

Bridges



Association of Administrators of the Interstate Compact on Adoption and Medical Assistance

Fall 1998

ADOPTION CROSSROADS: A MODEL FOR STATEWIDE POST ADOPTION SERVICES

by, Dr. Joyce Maguire Pavao

Adoption agencies have developed a myriad of innovative recruitment strategies to find families who will adopt children with a multiplicity of needs. However, most agencies now realize that their commitment to children does not end with adoptive placement. Many of these children have experienced the trauma of abuse and neglect and living in multiple settings. As a result, adopted children and their families are left to deal with physical disabilities, learning disabilities, psychological issues and behavior problems. These families often find themselves at a crossroads, where outside services and guidance are needed to continue down the path of adoption.

Last October, in response to this need, the Commonwealth of Massachusetts created Adoption Crossroads, a network of centers that offer services aimed at strengthening and supporting adoptive families. The network is funded through a 1.25 million-dollar contract with the Department of Social Services (DSS). These funds were successfully secured in the DSS fiscal year 1998 budget thanks to a campaign to

educate the legislature about the cost-effective qualities of post adoption services, and the benefits, both financial and emotional, that these services can render to the state. The campaign was spearheaded by the Massachusetts Coalition for Adoption, which includes adoptive parents, birth parents, foster parents, adopted adults, and professionals, with support and commitment from the Special Needs Adoption Network (SNAN), and Adoptive Families Together (AFT). The efforts of these constituents raised the awareness of the need for post adoption services, expanding the services that have

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been operating for many years, and creating new and knowledgeable service providers for adoptive families. It was, however, the foster and adoptive parents that were the key in getting the program funded.

The testimony of prospective and current adoptive parents had a great impact on the legislature. One of the foster parents who testified, is raising a very challenging child who would probably be in residential treatment if he was not living with her. Her son, John, is only 10 years old but has already been in over 17 foster homes. The cost to the state of providing services to him is very high. She is a committed foster parent on a fixed income, who wants to adopt John. She is well aware of the challenges in raising this child, and she loves him. John is attached to her. Yet, she fears that if she adopts him she will be left with no support and none of the resources she desperately needs to provide him with the care he will need for many years. In fact, she cannot adopt him without a guarantee of ongoing availability of wraparound services. She forcefully challenged the legislature by pointing out: “You are going to pay for this boy one way or the other. If he is moved one more time, you may be paying the high cost of residential treatment, hospitalization, and maybe at some point, a correctional institution. Why not pay to keep him in a safe and loving home by assuring that he will get the services needed after adoption? Provide the state with a post adoption services line item now and you will guarantee him a permanent placement.” Seeing that the time was right for positive and proactive attention to these complex families, the legislature allocated funding to the Department of Social Services to expand and improve the state’s post-adoption programs.

New Bedford Child and Family Services (NBCFS) is the lead agency for Adoption Crossroads. NBCFS, DSS, and 40 participating agencies worked very hard in a “short” year to put into place a network of centers, so that each region in the state would have post adoption services available. Children’s Aid and Family Services of Northampton is the center in West Region; in Central Region it is Worcester Children’s Friend; in the Northeast it is Catholic Charities of Merrimack Valley; in Southeast Region it is NBCFS; in Metro Region it is the Center for Family Connections; and in Boston Region it is Children’s Services of Roxbury.

Massachusetts, like most states, is composed of regions that are quite different in composition. There are urban, suburban, and rural communities and that diversity, as well as much ethnic and racial diversity, makes it important to provide post adoptive services in centers that can reflect the needs of their communities. Adoption Crossroads honors the existing and community-sensitive resources in each region, while working to provide some continuity of services throughout the state.

The services that are being provided statewide include:



1. **Respite:** Respite includes traditional respite care, with over 33 homes offering overnight respite for adoptive parents. In addition, there are over 51 other respite resources available. These include a Buddy/Mentor system, which allows the child to go on outings with a consistent person allowing him/her to build a meaningful relationship with that individual. There are also planned family activity days, recreational outings for children to attend without their parents, hourly care providers, in-home respite professionals and residential programs.

2. **Response:** The regional response team consists of a clinician, social worker and parent liaison. Their key responsibility is to advocate for and coordinate wrap-around services tailored for the adoptive families’ specific needs.
3. **Family Support Groups:** Adoptive family groups are available in all regions. It is the intention of Adoption Crossroads to make them available in numerous areas in each region so that families can conveniently attend these meetings that educate, support and empower adoptive families. Over 140 family support groups have been established, including 51 kinship groups.
4. **Training:** Training is being provided for both parents and professionals in order to expand the base of adoption sensitive professionals in schools, churches, and health care facilities, etc. Over 65 statewide professional/parent trainings have been planned.
5. **Information and Referral:** This service assists families in finding appropriate services. A hotline was created in October 1997, to refer families in need of services to other agencies, or just as a resource for families to discuss concerns. Over 240 calls were recorded in the first 5 months of operation.
6. **Advocacy:** Adoption Crossroads works to continuously increase the awareness of the needs of adoptive families, expand the services to meet those needs, and to ensure that policy and legislation reflect those needs.

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The Americans with Disabilities Act: What Adoption Agencies Need to Know

by, Madelyn Freundlich, Executive Director, Evan B. Donaldson Adoption Institute

The Americans with Disabilities Act [ADA], signed into law on July 26, 1990, prohibits discrimination on the basis of disability in employment and in programs and services provided by state and local governments, commercial facilities, and certain types of private agencies. By its specific terms, the ADA applies to all adoption agencies, irrespective of the number of employees. Public adoption agencies are covered under Title II and private adoption agencies are covered under Title III of the Act. The ADA contains important requirements designed to protect the interests of individuals with disabilities — requirements that may affect the way in which agencies utilize disability-related criteria in the selection of prospective adoptive parents.

This article reviews the non-discrimination mandates of the ADA, discusses who is protected by the Act, and outlines the sanctions for ADA violations. It addresses such questions as:

Can an adoption agency have a policy under which individuals who are blind or deaf are automatically rejected from consideration as adoptive parents for safety reasons?

Can an adoption agency reject an individual who successfully completed a drug rehabilitation program two years ago and is no longer using drugs?

Can an adoption agency refuse to consider as adoptive parents persons who are HIV infected?

