United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Human Resources
Committee on Ways and Means
House of Representatives

For Release on Delivery
Expected at 3:00 p.m. EST
Tuesday, April 8, 2003

FOSTER CARE

States Focusing on Finding Permanent Homes for Children, but Long-Standing Barriers Remain

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GAO-03-626T

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Highlights

Highlights of GAO-03-626T, a testimony for the Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives

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States Focusing on Finding Permanent Homes for Children, but Long-Standing Barriers Remain

Why GAO Did This Study

In response to concerns that some children were languishing in temporary foster care, Congress enacted the Adoption and Safe Families Act of 1997 (ASFA) to help states move children in foster care more quickly to safe and permanent homes. ASFA contained two key provisions: (1) the "fast track" provision allows states to bypass efforts to reunify families in certain egregious situations and (2) the"15 of 22" provision requires states, with a few exceptions, to file a petition to terminate parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months. Representative Wally Herger, Chairman of the House Ways and Means Subcommittee on Human Resources asked GAO to review (1) changes in outcomes for children in foster care since ASFA was enacted, (2) states' implementation of ASFA's fast track and 15 of 22 provisions, (3) states' use of two new adoption-related funds provided by ASFA, and (4) states' initiatives to address barriers to achieving permanency.

What GAO Found

ASFA's goal was to increase permanent placements, such as adoption, for children in foster care, but determining ASFA's impact is difficult. The annual number of adoptions have increased by 57 percent from the time ASFA was enacted through fiscal year 2000; however, the lack of comparable pre- and post-ASFA data make it difficult to determine ASFA's role in this increase. In addition, states have improved their foster care data since ASFA, making it difficult to determine whether observed changes in outcomes are due to changes in data quality or changes in state performance. States have also pursued other child welfare reform efforts that may be contributing to outcome changes. HHS data on children who left foster care between 1998 and 2000 indicate that most were reunified with their families after spending a median of 1 year in care (although about 33 percent returned to foster care within 2 years). Children who were adopted spent a median of 39 months in care.

In response to a GAO survey, very few states were able to provide data on the number of children affected by ASFA's fast track and 15 of 22 provisions. Survey data, as well as information gathered from the six states GAO visited, suggest that states use the fast track provision infrequently and exempt a number of children from the 15 of 22 provision. During GAO's site visits, state and local officials described circumstances, such as the reluctance on the part of some judges to allow a state to bypass reunification efforts, which made it difficult for these states to use fast track for more cases. In addition, these officials said that difficulties finding adoptive homes for certain children, such as adolescents, discouraged states from using the 15 of 22 provision for these children. States reported exempting children placed with relatives and children who were expected to reunify shortly with their families.

States are most frequently using ASFA's two new adoption-related funds to recruit adoptive parents and provide post adoption services. Examples include purchasing advertisements on Spanish language television to recruit adoptive families for older Hispanic children and creating a statewide adoption resource center to provide support to adoptive families.

The states GAO visited have implemented a variety of practices to address long-standing barriers—such as court delays and difficulties in recruiting adoptive families for children with special needs—to achieving permanency for foster children. To help address court delays, for example, Massachusetts has developed a mediation program to help birth families and potential adoptive parents agree on the permanent plan for a child. However, limited data are available on the effectiveness of these practices.

In a related report, GAO recommended that the Secretary of Health and Human Services review the feasibility of collecting data on states' use of ASFA's fast track and 15 of 22 provisions.

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Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the implementation of the Adoption and Safe Families Act of 1997 (ASFA). As you are aware, this legislation was enacted in response to concerns that some children were languishing in temporary foster care while prolonged attempts were made to reunify them with their birth families. ASFA contained two key provisions that were intended to help states move children in foster care more quickly to safe and permanent homes. One of these provisions, referred to as "fast track," allows states to bypass efforts to reunify families in certain egregious situations. The other provision, informally called "15 of 22," requires states, with a few exceptions, to file a petition to terminate parental rights (TPR) when a child has been in foster care for 15 of the most recent 22 months. In addition, ASFA emphasized the importance of adoption when foster children cannot safely and quickly return to the care of their birth parents. Toward that end, ASFA established incentive payments for states that increase their adoptions. In addition, the law provided a new source of funds for states to use to promote and support adoptions through the Promoting Safe and Stable Families (PSSF) Program.

My testimony today will focus on four key issues: (1) changes in the outcomes and characteristics of children in foster care from the time ASFA was enacted through fiscal year 2000, (2) states' implementation of ASFA's fast track and 15 of 22 provisions, (3) states' use of adoption-related funds provided by ASFA, and (4) practices states are using to address barriers to achieving permanency for children in foster care. My comments are based on the findings from our June 2002 report, Foster Care: Recent Legislation Helps States Focus on Finding Permanent Homes for Children, but Long-Standing Barriers Remain (GAO-02-585, June 28, 2002). Those findings were based on our analyses of national foster care and adoption data from the U.S. Department of Health and Human Services (HHS) for fiscal years 1998 through 2000;[1] site visits to Illinois, Maryland, Massachusetts, North Carolina, Oregon, and Texas; and interviews with federal officials and child welfare experts. In addition, we conducted a survey of child welfare directors in the 50 states and the

[1]Throughout this testimony, fiscal year refers to federal fiscal year, unless noted otherwise. In addition, we selectively updated information contained in this testimony.

District of Columbia.[2] We received responses from 46 states, although they did not all respond to every question.[3]

In summary, while the annual number of adoptions has increased by 57 percent from the time ASFA was enacted through fiscal year 2000, the lack of comparable pre- and post-ASFA data makes it difficult to determine ASFA's role in this increase or changes in other foster care outcomes. However, HHS data on children who left foster care between 1998 and 2000 provide some insight into the experiences of children in foster care. For example, children who left foster care during this time spent a median of nearly 1 year in care. Of these children, those who were adopted spent a median of approximately 3-½ years in foster care. Recent improvements in the quality of HHS data, however, make it difficult to determine if changes observed after 1998 are the result of changes in data quality or actual changes in the outcomes and characteristics of foster children. Similarly, data on states' use of ASFA's two key permanency provisions—fast track and 15 of 22—are limited, although some states described circumstances that hindered the broader use of these provisions. For example, state officials described several court-related issues, such as reluctance on the part of some judges to allow a state to bypass reunification efforts, which made it difficult for these states to use the fast track provision for more cases.

