

# Bridges



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

Spring 2003

## Outside the Box: Where to Look for Respite Resources

by Sharon McCartney, J.D.

It is not surprising that respite is one of the most frequently requested social support services by families adopting children from the child welfare system. The issues of grief, control, loss, and attachment that can lead to the behavioral and developmental problems particular to adopted children are well-known. Caring for a child with these problems can be both emotionally and physically taxing. Add to this the fact that many adopted children are also identified as children with special needs, and the demands of their care become even greater. Respite resources can ease the stresses of caring for an adopted and/or special needs child and many programs are available outside those developed by state child welfare systems. This article provides an overview of respite care services, coalitions, and other avenues to connect adoptive families to respite relief.

Respite is defined most simply as temporary relief for primary caregivers and can last anywhere from a segment of an hour to three months. Anything longer than three months is outside the parameters of respite's definition as a temporary service and branches into a form of more permanent care. Services can be divided into subgroups by scheduling, setting, caregiver, duration, and benefits. These divisions are often interdependent and the following descriptions of each will help illustrate this point. The needs of

the child and family preferences will form the basis for choosing between the various forms of respite.

The two broad scheduling divisions are planned and crisis respite. Planned respite is an event families regularly schedule on their calendars. Planned respite is part of a family-based approach to care of an adopted child. It recognizes the benefits of giving both caregiver and child a break from one another and offers the possibility of interaction with other people in other settings. The second type of respite is crisis respite. Crisis respite is an unplanned care arrangement made in response to an emergency. Crisis respite is designed to be a safety-net option available to families responding to an unforeseen event.

The primary settings for respite are in-home and out-of-home. Depending on a child's needs, care can be given in a health care facility with skilled medical staff or

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at home with respite-trained, non-medical family or friends. In-home care allows children the familiarity of a well-known environment and has the benefits of a family's at-home resources such as toys, books, sporting equipment, or medical supplies. Knowing their child is at home can also be comforting to parents. Another consideration in favor of in-home care is cost. It can be more economical to host respite services than to utilize outside service settings. Out-of-home care may be necessary due to a child's medical needs. It can also be deliberately chosen to prepare adolescents for greater independence, or to increase a child's circle of friends and experiences. Out-of-home care includes such settings as hospitals, friend's homes, camps, and day trips.

Planned respite can include an hour-long weekly event or a summer camp. Camps are an example of extended duration respite. Camps can provide care during the day or can be lengthened to overnight camps lasting a weekend, a week, or months. Meeting once a week in a school gym for an hour every Tuesday to improve motor skills is an example of a planned respite of short duration. Respite can also have academic benefits. Pairing a child with an adult skilled in a subject area of academic concern is called tutoring respite and is another example of planned, short-term respite.

Respite caregivers come in many forms. Caregivers can be a respite-trained family friend or a trained medical professional able to treat chronically ill children, if necessary, and respond to medical trauma. Depending on the state, caregivers may be required to receive various levels and types of provider training. Caregivers with emergency medical training who may be required for a chronically ill or medically fragile child are often only available through a health nursing agency in an out-of-home health facility. A child with fewer physical and/or emotional needs who does not need a caregiver with medical or therapeutic skills may easily be cared for in-home.

### **Respite Coalitions**

Congress recognized the therapeutic, proactive benefits of respite when it passed the Temporary Child Care for Children with Disabilities and Crisis Nursery Act in 1986. Federal funding was established to create respite (temporary childcare) demonstration projects. With these grants have come a host of approaches and applications of respite available to families of children with special needs. The availability of federal funding has encouraged the growth of state respite coalitions.

Respite coalitions were created to provide an integrated system of temporary support for families with members requiring extraordinary care. In the mid-1990s states began to earnestly seek an organized approach to respite services. The coalitions that were established in response to this focus took a variety of forms. Their purpose was to provide an informed and accessible resource, in a centralized location, for families looking for respite care .

Coalitions provide the benefit of strength in numbers. They can supply a ready support system with a multi-dimensional approach to problem-solving and a network of partners able to widely disseminate information and expand successful respite practices. The states with respite coalitions include Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Washington and Wisconsin.

Offering a single point of entry to access support, information, and referral throughout a state, coalitions vary greatly in formation, staffing, services, size, formality, and funding. Some are small and informal, staffed by volunteers and meeting in various locations across the state only a few times a year. Others are expansive and formal, incorporated as non-profits and staffed by full-time, paid employees. Beyond resource and referral, some coalitions offer representation of the interests of families and caregivers before federal, state, and local governments. Others function solely as a link between families in need of services, education, and support and the organizations equipped to provide these needs. Population density and resources often affect a coalition's size and offerings. The result is that some states do not have a recognized coalition at all and others assemble a respite movement outside a formal coalition that still provides a variety of services similar to those available through a coalition.

Respite funding comes from a variety of sources and often comes from a combination of several sources. Grants supply many coalitions with their funding and are the most universal source of support. Crisis Nursery grants from the federal government fund some groups, while others receive monies from the Community Development Block Grant administered through the Department of Housing and Urban Development. Still other coalitions are funded by state government

seed money, membership dues, and donations from individuals and organizations.

### **National Respite Network**

An independent organization, the ARCH National Respite Network and Resource Center, has a locator service that connects to every existing state respite coalition. ARCH was created to educate, connect, and direct families and professionals to appropriate respite resources in their community. ARCH is organized into three main divisions, each addressing different needs and approaches to issues in respite care. The **National Respite Locator** connects families to services available in their area that are targeted to their family's needs. The **ARCH National Resource Center** provides an Information Center and access to ARCH publications. The **National Respite Coalition** is ARCH's legislative arm, providing bill updates, legislative analysis, and information on Congress's respite advocates. *(See box at right for contact information.)*

### **Additional Resources**

#### **Support Groups**

Outside of coalitions and state-run programs, respite families, private organizations, and the respite community continually create new approaches to respite. The Family Caregiver Alliance (FCA) offers an on-line support group through the Internet. The FCA also develops respite services, advocates for public and private support of services, conducts research, and educates the public. They provide consultation on long-term care planning, service linkage and arrangements, legal and financial consultation, respite services, counseling and education. Their on-line promotion reads: "Like to talk with other caregivers? Share ideas and strategies? Ask for support during a difficult moment? Help someone solve a problem? Then subscribe to Family Caregiver Alliance's Online Caregiver Support Group." The site answers such questions as: How does the support group work? How do I become part of the support group? How do I send messages to the group? To access this site go to:  
[http://www.caregiver.org/online\\_sptgroup.html](http://www.caregiver.org/online_sptgroup.html)

#### **Parent Groups**

Networking directly with other parents through support groups can establish a respite resource as well as a friendship. Parents of children requiring respite services understand the needs of special children and the stresses associated with parenting them. They are a great resource and can serve as respite providers for other parents.