The Basic Requirements of the ADA

The ADA prohibits discrimination on the basis of disability. The non-discrimination rule is stated in Title II, which applies to public adoption agencies, as:

No qualified individual with a disability shall, by reason of such disability, be excluded from participation or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

In Title III, the rule that applies to private adoption agencies (which are considered “public accommodations” under the ADA) is stated as:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation.

The broad principles underlying the non-discrimination rule of the ADA are *equal opportunity to participate* and *equal opportunity to benefit*. With regard to public agencies, these principles have long been in place as a result of The Rehabilitation Act of 1973, and the ADA confirms these mandates on public agencies in Title II. The ADA, however, also prohibits, in Title III, disability-based discrimination by certain private entities such as adoption agencies.

The ADA Requirements for Private Agencies

The ADA, for the first time, applies the principles of *equal opportunity to participate* and *equal opportunity to benefit* to private adoption agencies. One of the key ADA provisions is that adoption agencies may not use “standards or criteria or methods of discrimination that have the effect of discriminating on the basis of disability.” The ADA lists a number of “specific prohibitions.” Of particular relevance for adoption agencies is the specific prohibition against “imposing or applying eligibility criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from fully and equally enjoying” any services “unless the criteria can be shown to be necessary for the provision” of those services.

One of the factors that can be used to justify the use of disability-related screening criteria is safety. If, however, safety is used to justify the screening out of individuals with disabilities, the decision must be based on actual risks and not on mere speculation, stereotypes, generalizations or unfounded fears about individuals with disabilities. Similarly, agencies may use the justification of “direct threat” when employing disability-related screening criteria. The law states that an agency is not required to permit an individual to participate in or benefit from a service when “that individual poses a direct

threat to the health and safety of others.” However, “direct threat” — defined as “a significant risk of harm to the health or safety of others that cannot be eliminated” by modifications in policy, practice, or procedures — must be determined on the basis of an individualized assessment. The ADA further requires that the determination of “direct threat” be based on:

reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modification of policies, practices, or procedures will mitigate the risks.

These provisions make clear that the ADA is violated if an agency categorically rejects individuals with disabilities based on vague standards related to “safety” or “direct threat.” Individualized assessments, drawing on objective data and a careful weighing of risks and opportunities to mitigate those risks, must support the rejection of individuals with disabilities from consideration as prospective adoptive parents. When such individualized assessments are utilized, the result may well be an acceptance of an individual with a significant disability, such as, for example, a woman who has crippling degenerative arthritis but whose home has been thoroughly adapted to enable her to function and whose husband is actively involved in parenting and home management.

Who is Protected Under the ADA

The ADA -- whether applied to public or private adoption agencies -- protects three categories of individuals with disabilities:

- (1) persons who have a physical or mental impairment that substantially limits one or more major life activities;**
- (2) persons who have a record of a physical or mental impairment that substantially limits one or more of the individual’s major life activities; and**
- (3) persons who are regarded as having such an impairment, whether they have the impairment or not.**

The regulations on the ADA provide guidance on the types of conditions that constitute protected disabilities. Protected “physical impairments” include: orthopedic, visual, hearing and

speech impairments; cerebral palsy; epilepsy; muscular dystrophy; heart disease; cancer; diabetes; HIV, whether symptomatic or non-symptomatic; tuberculosis; drug addiction; and alcoholism. Protected “mental impairments” include mental retardation, emotional or mental illness, and specific learning disabilities. Certain mental impairments are explicitly excluded from ADA protections, including sexual behavior disorders, compulsive gambling, kleptomania, and pyromania.

With regard to what constitutes a “substantial limitation” on a “major life activity,” the ADA regulations state that major life activities include such activities as “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.” There is no absolute standard for determining when an impairment is a “substantial limitation.” Generally, however, the rule is that there is a substantial limitation when “an individual’s important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.”

It is usually clear who is covered under the first two categories of individuals with disabilities — those who currently have and those who have a record of a physical or mental impairment that substantially limits one or more major life activities. Those who are protected because they are “regarded as” having such an impairment, whether they actually have the impairment or not, typically fall within three situations:

- (1) the individual has a physical or mental impairment that does not substantially limit major life activities but is treated as if he or she does;**
- (2) the individual has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; and**
- (3) the individual has no impairment but is treated as if he or she does.**

Examples of individuals who are protected under the “regarded as” category would include an individual with mild diabetes that is controlled by medication but who is nevertheless prohibited from receiving a service because of diabetes; an individual with a prominent facial disfigurement who is prohibited from receiving a service because of beliefs that others would be upset by her appearance; and an individual who is excluded from a service because of an untrue rumor that the individual has HIV.

Two additional areas in which questions related to ADA protections often arise are drug addiction and HIV infection. In the area of drug addiction, the ADA does not extend its protections to individuals who are currently using illegal drugs. The ADA defines "current illegal drug use" as the "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem." "Current illegal drug use," consequently, does not encompass any use of illegal drugs at any point in a person's life. The ADA does protect a person who is *not* currently using drugs and who is currently participating in a supervised rehabilitation program or who has successfully completed a supervised drug rehabilitation program or otherwise has been rehabilitated successfully. The ADA does not permit the rejection of an individual solely on the basis of a past history of drug treatment or because he or she is currently in a drug rehabilitation program.

The ADA explicitly prohibits discrimination based on HIV infection, and, as a result, adoption agencies may not categorically reject individuals as prospective adoptive parents based on HIV. The law protects individuals with HIV disease, both symptomatic and asymptomatic; persons who are regarded as having HIV, whether they have the disease or not; and persons who have a known association or relationship with an individual who is HIV-positive. The question often arises as to whether an agency may exclude a person with HIV because that person allegedly poses a direct threat to the health and safety of others. The U.S. Department of Justice has taken the position that "in almost every instance, the answer to this question is no." Interpretations of the ADA require that "direct threat" be shown in relation to the risk of HIV transmission in the course of providing the service. Considerations related to quality of life or anticipated life span have not been viewed as constituting a "direct threat" to health or safety. As a result, agencies may not reject individuals on the basis of HIV simply because they believe that these individuals will be unable to provide for children in a "permanent" way.