In general, states are most frequently using the new adoption-related funds provided by ASFA to recruit adoptive parents and provide post adoption services. For example, Connecticut used its adoption incentive funds to buy advertisements on Spanish language television to recruit adoptive families for older Hispanic children and sibling groups to address a shortage of families for these children. Oregon used its PSSF funds to create a new, statewide resource center to provide information and referral services, support groups, and educational workshops to adoptive families. The states we visited have implemented a variety of practices to address long-standing barriers—such as court delays and difficulties in recruiting adoptive families for children with special needs—to achieving permanency for foster children. To help address court delays, for example,

[2]Throughout this testimony, references to state survey responses include the District of Columbia.

[3]In addition, we requested survey data by federal fiscal year for 1999 and 2000. However, of the 46 states responding to our survey, 22 provided data for time periods other than federal fiscal years 1999 and 2000, such as calendar year or state fiscal year.

Massachusetts has developed a mediation program to help birth families and potential adoptive parents agree on the permanent plan for a child, thereby avoiding the time associated with a court trial and an appeal of the court's decision. States are testing different approaches to address these barriers; however, limited data are available on the effectiveness of these practices.

Background

The foster care system has grown dramatically in the past two decades, with the number of children in foster care nearly doubling since the mid-1980s. Concerns about children's long stays in foster care culminated in the passage of ASFA in 1997, which emphasized the child welfare system's goals of safety, permanency, and child and family well-being. HHS's Administration for Children and Families (ACF) is responsible for the administration and oversight of federal funding to states for child welfare services under Titles IV-B and IV-E of the Social Security Act.

These two titles of the Social Security Act provide federal funding targeted specifically to foster care and related child welfare services.[4] Title IV-E provides an open-ended individual entitlement for foster care maintenance payments to cover a portion of the food, housing, and incidental expenses for all foster children whose parents meet certain federal eligibility criteria.[5] Title IV-E also provides payments to adoptive parents of eligible foster children with special needs.[6] Special needs are characteristics that can make it more difficult for a child to be adopted and may include emotional, physical, or mental disabilities; age; or being a member of a sibling group or a member of a minority race. Title IV-B provides limited funding for child welfare services to foster children, as well as children remaining in their homes. In fiscal year 2002, total Title IV-E spending was

[4]In addition, Title XX provides funds under the social services block grant that may be used for many purposes, including child welfare.

[5]Certain judicial findings must be present for the child in order for the child to be eligible for Title IV-E foster care maintenance payments.

[6]Special needs are defined as a specific factor or condition that make it difficult to place a child with adoptive parents without providing adoption assistance. States have the discretion to define the specifics of the special needs category. The existence of special needs is used to determine a child's eligibility for adoption assistance under Title IV-E. To qualify for an adoption subsidy under Title IV-E, the state must determine that the child cannot or should not return home; the state must make a reasonable, but unsuccessful effort to place the child without the subsidy; and a specific factor or condition must exist that makes it difficult to place the child without a subsidy.

approximately $6.1 billion and total Title IV-B spending was approximately $674 million.

HHS compiles data on children in foster care and children who have been adopted from state child welfare agencies in the Adoption and Foster Care Analysis and Reporting System (AFCARS). HHS is responsible for collecting and reporting data and verifying their quality. States began submitting AFCARS data to HHS in 1995. Twice a year, states are required to submit data on the characteristics of children in foster care, foster parents, adopted children, and adoptive parents. Prior to AFCARS, child welfare data were collected in the Voluntary Cooperative Information System (VCIS), operated by what was then called the American Public Welfare Association.[7] Since reporting to VCIS was not mandatory, the data in the system were incomplete. In addition, the data submitted were inconsistent because states used different reporting periods and different definitions for various data elements.

ASFA included two key provisions intended to help states move into safe, permanent placements those foster children who are unable to safely return home in a reasonable amount of time. Under the fast track provision, states are not required to pursue efforts to prevent removal from home or to return a child home if a parent has (1) lost parental rights to that child's sibling; (2) committed specific types of felonies, including murder or voluntary manslaughter of the child's sibling; or (3) subjected the child to aggravated circumstances, such as abandonment, torture, chronic abuse, or sexual abuse. In these egregious situations, the courts may determine that services to preserve or reunite the family are not required. Once the court makes such a determination, the state must begin within 30 days to find the child an alternative permanent family or other permanent arrangement.[8]

The second provision requires states to file a TPR with the courts if (1) an infant has been abandoned; (2) the parent committed any of the felonies listed in the fast track provision; or (3) the child has been in foster care for 15 of the most recent 22 months. ASFA allows for some exemptions from

[7]In 1998, the American Public Welfare Association became the American Public Human Services Association.

[8]In addition, the Abandoned Infants Assistance Act of 1988, as amended in 1996, requires states to expedite the termination of parental rights for abandoned infants in order to receive priority to obtain certain federal funds.

the 15 of 22 provision. Under ASFA, states are not required to file a TPR if the child is placed with a relative; the state has not provided services needed to make the home safe for the child's return; or the state documents a compelling reason that filing a TPR is not in the child's best interest.

ASFA also created two new adoption-related funding sources. First, ASFA reauthorized the family preservation and family support program under subpart 2 of Title IV-B of the Social Security Act, renaming it Promoting Safe and Stable Families (PSSF) and adding two new funding categories: adoption promotion and support services and time-limited family reunification services. The original family preservation program included only family preservation and community-based family support services. In January 2002, the PSSF program was reauthorized, authorizing $305 million for each of fiscal years 2002 through 2006, along with an additional $200 million in discretionary grant funds for each of those years.