### **How to Contact the ARCH National Respite Network**

#### **Locator Service**

National Respite Locator Service Respite workers give parents of children and adults with disabilities a break from care-giving. Links to public and private providers and agencies are listed by state.  
[www. chtop.com/locator.htm](http://www. chtop.com/locator.htm)

#### **Resource Center**

ARCH National Respite Network supports service providers and families through training, technical assistance, evaluation, and research.  
[www. chtop.com/archbroc.htm](http://www. chtop.com/archbroc.htm)

#### **Publications**

ARCH products and publications, general resources, and networking are available with ARCH training guides, buttons, posters, and evaluation videos. A variety of products are offered and, if no price is given, single copies of the product are free of charge.  
[www. chtop.com/ARCH/ARCHpubs.htm](http://www. chtop.com/ARCH/ARCHpubs.htm)

#### **Network Contact Information**

ARCH National Respite Network Chapel Hill Training-Outreach Project, Inc.  
800 Eastowne Drive Suite 105 Chapel Hill, NC 27514  
Phone: (800) 473-1727, ext. 222  
E-mail: [ylyayden@chtop.org](mailto:ylyayden@chtop.org)  
Program Manager: Maggie Edgar  
807 North 50th Street, Seattle, WA 98103  
[www. chtop.com/ARCH/ARCHcontact.htm](http://www. chtop.com/ARCH/ARCHcontact.htm)

A California family resource center has been "meeting children's special needs through parents helping parents" for over 25 years. Called Parents Helping Parents (PHP), the group provides information on a wide range of disability-related topics and links parents of special needs children so that they can share problems, create support networks, and learn from each other's experiences. To access this site go to:  
<http://www.php.com>

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## Respitivity

Another approach combines respite and hospitality to create "respitivity." Under United Cerebral Palsy (UCP), the hospitality of local hotels is combined with respite care to create mini-vacations for parents of children with special needs. Parents who participate in respitivity receive a gift certificate for an overnight stay at a local hotel, along with child care funding from UCP, so that they can enjoy a short, refreshing break from their demanding daily care routines. Participants are responsible for arranging for child care, attendant expenses, and for their meals and incidentals while they are away. Respitivity is offered to parents or guardians who have children with any type of disability. There is a waiting list, and names are contacted from the list as space becomes available. Contact United Cerebral Palsy and ask for the Respitivity Program Coordinator.

Phone: (858) 571-7803

Fax: (858) 571-0919

e-mail: [ucpsd@pacbell.net](mailto:ucpsd@pacbell.net)

National\* website: <http://www.ucpa.org>

\*Local UCP chapters can be found on this site using zip codes.

## Camps

Whether it is a camping association or a soccer league, many activity organizations exist that are able to respond to the needs of special children and offer inclusive programs that simultaneously provide respite relief and recreation. Camps are uniquely situated to offer this dual outlet. For example, Camp Loyaltown in upstate New York provides a summer retreat for children and adults with developmental disabilities and respite for their family members. Loyaltown is on 235 wooded acres and offers a variety of programs in art, drama, sports, and recreation. Campers are grouped by age and abilities, and staff is assigned according to the needs of each individual. The season consists of four two-week sessions. The first, third, and fourth sessions are more highly supervised recreational programs open to children with developmental disabilities five years of age and over. Children may enroll for one, two, or three sessions and

have the option to stay for all four consecutive sessions.

In addition to the core benefit of relief from primary caregiving, respite can offer parent and child outside opportunities for relaxation, education, and physical fitness. Camps offer many of these benefits and can be chosen to meet a child's specific disability. This pairing of children with those who face similar challenges enables them to feel less isolated as a result of their challenges. Though often geared to a particular emotional and/or physical or psychological challenge, camps are also able to offer the social interaction, physical exercise, crafts, and sports offered by other camps for children without disabilities. Camps can also focus on preparing adolescents to live independently by providing training from life-skills experts.

Contact: Association for the Help of Retarded Children  
Nassau County Chapter  
189 Wheatley Road  
Brookville, NY 11545-2699

Phone: 516.626.1000

<http://www.ahrc.org/camp.htm>

For more information on other camps contact:

The American Camping Association  
<http://www.acacamps.org/>

or

The Therapy Respite Camps for Kids with Autism &  
Other Special Needs  
<http://wmoore.net/therapy.html>

## Share Your Respite News

Respite is a valuable post-adoption support service. Recognizing the demand for respite services and its continuous evolution in form and availability, **Bridges** will spotlight innovations in respite care in upcoming editions. If your state has a terrific respite program, service, or innovation please share your success!

Please e-mail respite news to Sharon McCartney, JD, AAICAMA Research Analyst, at: [SMcCartney@aphsa.org](mailto:SMcCartney@aphsa.org).