Enforcement under the ADA

For public adoption agencies, the enforcement provisions in Title II of the ADA mirror the remedies, procedures and rights set out in The Rehabilitation Act of 1973. When a public agency subjects an individual to discrimination based on disability, the individual may file a complaint with the Department of Justice and/or file a private lawsuit, seeking injunctive relief, money damages, and reasonable attorneys fees.

The ADA establishes two avenues for enforcement of Title III against private adoption agencies: private suits by

individuals who are subjected to discrimination; and suits by the Department of Justice when there is reasonable cause to believe that there is a pattern or practice of discrimination or the discrimination raises an issue of general public importance. When a private individual sues, he or she may obtain injunctive relief but may not obtain money damages or civil penalties. When the Department of Justice brings suit, the Department may seek injunctive relief, monetary damages, and if necessary to vindicate public interests, civil penalties of up to \$50,000 for the first violation and up to \$100,000 for any subsequent violation.

Summary

The Americans with Disabilities Act provides federal civil rights protections to individuals with disabilities, guaranteeing them equal opportunity to participate in and to benefit from services provided by public and private adoption agencies. A key provision of the ADA is the prohibition against imposing or applying eligibility criteria that screen out or tend to screen out individuals with disabilities unless the criteria can be shown to be necessary for the provision of the service. "Safety" and "direct threat" can be used to justify the use of disability-related criteria to screen out individuals from consideration as prospective adoptive parents. The law, however, requires individualized assessments based on actual risks and the use of reasonable judgment, based on current medical knowledge or on the best available objective evidence, in determining the risks involved and the actual abilities and disabilities of the individual. Categorical rejection of individuals with disabilities as prospective adoptive parents on such bases as blindness, deafness, HIV infection, or history of drug use and treatment will violate the ADA and expose adoption agencies to liability. Knowledge of the ADA requirements combined with sound casework practice will ensure that agencies meet their responsibilities to individuals with disabilities who seek to adopt.

For Additional Information

ADA Information Line: 1-800-514-0301 (voice)
1-800-514-0383 (TDD)

U.S. Department of Justice World Wide Web Page:
<http://www.usdoj.gov>.

The Americans with Disabilities Act: Questions and Answers. U.S. Department of Justice, Civil Rights Division, Disability Section [available through the ADA Information Line].

Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDS. U.S. Department of Justice, Civil Rights Division, Disability Section.

Update on The Americans with Disabilities Act [ADA]

by, *Madelyn Freundlich*

On June 23, 1998, the United States Supreme Court in *Bragdon v. Abbott* held that the Americans with Disabilities Act protects individuals who are HIV infected. Specifically, the question before the Court was whether the ADA, which prohibits discrimination by "public accommodations" such as adoption agencies, applies to a person with HIV who has not developed any of the acute conditions that come under the label of AIDS.

Although the ADA itself does not specify diseases or conditions that come under the protection of the law, regulations issued by the Justice Department have provided more specific guidance and they explicitly identify "HIV [whether symptomatic or asymptomatic]" as an example of an "impairment" that is protected. Lower courts had been divided on the issue, but the US Supreme Court held that such individuals are protected from discrimination in jobs, housing and public accommodations - which include adoption agencies.

The case before the US Supreme Court involved a dentist who refused to treat an individual who was HIV positive in his office and required her to have the procedure done at a hospital at additional expense to her. The dentist argued that the patient was not disabled within the meaning of the ADA and that in any event, his decision was justified because of his reasonable fear of infection. The patient argued that she is disabled within the meaning of the ADA because the "major life activity" that is "substantially limited" is reproduction. She contends that people with asymptomatic HIV are disabled. Because the Court determined that reproduction is a "major life activity" within the meaning of the ADA, many believe that the decision may extend beyond HIV and AIDS to individuals with other reproductive-related disabilities, including those whose ability to conceive has been impaired.

The analysis of the ADA that the Adoption Institute has prepared follows the current Justice Department regulations and informs agencies that asymptomatic HIV is protected under the ADA.

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These services are available to all families, even though the program is funded by the state. The Coalition for Adoption felt very strongly that it was to everyone's benefit that families adopting children internationally or privately be provided support and education along with families adopting children from the child welfare system. They advocated for preventative and crisis services, and for services for families that do not have "problems," but simply want guidance.

An intensive evaluation of Adoption Crossroads is being conducted by the School of Social Work at Salem State College, using data routinely collected to measure utilization, effectiveness, client satisfaction, service gaps and areas of concern needing additional focus. Additionally, a statewide advisory board consisting mostly of adoptive parents, plus the six agencies providing services, is charged with providing oversight and making recommendations to improve the program. Our hope is that with evidence gained from the evaluation component and the response by adoptive families, we will be equipped to ask the legislature to increase the budget in the coming years, especially as we move more and more children out of foster care and into adoptive families.

Adoption Crossroads is a turn in the road toward adoption sensitivity, collaboration, training, and community awareness. It is a model other states can follow to provide services that empower and embrace all adoptive families.

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PROVISION OF MEDICAID FOR CHILDREN RECEIVING TITLE IV-E ADOPTION ASSISTANCE PLACED IN RESIDENTIAL TREATMENT FACILITIES ACROSS STATE LINES

What is a state's responsibility for providing Medicaid to a child receiving adoption assistance pursuant to Title IV-E of the Social Security Act (SSA) when the child is placed in a residential treatment facility in a state other than the adoption assistance state or the state in which the adoptive parents reside? Does it make a difference whether it is the State or the adoptive parents making the placement?

1. A child is receiving Title IV-E adoption assistance from STATE A and is placed in a residential facility in STATE B by STATE A for the purpose of receiving psychiatric treatment. What is STATE B's responsibility for providing Medicaid coverage?
2. A child receiving Title IV-E adoption assistance from STATE A is placed in a residential facility in STATE B by STATE C for the purpose of receiving psychiatric treatment. STATE C is where the adoptive parents reside. What is STATE B's responsibility for providing Medicaid coverage?

The policy analysis that follows was developed by AAICAMA staff in conjunction with staff from the Health Care Financing Administration (HCFA). It does not, however, reflect an official policy position of HCFA. AAICAMA is seeking a formal policy clarification from HCFA.