Second, ASFA created the adoption incentive payment program, which awards states $4,000 for each foster child who is adopted over a previously established baseline and an extra $2,000 for each adopted child characterized by the state as having a special need. States have earned a total of approximately $145 million in incentive payments for adoptions finalized in fiscal years 1998 through 2001.

ASFA also expanded the use of federal child welfare demonstration waivers that allow states to test innovative foster care and adoption practices. In 1994, the Congress gave HHS the authority to establish up to 10 child welfare demonstrations that waive certain restrictions in Titles IV-B and IV-E of the Social Security Act and allow broader use of federal foster care funds. ASFA authorized 10 additional waivers in each year between fiscal years 1998 and 2002 to ensure more states had the opportunity to test innovations. States with an approved waiver must conduct a formal evaluation of the project's effectiveness and must demonstrate the waiver's cost neutrality—that is, a state cannot spend more in Titles IV-B and IV-E funds than it would have without the waiver. Projects generally are to last no more than 5 years.

Limited Data are Available to Measure Changes in the Outcomes and Characteristics of Children Since ASFA

The number of annual adoptions has increased since the implementation of ASFA; however, data limitations restrict comparative analysis of other outcomes and characteristics of children in foster care.[9] Foster care adoptions grew from 31,004 in fiscal year 1997 to 48,680 in fiscal year 2000, representing a 57 percent increase.[10] However, current data constraints make it difficult to determine what role ASFA played in this increase. The lack of reliable and comparable pre- and post-ASFA data limits our ability to analyze how other foster care outcomes or children's characteristics have changed. Current data do, however, provide some information about the characteristics and experiences of foster children after ASFA. For example, children leaving foster care between 1998 and 2000 spent a median of approximately 1 year in care. Of these children, those who were adopted spent more time in care—a median of approximately 3-½ years.

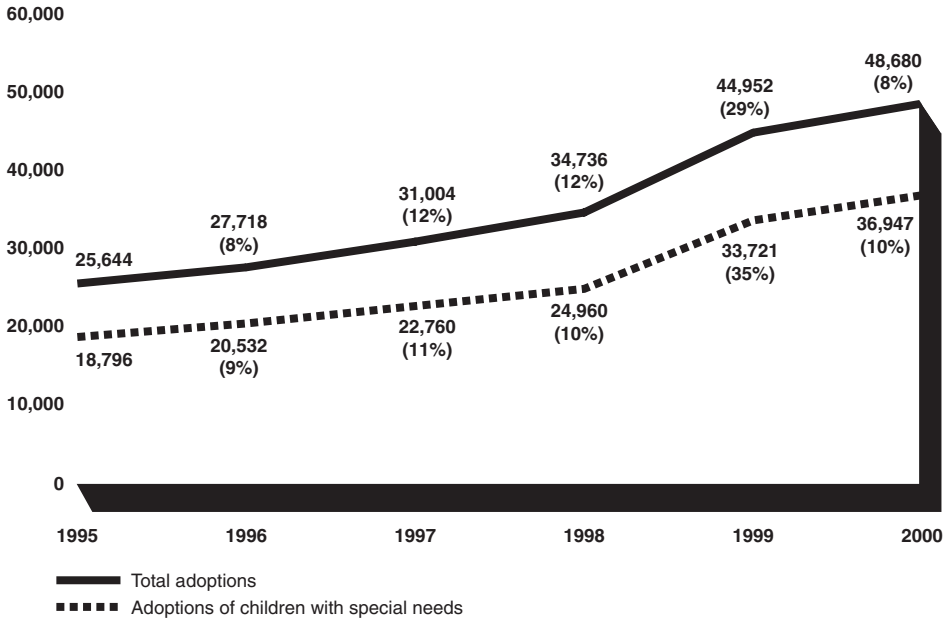
Adoptions Have Increased Since ASFA, but Changes in Other Outcomes Unclear

Adoptions from state foster care programs have increased nationwide by 57 percent from the time ASFA was enacted through fiscal year 2000, but changes in other outcomes are less clearly discernable. According to data available from HHS, the increase in adoptions began prior to the enactment of federal child welfare reforms (see fig. 1). For example, adoptions generally increased between 8 percent and 12 percent each year between 1995 and 2000, except in 1999 when they increased by 29 percent over 1998 adoptions. The increase in overall adoptions of children in foster care is accompanied by a parallel increase in the adoptions of children with special needs.

[9]HHS officials believe that the adoption data available as early as 1995 are more reliable than early data on other outcomes because of the incentive payments that states can earn for increasing adoptions. They noted that states made great efforts to improve the accuracy of their adoption data when the incentive payment baselines were established. For example, HHS initially estimated about 20,000 adoptions for fiscal year 1997, but after states reviewed and submitted their adoption data, as required for participation in the adoption incentive program, they reported about 31,000 adoptions.

[10]All HHS data are presented in terms of federal fiscal year.

Figure 1: Number of Children Adopted from Foster Care between Fiscal Years 1995 and 2000



Source: Data from HHS's Children's Bureau used to determine adoption incentive payments.

Note: The percentages in parentheses represent the increase in finalized adoptions over the previous year.

The role ASFA played in the increase in adoptions after 1997, however, is unclear. Similarly, whether the number of foster children being adopted will continue to rise in the future is unknown. For example, since our report was issued last June, HHS reported that 48,741 adoptions were finalized in 2001, which represents only a slight increase over adoptions finalized in 2000. While ASFA may have contributed to the adoptions of these children, other factors may have also played a role. For example, HHS officials told us that state child welfare reform efforts that occurred before ASFA might be linked to the observed increase in adoptions. Since it can take several years for foster children to be adopted, and ASFA has only been in existence for a few years, evidence of ASFA's effect may not be available for some time.