## Alternate Avenues for Locating Respite Services

An alternate approach for locating respite services for special needs children is through organizations designed to provide support and information to families of children with specific disabilities. Examples of these organizations include:

### Association for the Care of Children's Health (ACCH)

7910 Woodmont Avenue, Suite 300  
Bethesda, MD 20814  
(800) 808-2224 or (301) 654-6549

### Association for Persons with Severe Handicaps (TASH)

29 W. Susquehanna Avenue, Suite 210  
Baltimore, MD 21204  
(410) 828-8274 or (410) 828-1306(TT)  
<http://www.tash.org>

### The Arc

*(formerly The Association for Retarded Citizens)*

500 E. Border Street, Suite 300  
Arlington, TX 76010  
(800) 433-5255 or (817) 261-6003  
<http://www.thearc.org>

### United Cerebral Palsy (UCP)

1660 L Street, NW, Suite 700  
Washington, DC 20036  
(800) 872-5827 or (202) 842-1266  
<http://www.ucp.org>

### The National Easter Seal Society

230 West Monroe Street, Suite 1800  
Chicago, IL 60606  
(800) 221-6827 or (312) 726-6200  
(312) 726-4258 (TT)  
<http://www.easter-seals.org>

### Autism Society of America

7910 Woodmont Avenue, Suite 650  
Bethesda, MD 20814  
(800) 3-AUTISM or (301) 657-0881  
<http://www.autism-society.org>

### National Down Syndrome Society

666 Broadway  
New York, NY 10012-2317  
(800) 221-4602 or (212) 460-9330  
<http://www.ndss.org>

### The Sibling Support Project

Hosted by The Arc, this is a national program offering education and connections to peer support groups to the siblings of special needs children  
<http://www.thearc.org/siblingsupport>

### Federation for Children with Special Needs

1135 Tremont Street  
Suite 420  
Boston, MA 02120  
(800) 331-0688 or (617) 236-7210  
<http://www.fcsn.org>

## AAICAMA'S NEW BOARD

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**Susan Klickman (Texas)**  
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**Stephanie Pettaway (Maryland)**



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## Questioning the Constitutionality of the 15 Out of 22 Month TPR Provisions

Two state cases involving the termination of parental rights are receiving national attention. At issue is the constitutionality the Adoption and Safe Families Act (ASFA) provision regarding children being in foster care for 15 out of 22 months.

The goal of the Adoption and Safe Families Act was to expedite permanency for children in state care. Absent certain exceptions, if reunification is not achieved and children remain in the care of the state for 15 out of 22 months, states are required to file a petition to terminate parental rights. Many states have chosen to meet the federal provision by enacting state legislation requiring the initiation of proceedings to terminate parental rights when a child has been in foster care for 15 of 22 months. Illinois and Nebraska are two such states and the following two cases have emerged from that choice.

### Illinois: *In re H.G.*, *In re C.S.*

The constitutionality of an Illinois Adoption Act provision was challenged in two cases joined before the Supreme Court of Illinois. In the first case, Illinois filed a termination of parental rights petition alleging neglect of two minor children. Time passed, and the state added to its original allegation of neglect a second allegation of parental unfitness based on a minor child residing in foster care 15 out of 22 months. In the second case, the state filed petitions to terminate parental rights due to allegations of unfitness based on substance abuse and mental incapacity. Time passed and an appellate court determined that the parent was failing to make reasonable progress toward the return of her children. The state filed new petitions to terminate parental rights based on the fact that the children had now been in foster care 15 out of 22 months.

The relevant section of the Illinois Adoption Act reads that a parent may be found unfit if, "...a child has been in foster care for 15 months **out of any** 22 month period unless the child's parent can prove by a preponderance of the evidence that it is more likely than not that it will be in the best interests of the child to be returned to the parent within 6 months of the date on which a petition for termination of parental rights is filed...". Meaning, that if a child is in state care for 15 out of 22 months, the parent is presumed unfit and the state must file a petition for the termination of

parental rights. The parent can overcome this presumption if they can prove that it is more likely than not that it will be determined in the best interests of the child for the child to return home within 6 months. The Illinois Supreme Court found this provision of the state's legislation unconstitutional.

Parental rights are considered a fundamental right by law. These rights can be restricted only when the state proves by clear and convincing evidence that it is absolutely necessary to restrict the right in order to achieve a vital state goal. Even when a state is permitted to restrict a fundamental right, they can only do so in the least invasive manner, affecting the right as little as possible while still achieving their goal. The court found that the 15-month provision did not correspond to parental conduct, which was the basis for other provisions terminating parental rights. Equating the passage of time with parental unfitness was questioned. The court declared that the 15-month approach was not necessary to achieve the state goal of protecting children from harm, that

***"The (IL) court found that the 15 month provision did not correspond to parental conduct, which was the basis for other provisions terminating parental rights. Equating the passage of time with parental unfitness was questioned."***

there were other, less invasive approaches that could achieve this goal. The court stated, "[I]n this case, the passage of 15 months revealed nothing more than the fact that the judicial system's administrative needs may delay the resolution of certain cases. ... [T]he presumption contained in Section 1(D)(m-1) is not a narrowly tailored means of identifying parents who pose a danger to their children's health or safety."

The court found the Illinois provision unconstitutional for two reasons. The first involves the burden of proof. Removing or affecting a fundamental right requires the state to prove that an individual or group deserves to lose or have a right abridged for defined reasons. The individual or group is not required to prove that they deserve to keep the right unabridged. The Illinois law impermissibly placed the burden on the parent to prove that returning the child to the home within six months would be in the child's best interests. The second reason involved the process of determining parental fitness. The court read the law as including a "best interests of the child" determination as part of the parental fitness analysis when the two proceedings are meant to be separate and independent of one another. The Court stressed that a determination of

parental fitness is based on parental merit alone and that it was inappropriate to analyze the best interests of the child during a determination of parental fitness.

### Nebraska: In re Interest of Anthony R. et al.

Changes made to the Nebraska Juvenile Code in 1998 require the state to file a petition to terminate parental rights in the case of a child who has been in foster care under the responsibility of the state for 15 or more months **of the most recent** 22 months, unless the court determines an exception applies. In this case, minor children living with their mother and her boyfriend were found to be at risk of harm due to a lack of parental care based on allegations of inappropriate physical discipline, sexual contact, and witness of domestic violence. The Nebraska Department of Health and Human Services assumed temporary custody the children. The CPS worker assigned to the case stated that the mother was making reasonable efforts towards reunification and recommended the juvenile court find an exception to the 15 out of 22 month rule and allow the mother more time to address the issues that were the basis of the state's custody of her children. The juvenile court found such an exception and agreed not to refer the matter to the state for the filing of a TPR motion. Over two years passed and a review hearing was held. The mother

lost the hearing and appealed. The Nebraska Supreme Court had never decided if such an order is final and appealable. The Nebraska Supreme Court removed the case from the juvenile court docket to answer this question under their statutory authority to regulate appellate court caseloads.

