



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

AB809/SB461 TALKING POINTS

- It is critical that AB 809/SB 461 passes the Senate for two reasons:
 1. This is good policy and emphasizes best practices for children and their families who are involved with the child welfare and juvenile justice system in our state, which allows Wisconsin the opportunity to maximize our ability to capture federal IV-E funds.
 2. This puts Wisconsin in compliance with the federal Adoption and Safe Families Act and the final administrative rule implementing the act. Lack of compliance with the federal law can result in significant loss of federal revenue under Title IV-E of the Social Security Act and possible financial penalties to the state.
- The Adoption and Safe Families Act emphasizes the following themes:
 1. The safety of the child must be paramount;
 2. Permanency decisions for children must be timely;
 3. States must meet a set of child well-being outcomes;
 4. Permanency for the child must be the top priority when considering a placement.
- Many of the requirements of ASFA were incorporated into Wisconsin Statutes by 1997 Wisconsin Act 237. AB809/SB461 clarifies and adds to those changes based on the final federal rules implementing ASFA.
- AB809 passed in the Assembly 97-2 on Tuesday, February 26, 2002.

What are the highlights of AB809/SB461?

A. Physical Custody Hearings

- Physical custody hearings are required in all cases.
- Requires the court to make contrary to welfare and reasonable efforts to prevent removal at the temporary physical custody hearing.

B. Judicial Findings

- A newly created judicial finding that reasonable efforts to finalize the permanency plan must be made within 12 months of the child's removal from the home and every 12 months thereafter.
- Requires a statement of the factual basis for the contrary to welfare, reasonable efforts to prevent removal and the reasonable efforts to finalize the permanency plan finding be stated or referenced.

C. Termination of Orders

- Removes the requirement that the court order expires after 1 year in cases where the child is placed in out-of-home care.
- Requires a permanency hearing every 12 months, which reduces the number of court hearings that would be held because dispositional hearings and permanency plan reviews may not be on the same time line under current statutes.

D. Reasonable Efforts to Prevent Removal and to Return Home Not Required

- In specified situations, the court can make a finding that reasonable efforts are not required.
- If made at the time of the removal the permanency hearing must be held within 30 days.

E. Permanency Goals

- When determining the permanency options for a child, the agency shall consider one or more of the following goals: 1) reunification with the family; 2) adoption; 3) placement with a guardian; 4) permanent placement with a fit and willing relative; and 5) alternative placement (i.e. long-term foster care).

F. Permanency Planning Required with Court Order Relative Placements

- Affords the child and the relative the same level of services regardless if the placement is with a relative or non-relative.

G. Petition for Termination of Parental Rights

- A petition must be filed to terminate parental rights if a child has been in foster care under the responsibility of the State for 15 of the most recent 22 months, unless a filing with exception applies.

What is the amount of federal funds that will be lost if this does not pass?

- **Title IV-E Eligibility Review**

To determine Wisconsin's level of compliance with Title IV-E mandates the U.S. Department of Health and Human Services (HHS) is conducting the Title IV-E eligibility review in March 2002. A statewide sample of 80 cases for which IV-E reimbursement was claimed will be reviewed. If any of the 80 cases are found to have an error regarding the IV-E eligibility of the child or the reimbursability of a period in care, a case specific disallowance will be made. If more than 10% of the cases have an error, then the state will fail the initial review and be subject to a larger secondary review of 150 cases.

For the larger secondary review, if both the case errors and dollar amount of the case specific disallowances exceed the 10% error threshold, then a one-time disallowance will be extrapolated against the entire IV-E claim submitted by the state in that year. **A conservative estimate of the federal funds that could be lost is \$10 million.**

To minimize the potential for federal penalties, state statutory changes have been proposed in AB809/SB461 to clarify how IV-E eligibility and reimbursability requirements must be implemented under state law.

- **Children and Family Services Review**

There is also the potential for additional financial penalties if the state is found to be in nonconformance with 14 national performance standards (7 outcomes and 7 systemic factors) during the Children and Family Services Review to be held in August 2003. The outcome portion involves review of state outcome data and on-site case reviews of a random sample of cases from 3 sites. The systemic portion involves review of state policies and overall program operations.

Fiscal penalties for each of the 14 items can be imposed against IV-B and IV-E funds received by the state. Penalties start at 1% per item, which would be approximately \$150,000 per item for Wisconsin and continues until the state comes into compliance. The penalty increases to 2% and then 3% per item if noncompliance continues at subsequent reviews.

1. What outcomes are states measured on?

A. Outcome Measures

- Safety Outcome 1 – Protection of children from abuse and neglect.
- Safety Outcome 2 – Maintain children safely in their homes where appropriate.
- Permanency Outcome 1 – Permanence and stability of living situations.
- Permanency Outcome 2 – Preserving continuity of family relationships.
- Well-Being Outcome 1 – Enhancing capacity of families to provide for children.
- Well-Being Outcome 2 – Educational services to children.
- Well-Being Outcome 3 – Physical and mental health services.

B. Systemic Factors

- Information System Capacity – implementation of a Statewide Automated Child Welfare Information System (SACWIS).
- Case Review System – written case plans and regular permanency hearings.
- Quality Assurance – state program standards and quality assurance activities.
- Staff and Provider Training – training for local agency staff and foster parents.
- Service Array – needs assessment and services to children and families.
- Responsiveness to the Community – annual reports and consultation with stakeholders.
- Foster and Adoptive Parent Licensing, Recruitment and Retention – standards for licensing, criminal background checks and recruitment.

2. If the Adoption and Safe Families Act passed in 1997 why didn't we do this sooner?

The Adoption and Safe Families Act (ASFA) legislation became effective in November of 1997. Many of the requirements of ASFA were incorporated into Wisconsin statutes by 1997 Wisconsin Act 237. The final federal rule for ASFA became effective in March of 2000. AB809/SB461 clarifies and adds to Wisconsin statutes based on the final federal rules implementing ASFA.

3. Is there anything in the legislation that isn't tied directly to the federal law?

There is one provision within AB809/SB461 requiring permanency planning for children placed with a relative by court order. While the provision is consistent with the intent of ASFA to achieve timely permanence for children, it is unclear whether this is a direct mandate. When a child is removed from his or her home, the clear intent of ASFA is to ensure that permanence is achieved for a child regardless of the child's placement with a relative or in a foster home. Relatives providing care to children should be afforded the same opportunity to services as a foster parent.

In addition, the bill codifies existing federal language specifying the contents of the permanency plan.