pub. L. 110-351, §401(b)(1), substituted “means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007.” for “means—

“(A) with respect to fiscal year 2003, the number of foster child adoptions in the State in fiscal year 2002; and

“(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.”

Subsec. (g)(4). Pub. L. 110-351, §401(b)(2), inserted “that are not older child adoptions” before “for a State” and substituted “means, with respect to any fiscal year, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2007.” for “means—

“(A) with respect to fiscal year 2003, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2002; and

“(B) with respect to any subsequent fiscal year, the number of special needs adoptions that are not older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.”

Subsec. (g)(5). Pub. L. 110-351, §401(b)(3), substituted “means, with respect to any fiscal year, the number of older child adoptions in the State in fiscal year 2007.” for “means—

“(A) with respect to fiscal year 2003, the number of older child adoptions in the State in fiscal year 2002; and

“(B) with respect to any subsequent fiscal year, the number of older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.”

Subsec. (g)(7), (8). Pub. L. 110-351, §401(e)(2), added pars. (7) and (8).

Subsec. (h)(1)(D), (2). Pub. L. 110-351, §401(a)(4), substituted “2013” for “2008”.

2006—Subsec. (f). Pub. L. 109-288 substituted “624” for “623”.

2003—Subsec. (b)(2). Pub. L. 108-145, §3(a)(1)(A), added par. (2) and struck out former par. (2) which read as follows: “the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;”.

Subsec. (b)(4). Pub. L. 108-145, §3(a)(1)(B), substituted “through 2007” for “and 2002”.

Subsec. (b)(5). Pub. L. 108-145, §3(a)(1)(C), substituted “2007” for “2002”.

Subsec. (c)(2). Pub. L. 108-145, §3(a)(2), added par. (2) and struck out heading and text of former par. (2). Text read as follows:

“(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 679 of this title, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

“(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by April 30, 1998, and approved by the Secretary by July 1, 1998.”

Subsec. (d)(1). Pub. L. 108-145, §3(a)(3), inserted “that are not older child adoptions” after “adoptions” in two places in subpar. (B) and added subpar. (C).

2003—Subsec. (g)(3)(A), (B). Pub. L. 108-145, §3(a)(4)(A), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

“(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.”

Subsec. (g)(4). Pub. L. 108-145, §3(a)(4)(B), inserted “that are not older child adoptions” after “adoptions” in heading, added subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

“(A) with respect to fiscal year 1998, the average number of special needs adoptions in the State in fiscal years 1995, 1996, and 1997; and

“(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.”

Subsec. (g)(5), (6). Pub. L. 108-145, §3(a)(4)(C), added pars. (5) and (6).

Subsec. (h)(1)(D). Pub. L. 108-145, §3(a)(5)(A), added subpar. (D).

Subsec. (h)(2). Pub. L. 108-145, §3(a)(5)(B), inserted “, or under any other law for grants under subsection (a) of this section,” after “(1)” and substituted “2008” for “2003”.

Subsec. (i)(4). Pub. L. 108-145, §3(a)(6), substituted “2004 through 2006” for “1998 through 2000”.

Subsec. (j). Pub. L. 108-145, §3(a)(7), struck out subsec. (j) which related to supplemental grants.

1999—Subsec. (h)(1). Pub. L. 106-169, §131(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “For grants under subsection (a) of this section, there are authorized to be appropriated to the Secretary \$20,000,000 for each of fiscal years 1999 through 2003.”

Subsec. (j). Pub. L. 106-169, §131(a), added subsec. (j).

1998—Subsec. (c)(2)(B). Pub. L. 105-200 substituted “April 30, 1998” for “November 30, 1997” and “July 1, 1998” for “March 1, 1998”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-351 effective Oct. 7, 2008, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after such date, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110-351, set out as a note under section 671 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-288 effective Oct. 1, 2006, and applicable to payments under this part and part B of this subchapter for calendar quarters beginning on or after such date, without regard to whether implementing regulations have been promulgated, and with delay permitted if State legislation is required to meet additional requirements, see section 12(a), (b) of Pub. L. 109-288, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-145, §5, Dec. 2, 2003, 117 Stat. 1882, provided that: “The amendments made by this Act [amending this section and section 674 of this title] shall take effect on October 1, 2003.”

EFFECTIVE DATE

Section effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105-89, set out as an Effective Date of 1997 Amendment note under section 622 of this title.

FINDINGS

Pub. L. 108-145, §2, Dec. 2, 2003, 117 Stat. 1879, provided that: “The Congress finds the following:

“(1) In 1997, the Congress passed the Adoption and Safe Families Act of 1997 [Pub. L. 105-89; see Short Title of 1997 Amendment note set out under section 1305 of this title] to promote comprehensive child welfare reform to ensure that consideration of children’s safety is paramount in child welfare decisions, and to provide a greater sense of urgency to find every child a safe, permanent home.

“(2) The Adoption and Safe Families Act of 1997 also created the Adoption Incentives program, which authorizes incentive payments to States to promote adoptions, with additional incentives provided for the adoption of foster children with special needs.

“(3) Since 1997, all States, the District of Columbia, and Puerto Rico have qualified for incentive payments for their work in promoting adoption of foster children.

“(4) Between 1997 and 2002, adoptions increased by 64 percent, and adoptions of children with special needs increased by 63 percent; however, 542,000 children remain in foster care, and 126,000 are eligible for adoption.

“(5) Although substantial progress has been made to promote adoptions, attention should be focused on promoting adoption of older children. Recent data suggest that half of the children waiting to be adopted are age 9 or older.”

§ 673c. Timely interstate home study incentive payments

(a) Grant authority

The Secretary shall make a grant to each State that is a home study incentive-eligible State for a fiscal year in an amount equal to the timely interstate home study incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.