ASFA's effect on other foster care outcomes, such as birth family reunifications, is also difficult to determine. Lack of comparable and reliable data on foster care children, before and after ASFA, make it

difficult to know how ASFA has affected the child welfare system. While HHS officials report that some data are reliable to provide a picture of children in foster care after ASFA, they state that the child welfare data covering pre-ASFA periods are not reliable due to problems such as low response rates and data inconsistencies. Since 1998, however, HHS data specialists have observed improvements in the data submitted to HHS by states and attribute the changes to several factors, including the provisions of federal technical assistance to the states on data processing issues, the use of federal financial penalties and rewards, and the use of outcome measures to evaluate states' performance. According to HHS, these data improvements make it impossible to determine whether observed changes in outcomes from one year to the next are the result of changes in data quality or changes in state performance. HHS expects that the data will stabilize over time and can eventually be used as a reliable measure of state performance.

Current Data Describe Characteristics and Experiences of Children Who Exited Care between 1998 and 2000

Although pre-ASFA data are limited, current data do shed some light on the characteristics and experiences of the more than 741,000 children who exited foster care between 1998 and 2000.[11] According to HHS data for this time period and results from our survey, the following outcomes and characteristics describe the experiences children had while in foster care:

- Children left foster care after a median length of stay of approximately 1 year, although the amount of time spent in care differed depending on where the children were permanently placed. For example, in 2000, the median length of stay for children exiting care was 12 months. In contrast, the median length of stay for adopted children was 39 months in 2000.
- Many children have only one placement during their foster care stay, but a few experience five or more placements. Adopted children tend to have more foster care placements than other children, in part, because of their longer foster care stays.
- Upon leaving foster care, most children returned home to the families they had been living with prior to entering foster care. However, approximately 33 percent of the children who went home to their birth

[11]According to HHS's AFCARS data, 223,255 children exited foster care in fiscal year 1998 from 44 states (including the District of Columbia and Puerto Rico); 250,950 exited foster care in fiscal year 1999 from 51 states (including the District of Columbia and Puerto Rico); and 267,344 exited foster care in fiscal year 2000 from 51 states (including the District of Columbia).

families in 1998 subsequently returned to foster care by 2000, for reasons such as additional abuse and neglect at home.

- Our survey results indicated that the median percentage of children abused or neglected while in foster care during 1999 and 2000 was 0.60 percent and 0.49 percent, respectively.[12] Maltreatment rates in foster care ranged from a high of 2.74 percent in the District of Columbia to a low of 0.02 percent in Nebraska.[13]

Children exit foster care in a number of ways, including reunifying with their families,[14] being adopted, emancipation,[15] or entering a guardianship arrangement.[16] Although most children reunify with their families, the second most common way of exiting foster care is through adoption. The children adopted from foster care have a wide variety of characteristics, yet the data indicate some general themes.

- On average, 85 percent of the children adopted in 1998, 1999, and 2000 were classified as having at least one special need that would qualify them for adoption subsidies under Title IV-E.[17] According to results

[12]Of the 46 states that responded to our survey, 16 provided data on the percentage of foster children who had a substantiated report of abuse or neglect in fiscal year 1999, 2 provided data for calendar year 1999, 1 provided data for state fiscal year 1999, 18 provided data for fiscal year 2000, 1 provided data for calendar year 2000, and 2 provided data for state fiscal year 2000.

[13]According to HHS's *Child Welfare Outcomes 1999: Annual Report*, the median percentage of foster children abused and neglected while in care was 0.5 percent for the 20 states reporting. Maltreatment rates in foster care range from a high of 2.3 percent in Rhode Island to a low of 0.1 percent in Arizona, Delaware, and Wyoming.

[14]In AFCARS, reunification is defined as the child returning to the family with whom the child had been living prior to entering foster care.

[15]A child is emancipated from foster care when the child reaches majority age according to state law.

[16]Guardianship arrangements occur when permanent legal custody is awarded to an individual, such as a relative.

[17]While current AFCARS data indicate that 85 percent of children adopted in fiscal years 1998 through 2000 have at least one special need, the adoption incentive data presented earlier in figure 1 indicate a lower proportion of children with special needs adopted from foster care. An HHS official explained that this discrepancy is due to the timing of the measurement of the data. The data in figure 1 were measured at an earlier point in time and the numbers are not updated since adoption incentive payments are awarded to states based on the number of finalized adoptions reported at the end of each fiscal year. The data presented here reflect changes to AFCARS based on states resubmitting previous data after the initial reporting periods and are as recent as April 2002.

from our survey, 18 states reported that, on average, 32 percent of the children adopted from foster care in 2000 had three or more special needs.[18]

- Children adopted from foster care are equally likely to be male or female, slightly more likely to be black, and much more likely to be under age 12. The gender and race/ethnicity distributions of children adopted from foster care are similar to those of the general population of children in foster care. However, children adopted from foster care tend to be younger than the general population of children in foster care.
- Our survey results indicate that in fiscal year 2000 adopted children spent an average of 18 months living with the family that eventually adopted them prior to their adoption being finalized.[19]

As noted for other outcomes, the lack of reliable and national pre-ASFA data make it difficult to determine whether the rate at which adoptions encountered problems has changed since ASFA was enacted.[20] However, limited data suggest that problems occur in a small percentage of foster care adoptions. According to our survey,[21] about 5 percent of adoptions planned in fiscal years 1999 and 2000 disrupted prior to being finalized.[22] States also reported that approximately 1 percent of adoptions finalized in these years legally dissolved at a later date and that about 1 percent of the children who were adopted in these years subsequently re-entered foster

[18]One of the 18 states reporting on the number of children adopted with three or more special needs provided data based on calendar year 2000.

[19]Of the 46 states responding to our survey, 22 provided fiscal year data on the length of time children lived with the family that eventually adopted them and 1 provided data for calendar year 2000.

[20]Studies on adoption problems prior to ASFA's enactment have several limitations, such as small samples sizes, coverage of a few locations, and a focus on narrowly defined groups of children.

[21]Of the 46 states that responded to our survey, 17 provided data on adoption disruptions for fiscal year 1999, 2 provided data for calendar year 1999, 18 provided data on adoption disruptions for fiscal year 2000, and 2 provided data for calendar year 2000.