A case brought before a juvenile court in Nebraska is considered a special proceeding for appellate purposes. Proceedings brought before a juvenile court that **do not affect a substantial right** are not considered final and appealable. The Nebraska Supreme Court's decision found that **filing** a motion to terminate parental rights affects no fundamental right. The decision is therefore not final and is closed to appeal. The parent must let the prescribed sequence of events unfold. A court order to file a petition terminating parental rights must issue, a parent must receive notice of the petition, and the parent must be given an opportunity to respond to the petition. This sequence is statutorily prescribed to protect a parent's rights. The Nebraska Supreme Court ruled that if the filing resulted in an order terminating the mother's parental rights, then that order would be final and the mother would then be able to bring an appeal. Absent a final decision, the Supreme Court was unable to hear the case and dismissed it for lack of jurisdiction.

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## AAICAMA's MEETING ADOPTION PATHWAYS AND PARTNERSHIPS

**MAY 22-23, 2003  
HYATT BETHESDA  
BETHESDA, MARYLAND**

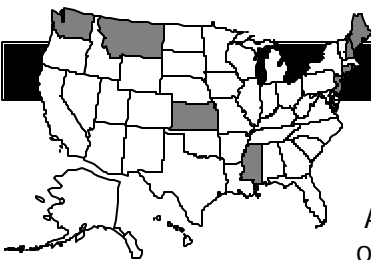
**AGENDA**

*STATES AT RISK: LEGAL IMPLICATIONS OF PI-02-09  
TITLE IV-E ADOPTION ASSISTANCE  
POST ADOPTION SERVICES IN TIGHT BUDGETARY TIMES  
CFSRS AND PIPS IMPACT ON STATE PROGRAMS  
ACHIEVING ADOPTION SPECIFIC SERVICES*

**TRAINING: NEGOTIATING ADOPTION ASSISTANCE AGREEMENTS**

**Call Robyn Bockweg for information at: 202.682.0100 x258**





## STATE INFORMATION EXCHANGE

### HHS Announces Adoption Excellence Awards

In November 2002, HHS Secretary Thompson announced the recipients of the Adoption Excellence Award. Given annually since 1997, the award honors states, organizations, businesses, individuals, and families for giving abandoned, neglected, or abused children loving families and safe and nurturing homes. The Adoption Excellence awards grew out of the Adoption and Safe Families Act of 1997. Recipients are chosen by a committee representing nonprofit adoption agencies, child welfare and adoption advocates, adoptive parents, foundations, the business community, and state and federal offices. The 2002 honorees are:



Ester Conyers, Village for Families & Children, Inc.  
(Hartford, CT)  
Illinois Dept. of Children & Family Services  
(IL)  
Faith House  
(St. Louis, MO)  
Partnership for Adoptions  
(Chesterfield, VA)  
The Kinship Center, Adoption & Seedling Clinics  
(Santa Ana, CA)  
Mical Anne Morrill, Downey Side, Inc.  
(St. Paul, MN)  
Child-Rite, Inc.  
(Taos, NM)  
African American Adoption Agency  
(St. Paul, MN)  
Indiana's Adoption Initiative  
(Indianapolis, IN)

Tom and Elizabeth Richmond  
(Peoria, IL)  
Allison Rosati  
(Chicago, IL)  
Jess McDonald  
(Springfield, IL)  
Brenda Krause Eheart  
(Rantoul, IL)  
Daunte Culpepper  
(St. Paul, MN)  
Freddie Mac Foundation  
(McLean, VA)  
Mass. Coalition for Permanency for Children  
(Leverett, MA)  
Erie County Court Improvement Project  
(Buffalo, NY)  
Catawba County Dept. of Social Services  
(Newton, NC)

### HHS Awards \$4 Million to Improve Opportunities for Adoption

In October 2002, 13 organizations were awarded three-year grants by HHS through the Adoptions Opportunities Program to help remove barriers to adoption of children with special needs. The grants will go towards programs to increase adoption of minority children, to provide post-adoption services, or to provide respite care to families who adopt special needs children.

Awards were granted to the following organizations:

Adoptions Together, Inc.  
(Silver Spring, MD)  
Another Choice for Black Children, Inc.  
(Charlotte, NC)  
Bienvenidos Family Services  
(Los Angeles, CA)  
Center for Family Connections  
(Cambridge, MA)  
Coordinators/2, Inc.  
(Richmond, VA)  
DePelchin Children's Center  
(Houston, TX)  
Easter Seals NH/VT, Inc.  
(Berlin, VT)

Every Child, Inc.  
(Pittsburgh, PA)  
Family Resources, Inc.  
(Davenport, IA)  
Family Support Services of the Bay Area  
(Oakland, CA)  
Illinois Dept. of Children and Families Services  
(Springfield, IL)  
Loving Homes, Inc.  
(Denver, CO)  
Lutheran Social Services of Kansas & Oklahoma  
(Wichita, KA)  
Office of Community Services  
(Baton Rouge, LA)

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## California Creates the Family Temporary Disability Insurance Program

In September 2002, California Governor Davis signed legislation that created a Family Temporary Disability Insurance (FTDI) program under the state's State Disability Insurance (SDI) plan. The program expands disability coverage to individuals who take time off from work for the birth, adoption, or foster care placement of a new child or to care for a sick or disabled family member. Key program elements include:

- Employee is required to wait one week before applying for the program;
- Employers can require employees to use up to two weeks of unused vacation time before receiving paid leave;
- Payments are capped at six weeks over a 12-month period, and at 55 percent of wages, up to an annually-adjusted maximum;
- Businesses with over 50 employees are required to hold a job open for a worker on leave.

The program goes into effect on July 1, 2004.

## New York State to Change Language in Adoption Statutes

In August 2002, New York passed legislation that replaces the phrase "natural parent" with "birth parent" in existing state statutes pertaining to the domestic relations law, the social services law, the insurance law and the Surrogate's Court Procedure Act. New York is the second state to use the phrase "birth parent" in legal references. California uses the phrase "birth parent" in their Family Code Sections regarding adoption. However, the California Uniform Parentage Act and the related Family Code Sections still use the term "natural parent."