Discussion

Section 42 CFR 435.403 (e)(1) provides the general rule of residency for the purpose of providing Medicaid when a placement is made by a State in an out-of-State institution. It states,

Any agency of the State, including an entity recognized under State law as being under contract with the State for such purposes, that arranges for an individual to be placed in an institution located in another State, is recognized as acting on behalf of the State in making a placement. The State arranging or actually making the placement is considered as the individual's State of residence.

The State Medicaid Manual further clarifies the regulation by stating that the State making an out-of-State placement because the State lacks a sufficient number of appropriate

facilities to provide services to its residents also retains responsibility for the purpose of establishing residences under Medicaid (Section 3230D).

Section 42 CFR 435.403(g) provides that for children receiving Title IV-E payments for foster care and adoption "the State of residence is the State where the child lives." Where the child lives is "the State in which the child is actually present" (HCFA Memorandum, July 22, 1991).

Section 3230 (C) of the State Medicaid Manual states that "if an exception exists as specified in Section 3230.3, then the exception supersedes the general residency rules as set forth in Sections 3230.1 through 3230.2. Children receiving adoption assistance are identified as an exception to the rule in Section 3230.3B. Section 3230.3B states that when one of the following exists, it supercedes the general residency rules...

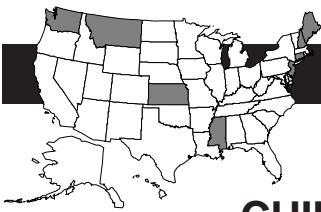
An individual of any age is receiving adoption assistance or foster care payment, the State of residence is where they reside even if it is not the State making the title IV-E payment or the State where the adoption assistance agreement was entered.

Conclusion

Therefore, in scenarios 1 and 2, the State in which the child is actually present is responsible for providing Medicaid to the child. First, the child is a child receiving Title IV-E payments and therefore the general residency rules regarding placement in an institution do not apply. A child who receives Title IV-E payments from any State must be deemed to be receiving such aid or assistance from the State in which the child is actually present. That State, as a result, must extend Medicaid eligibility to the child.

Lastly, whether it is the State or the adoptive parent making the placement, the same rules apply. If the adoptive parents are making the placement it does, however, raise the issue of how to facilitate the provision of Medicaid in these cases.

The answers to these questions clearly have some policy and practice implications. AAICAMA has set up a committee to identify the implications and solutions and also look at the related issue of child support enforcement.



HHS APPROVES EIGHT NEW CHILD WELFARE DEMONSTRATION PROJECTS

Maine Approved For Title IV-E Waiver Demonstration Project

By John Levesque, Maine Department of Human Services

The Maine Department of Human Services, Bureau of Child and Family Services (BCFS), has been approved for a Title IV-E Waiver Demonstration Project that will expand the provision and delivery of services to adopting families. Maine would be the first state in the nation to use enhanced federal resources to fund portions of these key services. If this pilot project is ultimately successful, it could open up possibilities for increased federal support to all states wishing to provide post legalization adoption services. Maine is the only state that has proposed this type of Demonstration Project.

The proposal was first submitted to the Department of Health and Human Services by DHS Commissioner Kevin Concannon on March 12, 1998 and was designed to respond to adoption related needs that had been identified by the legislature and by the Quality Assurance Unit of BCFS.

This pilot project was organized by Margaret Semple, Bureau Director, and Dawn Stiles, Director of Operations. They held a public forum on April 3, 1998 and gathered information from many different perspectives of the adoption field. The gathering included adoptive and foster families, representing the different phases in the adoption process. Also included were adoption casework staff and representatives from other service providers, who work with adopting families. We then followed this up with a public announcement in various newspapers around the state, to give a wide range of public comment.

The pilot project is set up to last for a period of five years. The first year would include a statewide educational campaign that would help educate mental health clinicians and other service providers about the different needs and functioning of the adoptive family. The heightened competencies of these service providers in the area of adoption should

translate into a more effective service delivery system to adopting families.

The next four years would include a random selection of families into two groups. One experimental group would be offered an enhanced array of services, provided through an "adoption competent" case manager, in collaboration with adoptive parent(s). The second control group would be provided the same services that are now available through the Adoption Assistance Program and other community resources.

If this pilot project is ultimately successful, it could open up possibilities for increased federal support to all states wishing to provide post legalization adoption services

No family would receive fewer services than are presently available. The Pilot Project would focus on the outcome goals of:

1. increasing the number of special needs children adopted;
2. decreasing the number of adoptions that disrupt;
3. decreasing the average length of a stay in foster care; and
4. strengthening the adoptive family.

The evaluative component of this pilot project will be a collaborative effort with the University of Southern Maine's Institute for Public Sector Innovation. We wish to thank Sue Ebersten, and her staff, for the ongoing involvement and support to this major undertaking.

The staff at the Bureau of Children and Family Services look forward to this pilot project and the positive outcomes it should have on the safety, well-being and permanency needs of our children and their adoptive families. We will keep you updated with our progress.

The seven other states who have been approved for IV-E Waivers are:

MISSISSIPPI

In Mississippi, the State and HHS have in recent years developed a Partnership Initiative to improve the state's child protective system. Under the new demonstration, Mississippi will expand eligibility for federal child welfare services. Child welfare funds will be spent for items or services that will eliminate or reduce harm to children in crisis. The state will build "child-focused, family-centered" case management teams that will work together across agency and discipline lines. These teams will provide services that may include respite care, family counseling, parenting training, medical care, child care, transportation and tutoring. The demonstration will be tested in eight counties: Forrest, Holmes, Jones, Lamar, Madison, Pearl River, Rankin, and Yazoo.

KANSAS

Kansas will test the effect of increased drug, alcohol, and aftercare services, more extensive caseworker training, and a new guardianship program on results for children. It will also compare the present case-rate, performance-based payment system with a fee-for-service payment system. The state will identify and assist families that have substance abuse problems, and provide services that include family and individual therapy, parenting education, family support, and school-based services. These and other services, including respite care, will be made available to families as needed when a child returns from foster care.

NEW HAMPSHIRE

New Hampshire will gauge the impact of parental substance abuse treatment on child safety and family stability. It will see if drug and alcohol treatment followed by comprehensive aftercare services reduces family disruptions as measured by placements and length of time children spend in foster care. The state will hire a substance abuse specialist with protective services expertise to conduct assessments and provide referrals when parental alcohol or other drug abuse is believed to be a factor contributing to the child's abuse or neglect.