[22]For example, Illinois reported a 12.4 percent disruption rate for fiscal year 1999 on our survey. In comparison, one study (Robert Goerge and others, *Adoption, Disruption, and Displacement in the Child Welfare System, 1976-1995* (Chicago: Chapin Hall Center for Children at the University of Chicago, 1995)) reviewed all planned and finalized adoptions in Illinois between 1981 and 1987. During that time, an average of 9.9 percent of adoption plans for Illinois foster children disrupted.

care.[23] However, little time has elapsed since these adoptions were finalized, and some of these adoptions may fail at a later date.

While Little Data are Available on Key ASFA Permanency Provisions, Some States Describe Circumstances That Limit Their Broader Use

While few states were able to provide data on the numbers of children affected by ASFA's fast track and 15 of 22 provisions, some reported on circumstances that make it difficult to use these provisions for more children. In addition, HHS collects very little data on the use of these provisions. Data from four states that provided fast track data in response to our survey indicate that they do not use this provision frequently. However, they described several court-related issues that make it difficult to fast track more children, including court delays and a reluctance on the part of some judges to relieve the state from reunification efforts. Survey responses from the few states that provided data on the 15 of 22 provision indicate that these states do not file TPRs for many children who are in care for 15 months. Officials in the six states we visited reported that they determine that filing a TPR under this provision for many children is not in the children's best interests. The determination is based on a variety of factors, such as difficulties in finding adoptive parents.

While Data on Fast Track Are Limited, Some States Report Court-Related Issues That Hinder the Use of the Fast Track Provision for More Children

Few states were able to provide data on their use of the fast track provision in response to our survey and HHS does not collect these data from the states. As a result, we do not have sufficient information to discuss the extent to which states are using this provision. Survey data reported by four states suggest the infrequent use of fast track. In fiscal year 2000, for example, about 4,000 children entered the child welfare system in Maryland, but only 36 were fast-tracked. Child welfare officials in the six states we visited told us that they used ASFA's fast track provision for a relatively small number of cases. Three states indicated that they fast-tracked abandoned infants, while four states reported using fast track for cases involving serious abuse, such as when a parent has murdered a sibling; however, some state officials also noted that few child welfare cases involve these circumstances. In addition, five states reported

[23]Of the 46 states that responded to our survey, 18 provided data on dissolutions for fiscal year 1999, 19 provided data on dissolutions for fiscal year 2000 and 1 provided data for calendar year 2000. In addition, 21 states provided survey data on foster care re-entries by children adopted in fiscal year 1999, 22 provided data for children adopted in fiscal year 2000, and 1 provided data for children adopted in calendar year 2000. Our survey results indicate that of all the children with finalized adoptions in fiscal year 1999, 0.55 percent returned to foster care in fiscal year 1999 or 2000. Of all the children with finalized adoptions in fiscal year 2000, 1.43 percent returned to foster care in fiscal year 2000.

that they would fast track certain children whose parents had involuntarily lost parental rights to previous children if no indication exists that the parents have addressed the problem that led to the removal of the children.

Officials in five of the states we visited described several court-related issues that they believe hindered the greater use of the fast track provision. However, because of the lack of data on states' use of fast track, we were unable to determine the extent of these problems. Officials in these states told us that some judges or other legal officials are at times reluctant to approve a state's fast track request. For example, child welfare staff for a county in North Carolina described a case in which a judge approved a fast track request involving a child who had suffered from shaken baby syndrome, but refused a similar request on a sibling who was born a few months after the shaking episode. County staff said that the judge's decision was based on the fact that the parents had not hurt the newborn and should be given an opportunity to demonstrate their ability to care for this child. State officials in North Carolina also told us that delays in scheduling TPR trials in the state undermine the intent of fast tracking. They noted that the agency may save time by not providing services to a family, but the child may not be adopted more quickly if it takes 12 months to schedule the TPR trial. Officials in Massachusetts expressed similar concerns about court delays experienced in the state when parents appeal a court decision to terminate their parental rights.

Other difficulties in using fast track to move children out of foster care more quickly are related to the specific categories of cases that are eligible to be fast-tracked. Officials in five states told us that they look at several factors when considering the use of fast track for a parent who has lost parental rights for other children. If a different birth father is involved, child welfare officials told us that they are obligated to work with him to determine if he is willing and able to care for the child. According to Maryland officials, if the agency is providing services to the father to facilitate reunification, pursuing a fast track case for the mother will not help the child leave foster care more quickly. In addition, child welfare officials in Massachusetts and Illinois emphasized that a parent who has addressed the problems that led to a previous TPR should have an opportunity to demonstrate the ability to care for a subsequent child.

Regarding the fast track category involving parents who have been convicted of certain felonies, child welfare officials in Massachusetts and Texas described this provision as impractical due to the time it takes to obtain a conviction. Massachusetts officials told us that, in most cases, the

children are removed at the time the crime is committed, and judges will not approve the fast track in these cases until the parent is actually convicted, which is usually at least a year after the actual crime. Finally, in Massachusetts, Texas, and Maryland, officials reported that it can be difficult to prove that a parent subjected a child to aggravated circumstances, such as torture or sexual abuse. According to these officials, the time and effort to go through additional court hearings to demonstrate the aggravated circumstances is not worthwhile; instead, the child welfare agency chooses to provide services to the family.

Although Little Data Exist on 15 of 22, Some States Report That They Do Not File TPRs on Many Children

Most states do not collect data on their use of ASFA's 15 of 22 provision. In response to our survey, only nine states were able to provide information on the number of children for whom the state filed a TPR due to the 15 of 22 provision or the number of children who were in care for 15 of the most recent 22 months and for whom a TPR was not filed. In addition, HHS does not systematically track these data, although it does collect some limited information on the 15 of 22 provision as part of its review of state child welfare agencies. The survey responses from 9 states indicated that they did not file a TPR on a number of children—between 31 and 2,919 in 2000—who met the requirements of the 15 of 22 provision. For most of these nine states, the number of children for whom a TPR was not filed greatly exceeded the number of children for whom a TPR was filed. For example, while Oklahoma filed over 1,000 TPRs primarily because the child had been in foster care for 15 of the most recent 22 months, it did not file a TPR for an additional 2,900 children.