## New Hampshire Receives Waiver Giving Families of Disabled Children More Control Over Services Received

In December 2002, HHS Secretary Thompson approved a waiver program that provides New Hampshire families with Medicaid-eligible disabled children greater control over the care and services their children receive. The New Hampshire program helps to coordinate services and provides enhanced services. Services include personal care, respite care, and home and vehicle modifications for eligible children. Under the program, families will be involved in planning service delivery, and will work with a "support broker" and a financial consultant who will assist with the process.

The New Hampshire waiver is the first of its kind under HHS' new Independence Plus Initiative established by President Bush's New Freedom Initiative (NFI). The NFI ensures that all Americans have the opportunity to live more independently, to engage in productive employment, and participate in community life. Initiative programs will delay high-cost out-of-home placement by strengthening supports to families or individuals, facilitate cost-effective decision-making by families, and give families more control over home- and community-based services received through the state's Medicaid program. The waiver also aids states in meeting their legal obligations under the Americans with Disabilities Act and the Supreme Court's *Olmstead* ruling which encourages appropriate community placement for persons with disabilities. Information about the waiver and federal support of self-direction options can be found at:

<http://www.cms.hhs.gov/independenceplus>

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## LEGISLATION PROVIDING TRIBAL GOVERNMENTS ACCESS TO IV-E INTRODUCED

The Indian and Alaska Native Foster Care and Adoption Services Amendments of 2003 (S. 331) were introduced the week of February 3, 2003, by Senator Daschle (D-S.D.) The bill is identical to the House version of the legislation (H.R. 443) introduced by Representative Camp (R-Mich.). Both bills address the treatment of Indian children under Title IV-E. The legislation amends Title IV-E to give tribal governments direct access to the foster care and adoption assistance program, providing Indian children with the same services that are currently available to other IV-E-eligible children. Most Indian children under the jurisdiction of tribes are not currently eligible for foster care and adoption assistance services because Title IV-E only applies to children who are placed by state agencies or by public agencies with which the state has an agreement. Currently, tribes cannot access this entitlement program for Indian children who are placed in foster care or adoptive homes by a tribal court unless that court has an agreement with the state, leaving a majority of Indian children ineligible. The legislation would allow tribes to apply directly to HHS for IV-E administrative funds to finance tribal placements, recognize tribal standards for foster home licensing, increase flexibility, and continue to allow tribal-state Title IV-E agreements.



### ACYF-CB-PI-02-09 Issued: Violations of Interjurisdictional Placements

On October 7, 2002, the Children's Bureau issued a Program Instruction (PI) regarding the requirements of the Social Security Act as related to inter-jurisdictional adoption. The PI provides states with guidance regarding Section 471(a)(23) (hereinafter inter-jurisdictional provisions) of the Social Security Act which prohibits states from:

- Denying or delaying the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child.
- Failing to grant an opportunity for a fair hearing to an individual who believes that the state has denied or delayed a child's adoptive placement when there is an approved family outside the jurisdiction.

It is important to note that the PI clearly states that a violation can occur not only across state lines but also across city and county lines.

#### **Systemic Violations**

There are two types of violations that can occur, systemic violations and individual violations. A systemic violation occurs if a state maintains any statute, regulation, policy, procedure, or practice that on its face:

- Allows the denial or delay of a child's placement for adoption when an approved family outside the jurisdiction is available.
- Fails to grant an opportunity for a fair hearing to anyone who alleges that the placement of a child has been denied or delayed when there is an approved family outside the jurisdiction who is willing to adopt the child.

The PI states that systemic violations can be revealed through the Children and Family Services Review process, but would be handled as a separate issue by the Administration for Children and Families (ACF). However, the PI indicates that this is not the only avenue by which possible systemic violations can be brought to the attention of ACF, but does not provide what the other possible avenues may be.

Once a concern has come to the attention of the ACF regarding a systemic violation, the ACF will send a letter to the state:

- Informing the state of how the ACF became aware of the potential violation.
- Describing the reasons the state appears to be in violation of the inter-jurisdictional provisions.
- Giving the state an opportunity to provide additional information to show that it is in compliance.

If the information from the state does not confirm that the state is in compliance with the Act, or the state does not submit additional information, ACF may require further review in order to make a final determination of compliance. This review could include an on-site review, a request for additional information, or both, depending upon the particular situation. Based on the findings of the partial review, ACF will determine if a violation of a section has occurred.

#### **Individual Violations**

If an individual believes that the state has denied or delayed a child's adoptive placement where there is an approved family outside the jurisdiction, s/he can request a fair hearing from the state agency to determine whether there has been a violation of this provision. This hearing is *not necessarily* a remedy for the individual regarding the placement decision made by the state, but rather to determine if the state violated the inter-jurisdictional provisions. The state must promptly provide a fair hearing, whether the allegation is against the state itself or an entity in the state that receives Title IV-E funds.

If the fair hearing officer finds that there has been a violation of the act, the state must notify the appropriate ACF Regional Office of the findings within 60 days of the decision. If the state wishes to exhaust additional legal remedies in the state, then the result must be submitted to ACF within 30 days of the final decision upholding the fair hearing officer's findings. ACF will then adopt the final finding from the state and will notify the state in writing.

Other entities receiving Title IV-E funds are also subject to review for individual violations.

### **Penalties**

For systemic violations, states have an opportunity to engage in a corrective action plan that must be submitted within 30 days of receiving written notification from ACF of the violation. Once the corrective action plan has been approved, the state must successfully complete the corrective action and come into compliance within six months. The PI provides more specifics regarding the content that must be included in a corrective action plan. States that fail to successfully complete their corrective action plan will be subject to penalties for the quarter of the fiscal year in which the state is notified of the violation and for each succeeding quarter within that fiscal year until the state comes into compliance. The reduction in Title IV-E funds will be computed as follows:

- 2% of the amount of Title IV-E funds claimed by the state for the fiscal year quarter in which the first finding of noncompliance was made.
- 3% of the amount of Title IV-E funds claimed by the state for the fiscal year quarter in which the second finding of noncompliance was made.
- 5% of the amount of Title IV-E funds claimed by the state for the fiscal year quarter in which the third or subsequent finding of noncompliance was made.