CONNECTICUT

Connecticut will use federal foster care funds to provide comprehensive services to youth ages 7 to 15 with behavioral problems who have been referred to residential or group homes. Under this project, all required services, including case management, group care, home-based services, outpatient services and aftercare will be provided from a single point of contact, which will coordinate all aspects of treatment. Success will be measured by increases in treatment options, decreases in length of stay in restrictive settings, and improvements in outcomes for children and families.

NEW JERSEY

New Jersey will use its federal adoption funds to encourage adoptions and help children make smoother transitions from foster care to adoption. A special unit within the state's Adoption Resource Centers will begin the groundwork for kinship placement or adoption at the same time a foster care plan is being developed, thereby avoiding long delays and repetitive actions. The state will also recruit and prepare families that can provide both foster care and adoptive homes to these youths on short notice. Legal and substance abuse services will also be available.

MONTANA

Montana will offer subsidized guardianships as an option for children over 12 years of age in state or tribal custody for whom reunification and adoption are not viable options. The state will use federal foster care and adoption funds to establish legal guardianships, provide subsidies to families, train staff, and pay administrative expenses.

WASHINGTON

The state of Washington will use federal foster care funds to provide comprehensive, individualized services to children 8 to 17 who are in need of mental health or special education services and are likely to be referred to group care. To avoid group care assignments, the state will contract with local service providers to create and implement individualized treatment plans. The state will gauge the impact of the fixed case rate approach, which allows services to be tailored to meet the complex needs of these children and their families at a reasonable cost.

Summaries taken from *HHS NEWS*, U.S. Department of Health and Human Services. The full press releases are available at the DHHS web site at <http://www.acf.dhhs.gov/news>



HHS Issues Proposed Child Welfare Regulations

On Friday, September 18, the Administration for Children and Families (ACF) issued a Notice of Proposed Rule Making (NPRM) in the *Federal Register*, implementing several child welfare statutes, including provisions of the Social Security Act Amendments of 1994 (P.L. 103-432) on Title IV-E foster care eligibility reviews and child and family services state plan reviews; the 1996 Interethnic Adoption Provisions of the Multi-Ethnic Placement Act (MEPA) of 1994; and certain provisions of the Adoption and Safe Families Act of 1997. Written comments must be received by HHS by December 17, 1998. The NPRM can be found on ACF's web site at <http://www.acf.dhhs.gov/hypernews> or on the Government Printing Office (GPO) site at http://www.access.gpo.gov/su_docs/index.html.

from *This Week in Washington*, APHSA, September 18, 1998

GAO Releases Report on Stable Homes for Children of Substance Abusers

The U.S. General Accounting Office (GAO) released a report analyzing the incidence of the children of substance abusers in the child welfare system. Based on survey data from random samples of foster care cases in Cook County, Illinois, and Los Angeles, California, GAO estimates that 74% and 65%, respectively, of foster care caseloads studied had a goal for substance abuse treatment for at least one parent. Of the mothers recommended to attend substance abuse treatment, less than 20% had completed treatment or were undergoing treatment when their children had been in foster care for a year or more. The study also describes three initiatives to improve outcomes of parents in substance abuse treatment and prospects for family reunification: the Illinois Expansion Initiative, the Reno Family Drug Court, and Delaware's Multi-Disciplinary Treatment Team Initiative. These programs may result in better outcomes for substance-abusing parents who have children in foster care than traditional programs that often entail waiting lists, lack of resources, and lack of coordination of services, however, GAO reports that these findings are not yet definitive. A copy of the report (GAO/HEHS-98-182) is available at <http://www.gao.gov/new.items/he98182.pdf> or can be obtained by calling GAO at (202) 512-6000.

Human Resources Subcommittee Holds Hearing on MEPA Implementation

The House Ways and Means Subcommittee on Human Resources held a hearing September 15th, 1998 to address implementation of and compliance with MEPA and the 1996 Interethnic Placement Amendments. Olivia Golden, HHS assistant secretary for children and families, testified on HHS' efforts to direct and assist states in complying with MEPA and IEPA directives. Golden stated that HHS has offered technical assistance to states to help them understand MEPA, make adjustments in their laws and policies to make them congruent with MEPA, and disseminate policy guidance to states on interpreting MEPA. Subcommittee Chair Rep. Clay Shaw (R-Fla.) and Rep. Sander Levin (D-Mich.), the ranking Democrat, expressed concerns that MEPA is not being enforced by HHS because no states have been penalized for noncompliance. Golden responded that states found noncompliant had made adjustments to correct the problems.

Shaw asked HHS to prepare a report to Congress on trends in the length of time minority children spend in foster care since the passage of MEPA. Shaw indicated that more hearings on MEPA are expected next year. In a related matter, HHS Secretary Donna Shalala wrote to all governors asking for their assistance in gaining full compliance with MEPA by individual social workers and other agency staff. Golden sent a similar letter to state human service administrators and offered technical assistance on MEPA implementation.

from *This Week in Washington*, APHSA, September 18, 1998

ACYF-CB-PI-98-14

On August 20, 1998 the Children's Bureau issued a Program Instruction providing guidance on the transition rules for implementing the requirement of section 475(5)(E) of the Adoption and Safe Families Act to file termination of parental rights (TPR) in certain circumstances.

ACYF-CB-PIQ 98-02

On September 3, 1998, the Children's Bureau issued Policy Interpretation Question 98-02 which deals with: (1) the issue of child support obligations of adoptive parents with children receiving Title IV-E adoption assistance; (2) suspension and reductions in adoption assistance payments; and (3) the requirements regarding annual renewals, re-certifications or eligibility re-determinations.

CORRECTION

In the spring, 1998 issue of *Bridges*, corrections to the article "Child Support when an Adopted Child is Placed in Substitute Care & Adoptive Parents Receive Adoption Assistance" should be noted as follows:

- The article does not reflect Federal guidance. Federal guidance on this issue is now published in ACYF-CB-PIQ-98-02.
- The article affirms that "the determination of good cause or other exceptions is defined by the IV-E agency. The title IV-D child support enforcement agency is responsible for determining good cause or other exceptions.
- Section 454(4)(A)(i)(II) of the Social Security Act, which requires the title IV-D agency to provide child support services "as appropriate," should be interpreted to refer to the child support agency's responsibility to determine the appropriate service to pursue, rather than determining whether or not it is appropriate to enforce child support.
- The article also references a State's option to revise child support guidelines. Revisions to the child support guidelines must be accomplished through State legislation.