Officials in all six states we visited told us that establishing specific timeframes for making permanency decisions about children in foster care has helped their child welfare agencies focus their priorities on finding permanent homes for children more quickly. Two of the states we visited—Texas and Massachusetts—created procedures prior to ASFA to review children who had been in care for a certain length of time and decide whether continued efforts to reunify a family were warranted. Other states had not established such timeframes for making permanency decisions before the 15 of 22 provision was enacted. The director of one state child welfare agency told us that, prior to ASFA, the agency would work with families for years before it would pursue adoption for a child in foster care. Officials in Maryland, North Carolina, and Oregon said that the pressure of these new timeframes has helped child welfare staff work more effectively with parents, informing them up front about what actions they have to take in the next 12 to 15 months in order to reunify with their children. Private agency staff in three states, however, expressed concern

that pressure from these timeframes could push the child welfare agency and the courts to make decisions too quickly for some children.

Child welfare officials in the six states we visited described several circumstances under which they would not file a TPR on a child who was in care for 15 of the most recent 22 months. In five of the six states, these officials told us that the provision is difficult to apply to children with special needs for whom adoption may not be a realistic option, such as adolescents and children with serious emotional or behavioral problems. Officials from Maryland and North Carolina reported that, in many cases, the child welfare agency does not file a TPR for children who have been in care for 15 of the most recent 22 months because neither the agency nor the courts consider it to be in the children's best interest to be legal orphans—that is, to have their relationship to their parents legally terminated, but have no identified family ready to adopt them.[24] State officials in Oregon told us that state law requires that parental rights be terminated solely for the purposes of adoption, so as to avoid creating legal orphans.

Officials in four states noted that many adolescents remain in long-term foster care. In some cases, they have strong ties to their families, even if they cannot live with them, and will not consent to an adoption.[25] In other cases, the teenager is functioning well in a stable situation with a relative or foster family that is committed to the child but unwilling to adopt.[26] For example, officials in a child welfare agency for a county in North Carolina told us about a potentially violent 16-year old foster child who had been in a therapeutic foster home for 10 years. The family was committed to fostering the child, but did not want to adopt him because they did not have the financial resources to provide for his medical needs and because they did not want to be responsible for the results of his actions.

[24]In North Carolina, child welfare agency staff may recommend to the court that a TPR not be filed on a child who has been in care for 15 of the most recent 22 months; however, according to state officials, North Carolina requires that a judge determine that one of the ASFA exceptions exists.

[25]All the states we visited require that children over a certain age consent to their adoption. For example, Maryland requires that children 10 years or older consent to their adoption.

[26]ASFA specifically allows states to exempt children placed with relatives from the 15 of 22 provision.

Child welfare staff from two states told us that some parents need a little more than 15 months to address the problems that led to the removal of their children. If the child welfare agency is reasonably confident that the parents will be able to reunify with their children in a few months, the agency will not file a TPR for a child who has been in foster care for 15 months. In addition, child welfare officials in four states observed that parents must have access to needed services, particularly substance abuse treatment, soon after a child enters care in order for the child welfare system to determine if reunification is a realistic goal by the time a child has been in care for 15 months. Officials in Maryland, Oregon, and Texas reported that the lack of appropriate substance abuse treatment programs that address the needs of parents makes it difficult to get parents in treatment and stable by the 15th month.

New ASFA Adoption-Related Funds Most Commonly Used to Recruit Adoptive Families and Provide Post Adoption Services

States reported in our survey that they most commonly used their adoption incentive payments and PSSF adoption promotion and support services funds to recruit adoptive families and to provide post adoption services (see table 1). Child welfare officials in all of the states we visited reported that they are struggling to recruit adoptive families for older children and those with severe behavioral or medical problems. To meet this challenge, states are investing in activities designed to match specific foster care children with adoptive families, as well as general campaigns to recruit adoptive families. Child-specific recruitment efforts include: featuring children available for adoption on television, hosting matching parties for prospective adoptive parents to meet children available for adoption, and taking pictures and videos of foster children to show to prospective families. For example, Massachusetts used its incentive payments to fund recruitment videos to feature the 20 children who had been waiting the longest for adoptive families. General recruitment efforts being funded by states include promoting adoption through National Adoption Month events, hiring additional recruiters, and partnering with religious groups.

Table 1: Main Uses of Adoption Incentive Payments and PSSF Adoption Promotion and Support Funds

Activity	Number of states using adoption incentive payments (FY 1999 and FY 2000)	Number of states using PSSF adoption promotion and support funds (FY 2000)
Recruitment of adoptive families	19[a]	16[b]
Post adoption services[c]	17[a]	21[b]
Preadoptive counseling	[d]	15
Hiring/Contracting additional social work staff	13[e]	[d]
Training	11	4

Source: GAO survey.

Note: Of the 46 states that responded to our survey, 34 provided data on the use of FY 1999 and FY 2000 incentive payments and 26 provided information on the use of FY 2000 PSSF funds.

[a]One state provided data for calendar year 1999.

[b]One state provided data for calendar year 2000.

[c]Post adoption services include: counseling, respite care (short-term specialized child care to provide families with temporary relief from the challenges of caring for adoptive children), support groups, adoption subsidies, and adoption preservation services.

[d]This activity was not included as a response for this funding source.

[e]One state provided data for state fiscal years 1999 and 2000.

States are also investing adoption incentive payments and PSSF funds in services to help adoptive parents meet the challenges of caring for children who have experienced abuse and neglect. During our site visits, officials in Massachusetts and Illinois pointed out that the population of adopted children had increased significantly in recent years and that the availability of post adoption services was essential to ensure that these placements remain stable. Approximately 60 percent of the states responding to our survey used their adoption incentive payments or their PSSF funds or both for post adoption services, such as post adoption counseling, respite services, support groups, and recreational activities. For example, California has used some of its adoption incentive funds to pay for therapeutic camps and tutoring sessions for adopted children. In addition, Minnesota has used PSSF funds to teach adoptive parents how to care for children with fetal alcohol syndrome and children who find it difficult to become emotionally attached to caregivers.