No fiscal year payment to a state will be reduced by more than 5%. The maximum number of quarters that penalties will be imposed are those remaining in the fiscal year in which the determination of nonconformity is made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties in the subsequent year(s).

In contrast, there is no provision for corrective action in cases in which ACF finds that there has been an individual violation. A final finding will not be made, however, until the state agency has exhausted all the legal remedies available to the state, should it choose to do so. Once a final finding is made, ACF will reduce a state's Title IV-E funds (or those received by another entity receiving Title IV-E funds) for the fiscal quarter in which the state received notification of its violation. In addition, the state will be liable for interest on the amount of funds reduced by ACF.

### **Requirements for the Effective Use of Interjurisdictional Resources**

The PI goes on to clarify section 422(b)(12) of the Social Security Act. States must ensure, in their title IV-B plan, effective use of inter-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. This requirement is subject to review in the CFSRs. If a state does not have an appropriate plan, it will be addressed in the report to the state and will be subject to inclusion in the state's Program Improvement Plan (PIP).

If a potential violation of section 471(a)(23) of the act is discovered during the CFSR, ACF will note the violation in the cover letter that is used to send the CFSR and will address the question as a separate issue.

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### **President Bush Signs Executive Orders to Implement Key Components of the Faith-Based Initiative**

In December 2002, President Bush signed two executive orders (EOs) that implement key elements of the Faith-Based Initiative.

The first EO allows faith-based organizations access to grants established through federally funded programs and provides protections against discrimination by these organizations for religious purposes. The funds can be used to provide such social services as foster care, adoption, counseling, and others. Faith-based organizations are also allowed to maintain their religious identities through use of symbols and selection of board members, and to make personnel decisions based on religious beliefs. Organizations may not use funds for religious activities such as worship and religious instruction.

A second EO was signed to create Centers for Faith-Based and Community Initiatives at the U.S. Department of Agriculture (USDA) and the Agency for International Development (AID). Other such centers have previously been established in the Departments of Health and Human Services, Housing and Urban Development, Education, Justice, and Labor. The centers are charged with eliminating regulatory and programmatic barriers and developing program initiatives that encourage participation of faith-based organizations.



## RESOURCE NOTES

### **REPORT: *Sustaining Adoptive Families: A Qualitative Study of Public Post-Adoption Services***

Association of Administrators of the Interstate Compact for Adoption and Medical Assistance; Center for Adoption Studies

This report provides an overview of post-adoptive services that state child welfare agencies have specifically developed for families who have adopted from the public child welfare system. The survey examined eight types of post-adopt services, including information and referral, education, support, therapeutic interventions, advocacy, residential treatment, respite care, and mediation and search services. The report highlights innovative programs and discusses how states fund their post-adoptive services programs. The *Sustaining Adoptive Families: A Qualitative Study of Public Post-Adoption Services* is available from AAICAMA.

Phone: (202) 682-0100 ext. 258

e-mail: rbockweg@aphsa.org

### **BOOKLET: *Tax Benefits for Adoptions: For Use in Preparing 2002 Tax Returns***

Internal Revenue Service

*Tax Benefits for Adoptions: For Use in Preparing 2002 Tax Returns* provides guidelines to adoptive families filing for the adoption tax credit. The booklet highlights changes for the 2002 tax year. It also describes who qualifies for the tax benefit, qualifying expenses, and dollar amounts that can be applied. The booklet provides information on where to get help and tax forms. This booklet, publication 968 is available on the Internet at:

<http://www.holtintl.org/infoupdates/pdfs/2002p968.pdf>

### **BOOKLET: *Federal Tax Benefits for Foster and Adoptive Parents and Kinship Caregivers 2002 Tax Year***

Casey Family Programs

This booklet highlights the various tax benefits available to foster and adoptive parents and kinship caregivers for the 2002 tax year. The booklet also provides information about tax changes and basic tax information that are valuable for resource families to know. This booklet, published in 2002, may be accessed on the Internet by going to:

[www.casey.org/cnc/support\\_retention/federal\\_tax\\_benefits.htm](http://www.casey.org/cnc/support_retention/federal_tax_benefits.htm)

### **REPORT: *Improving Educational Outcomes for Youth in Care: A National Collaboration***

Child Welfare League of America

*Improving Educational Outcomes for Youth in Care: A National Collaboration* is the result of a collaborative effort between the Child Welfare League of America (CWLA) and the National Council of Juvenile and Family Court Judges, with support from Casey Family Programs. The purpose of the collaboration was to improve the ability of judges, child welfare staff, and educators to help older youth in foster care meet educational and transitional goals. The report provides a summary of the educational experiences, placement stability, and other factors that affect educational outcomes for foster care youth. The report also provides best practice recommendations for helping youth in care to achieve more positive outcomes. Copies of this report are available at the CWLA website for \$8.95.

<http://www.cwla.org/pubs/>

order number: 2002/0-87868-867-8/#8678

### **TRAINING CURRICULUMS: *Adolescents and Families for Life: A Toolkit for Supervisors* and *The Family Bound Program: A Toolkit for Preparing Teens for Permanent Family Connections***

Robert G. Lewis & Communities for People, Inc.

*Adolescents and Families for Life: A Toolkit for Supervisors* and *The Family Bound Program: A Toolkit for Preparing Teens for Permanent Family Connections* are two training curriculums that address improving permanency planning for teens. *Adolescents and Families for Life: A Toolkit for Supervisors* curriculum is for child welfare supervisors to use as a staff training tool about permanency issues for teens. It is organized into three sections:

- Making the case for permanence
- Choosing, using, and developing tools with teens
- Supporting permanence

The curriculum is divided into 27 short units that cover topics including: importance of permanency for adolescents, adolescent development, how to help teens accept permanent family relationships, system barriers, identifying established connections, and supporting permanent placements. The curriculum provides training tips, overviews of goals and objectives for each section, group exercises, handouts, and a CD-ROM that provides PowerPoint slides.