ACYF-CB-IM-98-04

Children's Bureau Issues Guidance to Child Welfare Agencies Regarding Federal Public Benefits

On September 25, the Children's Bureau issued an Information Memorandum (ACYF-CB-IM-98-04) providing guidance to child welfare agencies on the interpretation of "federal public benefit" as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Illegal Immigration Reform and

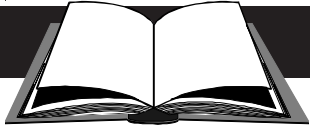
Immigration Responsibility Act of 1996. PRWORA requires programs that provide Federal public benefits to verify immigration and citizenship status of applicants in order to ensure that only qualified aliens and citizens receive the programs' benefits and services. According to the August 4, 1998 Federal Register notice, federally funded foster care maintenance, adoption assistance, and Independent Living programs have been determined to be Federal public benefits. Programs exempted from the verification requirements include: the provision of in-kind, community based services which are necessary for the protection of life and safety; the provision of emergency medical care and certain other immunizations and treatments; and the protection of battered alien spouses and children. Services funded under title IV-B subparts 1 and 2, and through Adoption Opportunities; Community Based Family Resource and Support; Abandoned Infants Assistance; Child Abuse Prevention and Treatment Act State Grant and Discretionary Activities; and Child Welfare Training have also been exempted from the definition of Federal public benefits. State child welfare agencies must verify alien status using the Department of Justice (DOJ) Interim Guidance published in the Federal Register on November 17, 1997. A copy of the Interim Guidance may be obtained on line at www.access.gpo.gov/nara. Full compliance will be required within 2 years of publication of the DOJ final rule.

If you need a copy of the PI, PIQ or IM contact Shannon Guiltinan at 202/682-0100 or sguiltinan@aphsa.org

ADOPTION OPPORTUNITIES GRANTS AWARDED

The Administration on Children, Youth and Families awarded 34 new discretionary grants under the Adoption Opportunities Program. Funds from the Adoption Opportunities Program are designed to provide services that facilitate the elimination of barriers to adoption and to provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Grants in the following priority areas were awarded: Administration of the Interstate Compact on Adoption and Medical Assistance; Achieving Increased Adoption Placements of Children in Foster Care; Effective Collaboration for Timely Adoptions; Adoption 2002 Support Project; and Post-Legal Adoption Services.

In future issues of *Bridges*, information on the projects of the grantees will be highlighted.



Struggle for Identity: Issues in Transracial Adoption

New York State Citizen's Coalition for Children, Inc.

In this 20 minute documentary, viewers hear the compelling voices of experience, as transracial adoptees and their families confront difficult issues of racism, identity, and sense of place in candid discussions about their lives. The video is a training tool for use in pre-adoption homestudies, and for ongoing education for adoption and foster care professionals and parents.

Contact: PhotoSynthesis Productions

418 N. Tioga Street; Ithaca, NY 14850

(607) 272-4242

Finding Our Place: The Inside Story on Foster Care-A Guide by and for Young People in Care

C. Barich (Ed.), 1998 105 pages.

This book was written by present and former youth in foster care for youth who are entering foster care or seeking to better understand the foster care experience. Through the use of real stories, this book gives youth an introduction to the foster care system, and answers the questions the authors had when they entered foster care. It is also a valuable tool for foster parents, birth parents, and professionals who work with children in the child welfare system.

Contact: Human Services Associates

336 North Robert Street, Suite 1520, Saint Paul, MN 55101

(800) 736-8967 or (612) 224-8967; Fax (612) 2246057

The Family of Adoption

Dr. Joyce Maguire Pavao

In this book, Dr. Joyce Maguire Pavao, demonstrates the often predictable and understandable developmental stages and challenges for all adopted people. She lays them out by age level, using real-life stories-including, for instance, how and why daydreaming is a normal strategy for adoptees, how particular academic subjects may create pain for adopted children, and why so many adopted adolescents experiment with the "wrong crowd." Pavao talks about her own legacies as an adult adoptee, and argues that all adoptive parents, as well as teachers and therapists and all those who work with children, must come to understand these developmental stages as normal – often challenging, but normal- for the adopted child. She writes with equal insight of the "birth rites" of both

biological and adoptive parents; of how adoption does not cure infertility, but childlessness; and of healing rituals for birth parents who must give up the parenting of their child.

Contact: Beacon Press

25 Beacon Street, Boston, MA 02108-2892

(617) 742-2100; Fax (617) 742-2290

Protecting Children from Abuse and Neglect

The Future of Children Volume 8, Number 1-Spring 1998

The David and Lucile Packard Foundation

The latest articles in the David and Lucile Packard Foundations' *The Future of Children* series include: *Past, Present and Future Roles of Child Protective Services* by Patricia A. Schene, Ph.D.; *The Extent and Consequences of Child Maltreatment* by Diana J. English, Ph.D; *Family-Centered Services: Approaches and Effectiveness* by Jacquelyn McCroskey, D.S.W.; and William Meezan, D.S.W.; *When Children Cannot Return Home: Foster Family Care and Kinship Care* by Jill Duerr Berrick, Ph.D; *The Costs of Child Protection in the Context of Welfare Reform* by Mark E. Courtney, Ph.D; and *Rethinking the Paradigm for Child Protection* by Jane Walfogel, Ph.D. For free copies, write: *Circulation Department, Center for the Future of Children, 300 Second Street, Suite 102, Los Altos, CA 94022* *Journal and Executive Summary are also available on line: <http://www.futureofchildren.org>*

Take This Heart:

The National Foster Care Awareness Project

A recent poll released by the National Foster Care Awareness Project found that 95% percent of the respondents recognize the serious need for foster care in the United States and 74% held a positive view of the foster care system in general. In addition, when asked about providing extended services for youth transitioning out of care at 18, 79% of those surveyed were willing to pay an additional \$2 in state taxes to support these services.