Although the 46 states responding to our survey reported that they are most frequently using the money for the activities described above, about two-thirds of them also reported that they are investing some of these

funds in a variety of other services. Many states are using PSSF funds to provide pre-adoptive counseling to help children and parents prepare for the emotional challenges of forming a new family. Similarly, some states are using incentive payments and PSSF funds to train foster families, adoptive families, and service providers. For example, Arkansas used its incentive payments to help families attend an adoptive parent conference, while Kentucky used its incentive funds to train judges and attorneys on adoption matters. Finally, some states are using their adoption incentive payments to hire or contract additional child welfare and legal staff.

States Develop Practices in Response to Long-Standing Barriers That Continue to Hamper Efforts to Promote Permanency for Foster Children

States have been developing a range of practices to address long-standing barriers to achieving permanency for children in a timely manner—many of which have been the subject of our previous reports. Both independently and through demonstration waivers approved by HHS, states are using a variety of practices to address barriers relating to the courts, recruiting adoptive families for children with special needs, placing children in permanent homes in other jurisdictions, and the availability of needed services. Because few of these practices have been rigorously evaluated, however, limited information is available on their effectiveness.

Systemic Court Problems Continue to Delay Child Welfare Cases

Our previous work, officials in all the states we visited, and over half of our survey respondents identified problems with the court system as a barrier to moving children from foster care into safe and permanent homes.[27] In 1999, we reported on systemic problems that hinder the ability of courts to produce decisions on child welfare cases in a timely manner

[27]Of the 29 states that reported an insufficient number of judges or court staff, 18 reported that the problem represented either a moderate, great, or very great hindrance to finding permanent homes for children. Of the 28 states that reported insufficient training for court staff, 20 reported that the problem represented a moderate or great hindrance. Of the 23 states that reported that judges were not supportive of ASFA's goals, 10 reported that the problem represented either a moderate, great, or very great hindrance. Of the 46 states that responded to our survey, 40 reported on the insufficient number of judges and court staff, 41 reported on the lack of training for judges and court staff, and 39 reported on judges not being supportive of ASFA's goals.

that meet the needs of children.[28] The barriers included inadequate numbers of judges and attorneys to handle large caseloads, the lack of cooperation between the courts and child welfare agencies, and insufficient training of judges and attorneys involved in child welfare cases.

During our visit to Massachusetts, state officials told us that the courts experienced significant delays in court hearings and appeals due to a lack of court resources. As an alternative to court proceedings, Massachusetts implemented a permanency mediation program—a formal dispute resolution process in which an independent third party facilitates permanency planning between family members and potential adoptive parents in a nonadversarial setting. By avoiding trials to terminate parental rights, Massachusetts officials reported that permanency mediation helps reduce court workloads, eliminate appeals, and more effectively uses limited court resources. A preliminary evaluation of the Massachusetts program suggested that cases involved in the mediation program needed less time and fewer court resources to reach an agreement than cases that go to trial. However, the evaluation did not directly compare outcomes, such as the length of time a child spent in foster care, for mediation and nonmediation cases.

Texas officials identified court barriers in rural areas that negatively affect both the timeliness and quality of child welfare proceedings—specifically, the lack of court time for child welfare cases and the lack of judges with training and experience in child welfare issues. In response to these barriers, Texas developed the visiting judge cluster court system, an approach in which a judge trained in child welfare issues is assigned to a cluster of rural counties. The judge travels from county to county presiding over all child welfare cases. This approach may create more court time in rural areas and allows knowledgeable and experienced judges to make the best possible decisions for children in foster care. While Texas officials believe this approach has been helpful in moving children to permanency, no formal evaluation of the approach has been conducted.

[28]U.S. General Accounting Office, *Juvenile Courts: Reforms Aim to Better Serve Maltreated Children*, GAO/HEHS-99-13 (Washington, D.C.: Jan. 11, 1999).

Permanency for Children with Special Needs Hindered by Lack of Adoptive Families

Officials in five states we visited, along with the majority of the respondents to our state survey, reported that difficulties in recruiting families to adopt children with special needs is a major barrier to achieving permanent placements for these children.[29] Our survey revealed that states relied on three main activities to recruit adoptive families for children who are waiting to be adopted: listing a child's profile on state and local Web sites, exploring adoption by adults significantly involved in the child's life, and featuring the child on local television news shows.[30]

Several states we visited are using recruitment campaigns targeted to particular individuals who may be more likely to adopt children with special needs. For example, the child welfare agencies in Illinois, Maryland, North Carolina, and Texas are collaborating with local churches to recruit adoptive families specifically for minority children. However, an Illinois recruitment report noted that little information exists on what kinds of families are likely to adopt children with specific characteristics. While the states we visited used a variety of recruitment efforts to find families for special needs children, they generally did not collect data on the effectiveness of their recruiting efforts.

In addition to the activities described above, some demonstration waivers are testing a different approach to finding permanent homes for children in foster care.[31] Seven states are using demonstration waivers to pay subsidies to relatives and foster parents who become legal guardians to foster children in their care. These states hope to reduce the number of children in long-term foster care by formalizing existing relationships in which relatives or foster parents are committed to caring for a child but adoption is not a viable option. Evaluation results from Illinois's waiver suggest that offering subsidized guardianship can increase the percentage

[29]Of the 46 states responding to our survey, 43 states reported on the sufficiency of adoptive homes for children with special needs. All 43 states reported that they did not have enough adoptive homes for children with special needs, with 39 reporting that the problem represented a moderate, great, or very great hindrance to finding permanent homes for children.

[30]Of the 46 states responding to our survey, 44 answered the question about recruitment activities used in their states.

[31]HHS is authorized to approve child welfare demonstration projects in up to 10 states for each of the 5 fiscal years 1998 through 2002. Under these projects, HHS waives certain restrictions in title IV-E and allows broader use of federal foster care funds.

of children placed in a permanent and safe home. Results from most of the other guardianship waiver projects are not yet available.