*The Family Bound Program: A Toolkit for Preparing*

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*Teens for Permanent Family Connections* curriculum is a tool for child welfare professionals who work with teens ages 13–20. Its goal is to help staff learn how to prepare teens for permanency and independent living with a focus on family life and its responsibilities. The curriculum is divided into nine two-hour workshop sessions, and includes the step-by-step guides to be used with the curriculum. Topics include:

- Group Leaders Guide for Working with Teens
- The Family Bound Program: Handbook for Teens
- Welcome In: Families' Guide to the Family Bound Program.

For additional information or to order copies go to:

[www.highpopples.com](http://www.highpopples.com) or

e-mail Robert Lewis at [rglewis@highpopples.com](mailto:rglewis@highpopples.com)

#### **TECHNICAL ASSISTANCE BULLETIN:**

##### ***The Portland Model Court Expanded Second Shelter Hearing Process: Evaluating Best Practice Components of Front-Loading***

National Council of Juvenile and Family Court Judges

This bulletin describes the Portland Model Court Project in Oregon, the statistical impact of the model on the handling of child maltreatment cases, as well as practice recommendations. The Portland Model added a second shelter hearing requirement in child maltreatment cases. The purpose of the second shelter hearing, which is held 7-14 days after the initial hearing, is to give case workers more time to collect information and address issues important to determining placement of a child. The project also implemented a "front-loading" approach, using a continuity of legal representatives and judges for a case. To order copies call:

(775) 327-5300

or e-mail at: [ppp@pppncjfcj.org](mailto:ppp@pppncjfcj.org)

#### **WEB SITE UPDATE: *The Implementation of the Chafee Program State Pages***

National Resource Center for Youth Development

On January 6, 2003, the National Resource Center for Youth Development launched a new section of their web site which provides state information about the implementation of the Chafee Program in each of the states, Puerto Rico, and the District of Columbia. For each state page, basic information about the Chafee Program, how the state is implementing the program, pertinent contact information, and information about the CFSRs are included. The state pages may be accessed on the Internet at:

[www.nrcys.ou.edu/NRCYD/State\\_Pages\\_f/state\\_md.htm](http://www.nrcys.ou.edu/NRCYD/State_Pages_f/state_md.htm)

#### **REPORT: *Child Maltreatment 2000***

U.S. Department of Health & Human Services,  
Administration for Children and Families,  
Administration on Children, Youth, and Families,  
Children's Bureau

The 11<sup>th</sup> annual report, *Child Maltreatment 2000*, provides statistical information about child abuse and neglect based on NCANDS data. The report provides data pertaining to referrals and reports of child maltreatment, types of child maltreatment cases, number of child deaths, perpetrator data, and services available as reported by the states. Copies of this report may be obtained by calling:

(800) 394-3366

or on the Internet at [www.acf.hhs.gov/programs/cb](http://www.acf.hhs.gov/programs/cb)

#### **REPORT: *The Cost of Protecting Vulnerable Children III: What Factors Affect States' Fiscal Decisions?***

Assessing the New Federalism

This report provides an in depth analysis of state spending on child welfare programs. This is the third time this study has been conducted by the Assessing the New Federalism Project, thus, spending trends were also examined. The report examines how much states spent in FY 2000, federal funding streams, state and local funding, and proposals for changes in state spending. The report also provides a brief discussion about recent welfare reform and financing child welfare during a recession. Copies are available at :

[www.urban.org/Content/Research/NewFederalism/AboutANF/AboutANF.htm](http://www.urban.org/Content/Research/NewFederalism/AboutANF/AboutANF.htm) Occasional Paper 61 (OP-61).

#### **REPORT: *A Portrait of Adolescents in America, 2001***

The Robert Wood Johnson Foundation and  
Foundation for Accountability

*A Portrait of Adolescents in America, 2001* provides the results of a study that addresses health care issues for adolescents in America. The survey divided participants into three risk groups: risky health behaviors, symptoms of depression, and special health care needs. A comparison group of non-risk adolescents was pulled from another study called the *Youth Risk Behavior Surveillance Survey*. The portrait was filled out online by individuals who were invited to participate. It examines physical activity, confidence to change risky behaviors, peers who participate in risky behaviors, health care services received, and health-related activities. For more information about adolescent health issues or for a copy of this report, go to:

[www.rwjf.org](http://www.rwjf.org) or [www.facct.org](http://www.facct.org).

*(Resources continued on page 14)*

(Resources continued)

**WEBSITE: *Title V Toolbox for Family Participation***  
Family Voices

The *Title V Toolbox for Family Participation* was developed to provide resources to states to increase participation of families within Title V programs. The tool box includes information about state policies, model programs, resources to share with families, and other useful information that support family involvement in the Maternal and Child Health (MCH) and Children with Special Health Care Needs (CSHCN) programs. The toolbox may be accessed by going to: [www.familyvoices.org/toolbox](http://www.familyvoices.org/toolbox)

**SERIES: *Building Capacity for Local Decision Making***

Center for the Study of Social Policy; Georgia's Family Connection; Missouri's Family Investment Trust; Vermont's Agency for Human Services; and The Annie E. Casey Foundation

This six-part series of learning guides is based on the premise that, "government, in tandem with citizens and community organizations, can and should do a much better job of helping disadvantaged people." The series seeks to inform and empower the public at a local level to create new approaches to achieve this premise. The aim of the series is to help states, local businesses, civic leaders, and citizens "to improve children's health, safety, success in school, and movement to a productive adulthood." The emphasis is on localized control and the theme is partnership between community groups.