The poll is part of an ongoing effort among public television, public and private agencies, community organizations and foundations to call attention to the needs of children in the foster care system, particularly older youth.

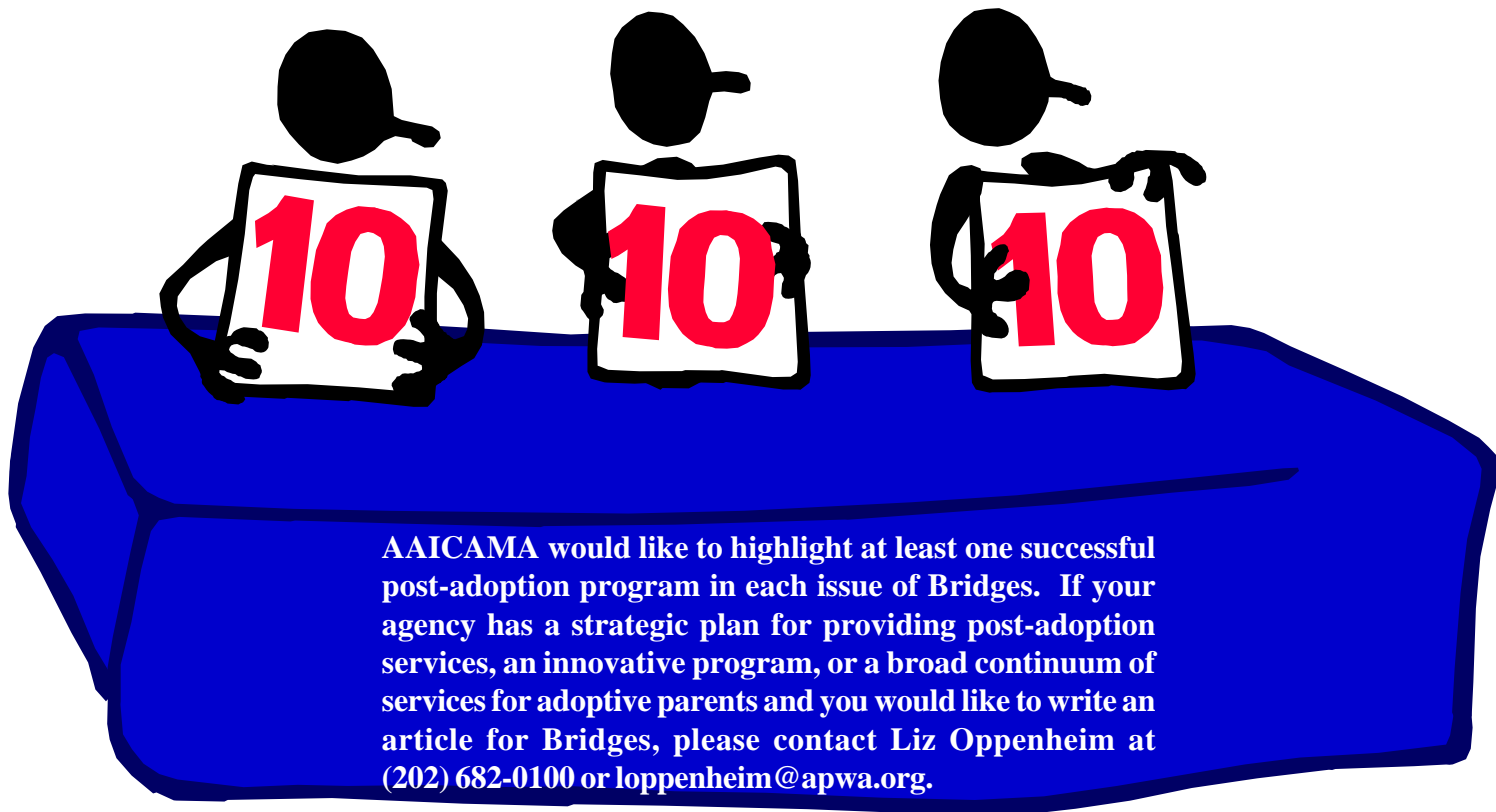
For more information about the Project, or the poll contact:

Kathy Barbell, Director of Foster Care

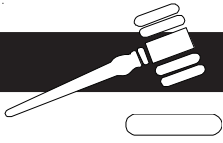
Child Welfare League of America (202) 638-2952

CALL FOR ARTICLES

**DOES YOUR AGENCY
HAVE A MODEL
POST - ADOPTION
SERVICES PROGRAM?**



AAICAMA would like to highlight at least one successful post-adoption program in each issue of Bridges. If your agency has a strategic plan for providing post-adoption services, an innovative program, or a broad continuum of services for adoptive parents and you would like to write an article for Bridges, please contact Liz Oppenheim at (202) 682-0100 or loppenheim@apwa.org.



JUDGE EXTENDS CONSTITUTIONAL RIGHTS FOR FOSTER PARENTS AND CHILDREN IN NARROWLY DEFINED CASES

Rodriguez v. Cardinal McClosky Children's And Family Services, New York City Dept. of Social Services, New York City Child Welfare Administration

On September 15, 1998, Judge Kimba M. Wood of the United States District Court for the southern district of New York ruled that foster parents have a liberty interest within the Fourteenth Amendment's Due Process Clause in their relationship with their foster children in narrowly defined circumstances. A liberty interest is recognized for foster parents, "(1) whose foster children's biological parents' parental rights have been terminated; (2) who have cared for their foster child continuously for more than twelve months since the child's infancy; and (3) who have entered into an adoptive placement agreement for their foster child."

Background

The decision came in a lawsuit stemming from an "emergency removal" of a 4-year-old boy, Andrew, from the home of his foster mother, Sylvia Rodriguez, who had been his foster mother since he was one month old, and who was in the final stages of adopting him. Andrew was born on March 15, 1990; his biological mother abandoned him immediately following his birth. Thirteen days after his birth, he was placed with Ms. Rodriguez pursuant to a foster family agreement.

On March 18, 1995, a caseworker from Cardinal McCloskey Children's and Family Services, a foster care agency under contract to New York City removed Andrew from the home. The caseworker was making a scheduled visit and found only Ms. Rodriguez's 12-year-old grandson, Edwin, supervising Andrew and his 3-year-old foster brother. After waiting for two hours and consulting with his supervisor, the caseworker removed the two younger children, feeling Edwin was unable to care for the children.