Placing Children Across Jurisdictions Remains Problematic for States

Many states encounter long-standing barriers in placing children with adoptive families in other states. As we reported previously, these interjurisdictional adoptions take longer and are more complex than adoptions within the same child welfare jurisdiction.[32] Interjurisdictional adoptions involve recruiting adoptive families from other states or other counties within a state, conducting comprehensive home studies of adoptive families in one jurisdiction, sending the resulting home study reports to another jurisdiction, and ensuring that all required legal, financial, and administrative processes for interjurisdictional adoptions are completed. Five states we visited reported frequent delays in obtaining from other states the home study reports necessary to place a child with a potential adoptive family in another state. According to recent HHS data, children adopted by out-of-state families typically spend about 1 year longer in foster care than children adopted by in-state families.

Child welfare agencies have implemented a range of practices to facilitate adoptions across state and county lines. In our survey, the most common practices for recruiting adoptive families in other jurisdictions included publicizing profiles of foster care children on websites, presenting profiles of children in out-of-state media, and contracting with private agencies to recruit adoptive parents in other states.[33] States have also developed practices to expedite the completion of home studies and shorten the approval processes for interstate adoptions. The two primary practices cited by states on our survey were working with neighboring states to facilitate interstate placements and contracting with private agencies to conduct home studies in other states.[34]

States we visited have implemented several of these practices to overcome barriers to interjurisdictional adoptions. In Oregon, the state child welfare

[32]U.S. General Accounting Office, *Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process*, GAO/HEHS-00-12 (Washington, D.C.: Nov. 19, 1999).

[33]Of the 46 states that responded to our survey, 22 reported that they publicized profiles of foster children in media in other states, 41 reported that they publicized profiles of foster children on web sites, and 15 reported that they contracted with private agencies to recruit adoptive parents in other states.

[34]Of the 46 states responding to our survey, 35 reported that they worked with neighboring states to facilitate interstate placements and 19 reported that they contracted with private agencies in other states to conduct home studies.

agency works with neighboring states in the Northwest Adoption Exchange to recruit adoptive parents for children with special needs. In Texas, the state contracts with private agencies to place foster care children with out-of-state adoptive families. In Illinois, the state works with a private agency in Mississippi to conduct home studies because families in Mississippi adopt many Illinois children.

Poor Access to Services Can Impede Permanency Decisions

Officials in four states told us that making decisions about a child's permanent home within a year is difficult if the parent has not had access to the services necessary to address their problems, particularly substance abuse treatment. We have previously reported on barriers to working with parents who have a substance abuse problem, including inadequate treatment resources and a lack of collaboration among substance abuse treatment providers and child welfare agencies.[35] Similarly, 33 states reported in our survey that the lack of substance abuse treatment programs is a barrier to achieving permanency for children.[36]

To address this issue, four states have developed waiver projects to address the needs of parents with substance abuse problems. By testing ways to engage parents in treatment and to provide more supportive services, these states hope to increase the number of substance abusing parents who engage in treatment, increase the percentage of children who reunify with parents who are recovering from a substance abuse problem, and reduce the time these children spend in foster care. For example, Delaware's waiver funds substance abuse counselors to help social workers assess potential substance abuse problems and engage parents in treatment. Final evaluation results were published in March 2002 and concluded that the project successfully engaged many parents in substance abuse treatment and resulted in foster care cost savings, although it did not achieve many of its intended outcomes. For example, children participating in the waiver project spent 31 percent less time in foster care than similar children who were not part of the waiver project,

[35]U.S. General Accounting Office, *Foster Care: Agencies Face Challenges Securing Stable Homes for Children of Substance Abusers*, GAO/HEHS-98-182 (Washington, D.C.: Sept. 30, 1998).

[36]Of the 46 states that responded to our survey, 39 reported on the lack of substance abuse treatment programs. Of the 33 states that reported that not enough drug treatment programs were available, 26 reported that the problem represented either a moderate, great, or very great hindrance to finding permanent homes for children.

although the project's goal was a 50 percent reduction. Evaluation results for the other states are not yet available.

Concluding Observations

Most of the states we visited reported that ASFA has played an important role in helping them focus on achieving permanency for children within the first year that they enter foster care. However, numerous problems with existing data make it difficult to assess at this time how outcomes for children in foster care have changed since ASFA was enacted. While an increasing number of children have been placed in permanent homes through adoption during the last several years, we know little about the role ASFA played in the adoption increases or other important outcomes, such as whether children who reunify with their families are more or less likely to return to foster care or whether these adoptions are more or less stable than adoptions from previous years.

The availability of reliable data, both on foster care outcomes and the effectiveness of child welfare practices, is essential to efforts to improve the child welfare system. In the past few years, HHS and the states have taken important steps to improve the data available to assess child welfare operations. In addition, evaluation data from the demonstration waivers should be available in the next few years, providing key information on child welfare practices that are effective and replicable. However, important information about ASFA's impact on children in foster care is still unavailable. For example, the lack of comprehensive and consistent data regarding the fast track and 15 of 22 provisions make it difficult to understand the role of these new provisions in reforming the child welfare system and moving children into permanent placements. To obtain a clearer understanding of how ASFA's two key permanency provisions are working, we recommended in our June 2002 report that the Secretary of HHS review the feasibility of collecting data on states' use of ASFA's fast track and 15 of 22 provisions. In commenting on that report, ACF generally agreed with our findings and recommendation. ACF officials report that they are currently in the process of reviewing child welfare data issues, which includes an internal review of AFCARS and obtaining input from the states through focus groups. In addition, GAO is currently conducting an engagement for the Senate Finance Committee and the House Majority Leader on states' implementation of automated information systems and reporting of child welfare data to HHS. I expect this report to be released in July.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other members of the Subcommittee may have.

GAO Contact and Acknowledgments

For further contacts regarding this testimony, please call Cornelia M. Ashby at (202) 512-8403. Individuals making key contributions to this testimony include Diana Pietrowiak, Sara L. Schibanoff, and Michelle St. Pierre.

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