With the trend toward devolution, local groups are assuming ever-greater responsibility for the decisions affecting social services. The series addresses the problem that much of the community now entrusted with the mission are ill-equipped to shoulder the tasks. They have not been given the necessary knowledge and/or practice skills to assume their new roles. The series seeks to bridge this gap with six publications laid out sequentially toward achieving success in public sector resources, staffing and service delivery. The titles of the volumes indicate their place in the path toward more effective social servicing. Titles include: *Theory and Purpose of Local Decision Making*, *Working with Members*, *Setting a Community Agenda*, *Strategies to Achieve Results*, *Financing and Budgeting Strategies*, and *Using Data to Ensure Accountability*. Copies of the series are available from the Center for the Study of Social Policy by at: (202) 371-1565 or [www.cssp.org](http://www.cssp.org)

**CASE STUDY REPORT: *Assessing the Field of Post-Adoption Services: Family Needs, Program Models, and Evaluation Issues***

U.S. Dept. of Health and Human Services, Office of the Assistant Secretary for Planning Evaluation and The Administration for Children and Families

This report summarizes a case study analysis of post-adoption services (PAS) based on interviews with state adoption program managers and post-adoption coordinators and providers, and focus groups of adoptive parents. The case study also included information gathered from site visits to five model programs. The case study focused on identifying the service needs of families, the characteristics of existing PAS, and determining how PAS programs are evaluating their effectiveness. Among the findings of this study was the fact that, though many states develop programs around identified needs of families, they rarely conduct formal evaluations of their PAS programs. This report is the second of a series of reports that evaluates post-adoption services in America. Three more reports are to be released in the near future. To receive a copy of the report, send a request to:

Human Services Policy  
Assistant Secretary for Planning and Evaluation  
Room 404E  
200 Independence Ave, SW  
Washington, DC 20201  
or Fax request to: (202) 690-6562

***Our Thanks to Outgoing Board Members***



***John Levesque***

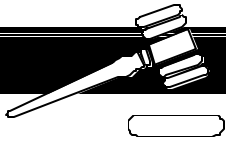
*John retired from Maine's Dept. of Human Resources with 25 years of service. He is now working with the National Resource Center for Special Needs Adoption as a senior consultant.*

***Judith Paris***

*Judith has served on AAICAMA's board since 1994 as both President and Vice President. She is currently the Special Needs Administrator for the South Carolina Dept. of Social Services.*

***Mary Gambon***

*Mary served on the board from 2001-2002. She is currently with the Massachusetts Dept. of Social Services and has 25 years experience in child welfare.*



## CASES OF INTEREST

### ADOPTION, ELIGIBILITY

*Glanowski v. New York*, 225 F. Supp.2d 292 (W.D. N.Y. 2002)

At issue in this case is whether a privately adopted, handicapped child is eligible for Title IV-E Adoption Assistance. Neither the state nor an authorized agency was involved in the care or placement of the children for adoption, the decisions of the birth parents to place their children for adoption, or the determination of the suitability of the adoptive parents.

New York's definition of a special needs child includes a requirement that the minor at one time be in the guardianship and custody of a "...[S]ocial services official or a voluntary authorized agency, or whose guardianship and custody have been committed to a certified or approved foster parent pursuant to a court order prior to such person's eighteenth birthday." Plaintiffs assert that Congress did not restrict Title IV-E eligibility to special needs children in the legal custody of a county agency or other state approved agency. They claim that to the extent that the state's definition of "child" results in denial of benefits to privately adopted special needs children, it conflicts with the federal Adoption Assistance Program and is without effect because it is in conflict with federal law. Plaintiffs also argue federal law does not require a child to have been in the custody of a state agency before that child may be deemed a child with special needs and entitled to federal adoption assistance. They charge that the state does not follow the federal law and has added eligibility criteria not contained in the act.

The state argued that Title IV-E provides states with broad discretion to define children with special needs and that New York's plan is consistent with the purpose and intent of Title IV-E. Defendants further assert that because the state program is consistent with Title IV-E, and there is no provision that a state *must* provide adoption assistance to privately adopted children, plaintiffs cannot assert any violation of their rights.

The court held that "although the court has sympathy with the plaintiffs' position, and commends them for their compassionate and generous actions in adopting their children, **it is clear that their position that they should be entitled to federal adoption benefits finds no support in either the federal or state statute or from any of the policy announcements that have clarified the federal statute's reach.**"

### ADOPTION, PROCEDURE

*In re Roldan* WL 1754784 (Ore. Ct. App. Apr. 3, 2003)

The Oregon Court of Appeals reversed and remanded the juvenile court's order requiring the Department of Human Services (DHS) to produce home studies of families that were being considered to adopt children to the children's court appointed special advocate (CASA). The Court of Appeals explained that the CASA's need for the home study must be balanced against the prospective adoptive family's interest in privacy and concluded that, because no home studies had been chosen for submission to the adoption committee in this case and because the CASA did not need those studies in order to advocate for the children before the permanency committee, the trial court abused its discretion in ordering discovery of the studies when it did.

Link:

<http://www.publications.ojd.state.or.us/A117750.htm>

### KEFFELER DECIDED

The U.S. Supreme Court unanimously decided that a state's use of Social Security benefits to reimburse itself for some of its initial expenditures does not violate a Social Security Act provision protecting benefits from "execution, levy, attachment, garnishment, or other legal process", 42 U.S.C. Section 407(a). The decision has national impact because public agencies in all states use Social Security money to help defray foster-care costs.

About two-thirds of the foster children who receive Social Security payments in Washington are eligible to do so because they are both disabled and indigent. The other third are eligible because they are surviving dependents of deceased or disabled parents. Children's SSI benefits cover about a third of Washington's monthly expenses for SSI recipients in foster care. The decision will allow Washington to continue to receive an estimated \$7 million in SSI funds per year to help pay for the support of children in foster care.

Washington state's position was supported in amicus brief by the U.S. Dept. of Justice, 26 states, Puerto Rico, and many children's organizations.

To read the full text of this opinion, go to:

<http://laws.lp.findlaw.com/us/000/011420.html>

We welcome any comments or contributions.

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Secretariat Services provided by:  
American Public Human Services Association  
810 First Street, NE, Suite 500  
Washington, D.C. 20002  
(202) 682-0100  
Fax (202) 289-6555

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**Program Director: Liz Oppenheim, J.D.**  
**Research Analyst: Sharon McCartney, J.D.**  
**Research Analyst: Ursula Krieger, M.A.**  
**Policy Analyst: Jennifer Grayson, M.P.P.**

**STAFF**

**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 AAICAMA, APHSA or HHS/ACF/ACYF/Children's Bureau.

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ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE  
COMPACT ON ADOPTION AND MEDICAL ASSISTANCE, INC.

810 FIRST STREET, N.E., SUITE 500, WASHINGTON, D.C. 20002-4267