The foster care agency filed a report of suspected child abuse or maltreatment, and the city began an investigation. For three months the foster mother had no chance to contest the removal and was denied the right to visit Andrew, who was transferred to another foster home. After an independent review hearing, the city found no neglect and ordered the child returned to the care of Ms. Rodriguez, who adopted him

on August 17, 1995. She then filed a suit seeking damages against the agency and the city.

The Allegations and Findings

Ms. Rodriguez alleged that the removal of Andrew violated her right to procedural due process guaranteed by the Fourteenth Amendment because: (1) the circumstances did not justify an emergency removal of Andrew from her home, and therefore, she was entitled to notice and an opportunity to be heard prior to his removal; (2) she was not provided with either adequate post-removal notice or opportunity to contest the removal; and (3) she was not provided an adequate opportunity to be heard to contest the denial of her request to visit Andrew. In order to find the defendants violated her due process rights, Ms. Rodriguez had to demonstrate that: (a) there had been a deprivation of liberty or property in a constitutional sense, and (2) the procedures used by the state to effect this deprivation were constitutionally inadequate.

Liberty Interest in Pre-Adoptive Foster Care Relationship

In 1977, in the case of *Smith v OFFER*, the Supreme Court suggested in dictum that long-term foster parents may be entitled to some due process protection in view of the mutual care and support developed in these relationships. In the OFFER case, a suit by foster parents against New York officials that challenged the constitutionality of state procedures for the removal of foster children from foster homes, the Court discussed whether a foster family has a constitutionally protected liberty interest in their foster children. The Court, however, did not resolve the question because it held that New York's pre-removal procedures provided foster parents with adequate procedural protections, even if there was a constitutionally protected interest in their foster children. The OFFER Court went on to note three distinctions between foster parent-child relationships and biological families that it viewed as important. First, there is generally no biological relationship between foster parents and foster children. Second there is a "virtually unavoidable tension between the rights of biological parents and those foster

parents. Third “whatever emotional ties may develop between foster parent and foster child,” the relationship has its origins, “in state law and contractual arrangements.” Lastly, where a claimed liberty interest derives from contractual relations with a state it is appropriate to ascertain from state law the expectations of the parties.

In assessing Ms. Rodriguez’s expectations in the context of relevant New York statutes and regulations, and given that she had signed an Adoption Placement Agreement and Andrew’s biological mother’s parental rights had been terminated, the court determined that Ms. Rodriguez had a protected liberty interest in her relationship with Andrew.

The court then went on to consider: what did due process require; was the removal warranted; and were the individual defendants immune from liability under the doctrine of qualified immunity? On the matter of due process, the court found that the delay (3 months) in providing Ms. Rodriguez’s post-removal notice and an opportunity to be heard to contest the removal and the failure to provide her with any opportunity to contest the decision not to allow her to visit Andrew, violated her due process rights. The court, however, did find that the circumstances did justify an emergency removal and dismissed Ms. Rodriguez’s claim that she was entitled to pre-removal notice and an opportunity to be heard. Lastly, the court found that the individual defendants were immune from liability “given the individual’s understanding of Andrew’s best interest” and that the “procedural failures ... were not of the sort that any reasonable person would have recognized a constitutional violation.”

The case will now proceed to trial against the city and the agency on compensation due to Ms. Rodriguez. This case is a step in the changing face of the definition of children. It should not, however, be taken to mean that children cannot be removed from foster parents. Rather, it recognizes a liberty interest of “a discretely identifiable set of foster parents” in their foster children.



ADOPTION, BEST INTERESTS

Adoption of Hugo, 1998 WL 264139 (Mass. App. Ct.)
"Emotionally fragile" three-year-old child's best interests would best be met through adoption by foster mother, with whom she had bonded and lived for over a year, rather than a paternal aunt in New Jersey; speculation that the aunt would make progress with child did not warrant breaking child's bond with foster mother and close ties with sibling.

DEPENDENCY, REUNIFICATION

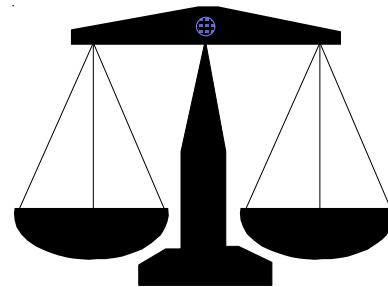
Maribel M. v. Superior Court, 72 Cal. Rptr.2d 536 (Ct. App.)
Trial court did not improperly deny mother's request for additional reunification services or wrongly find that child was adoptable for purpose of permanency plan; mother chose not to participate in court-ordered services during her incarceration and did not attend 12-month review hearing, and evidence that child was living in a stable foster family placement where his special medical needs were being met supported finding that he was adoptable.

(From ABA Child Law Practice, September 1998)

TERMINATION OF PARENTAL RIGHTS, ICWA

In re R.L., 1998 WL 349449 (Colo. Ct. App.)
Trial court should not have terminated Indian mother's parental rights without first applying requirements of the Indian Child Welfare Act (ICWA); prior proceedings had acknowledged the child was an "Indian Child" and followed ICWA mandates at the request of child welfare agency so state was barred from challenging ICWA's applicability at termination.

(From ABA Child Law Practice, September 1998)



Bridges is published Quarterly by the Association of Administrators of the Interstate Compact on Adoption and Medical Assistance (AAICAMA). AAICAMA was created to administer and support the Interstate Compact on Adoption and Medical Assistance. States that are members of AAICAMA work together to improve and enhance services to special needs adoptive children and their families. The Association and its activities, including this newsletter, are supported by a federal grant (No. 90-CO-0866) awarded to AAICAMA by the U.S. Department of Health and Human Services (HHS).

The views that are presented in this newsletter are those of the authors, and do not necessarily reflect the opinions of the Association of Administrators of the Interstate Compact on Adoption and Medical Assistance, HHS or APWA. We welcome reproduction and/or distribution of the information in Bridges, a publication of the Association of the Interstate Compact on Adoption and Medical Assistance, c/o APWA, 810 First Street, NE, Washington, D.C. 20002.

We welcome any comments and contributions.

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