

104TH CONGRESS
1ST SESSION

H. R. 446

To prohibit States from requiring parents or legal guardians to transfer legal custody of their children for the sole purpose of obtaining public services for such children.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1995

Mr. STARK (for himself, Mrs. MORELLA, Mr. MATSUI, and Mr. COYNE) introduced the following bill; which was referred to the Committee on Ways and Means and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit States from requiring parents or legal guardians to transfer legal custody of their children for the sole purpose of obtaining public services for such children.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CHILD WELFARE SERVICES.**

4 Section 422(b) of the Social Security Act (42 U.S.C.
5 622(b)) is amended—

6 (1) by striking “and” at the end of paragraph

7 (9);

1 (2) by striking the period at the end of para-
2 graph (10) and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(11) provide that—

5 “(A) the State shall not require any parent
6 or legal guardian to transfer custody of a child
7 in order to have the child placed outside the
8 home of the parent or legal guardian, if the sole
9 reason for the placement is the need to obtain
10 services provided under the plan for the child’s
11 emotional, behavioral, or mental disorder or de-
12 velopmental or physical disability;

13 “(B) any such placement of a child shall
14 be made pursuant to a voluntary placement
15 agreement (as defined in section 472(f)(2));

16 “(C) the State shall have responsibility for
17 the placement of any child subject to a vol-
18 untary placement agreement (as so defined),
19 and for the care of any child so placed; and

20 “(D) the State shall apply procedural safe-
21 guards to assure each child so placed of
22 dispositional hearings of the type, and at the
23 times, specified in section 475(5)(C).”.

1 **SEC. 2. FAMILY PRESERVATION AND SUPPORT SERVICES.**

2 (a) IN GENERAL.—Section 432(a) of the Social Secu-
3 rity Act (42 U.S.C. 632(a)) is amended by redesignating
4 paragraphs (6), (7), and (8) as paragraphs (7), (8), and
5 (9), respectively, and by inserting after paragraph (5) the
6 following:

7 “(6) provides that—

8 “(A) the State shall not require any parent
9 or legal guardian to transfer custody of a child
10 in order to have the child placed outside the
11 home of the parent or legal guardian, if the sole
12 reason for the placement is the need to obtain
13 services provided through the State program
14 under this subpart for the child’s emotional, be-
15 havioral, or mental disorder or developmental or
16 physical disability;

17 “(B) any such placement of a child shall
18 be made pursuant to a voluntary placement
19 agreement (as defined in section 472(f)(2));
20 and

21 “(C) the State shall have responsibility for
22 the placement of any child subject to a vol-
23 untary placement agreement (as so defined),
24 and for the care of any child so placed; and

25 “(D) the State shall apply procedural safe-
26 guards to assure each child so placed of

1 dispositional hearings of the type, and at the
2 times, specified in section 475(5)(C);”.

3 (b) CONFORMING AMENDMENT.—Section
4 432(b)(2)(A) of such Act (42 U.S.C. 632(b)(2)(A)) is
5 amended by inserting “(other than of subsection (a)(6))”
6 after “this section”.

7 **SEC. 3. FOSTER CARE MAINTENANCE PAYMENTS.**

8 (a) IN GENERAL.—Section 471(a) of the Social Secu-
9 rity Act (42 U.S.C. 671(a)) is amended—

10 (1) by striking “and” at the end of paragraph
11 (16);

12 (2) by striking the period at the end of para-
13 graph (17) and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(18) provides that—

16 “(A) the State shall not require any parent
17 or legal guardian to transfer custody of a child
18 in order to have the child placed outside the
19 home of the parent or legal guardian, if the sole
20 reason for the placement is the need to obtain
21 foster care maintenance payments for the child;

22 “(B) any such placement of a child shall
23 be made pursuant to a voluntary placement
24 agreement; and

1 “(C) the State shall have responsibility for
2 the placement of any child subject to a vol-
3 untary placement agreement, and for the care
4 of any child so placed.”.

5 (b) MODIFICATION OF VOLUNTARY PLACEMENT
6 AGREEMENTS.—Section 472(f)(2) of such Act (42 U.S.C.
7 672(f)(2)) is amended—

8 (1) by inserting “legal” before “guardians”
9 each place such term appears; and

10 (2) by inserting “, and which does not transfer
11 legal custody of the child to the State” before the
12 period.

13 (c) RULE OF CONSTRUCTION.—Section 474 of such
14 Act (42 U.S.C. 674) is amended by adding at the end the
15 following:

16 “(d) The provisions of this part, individually or in
17 combination, shall not be construed to require a State to
18 have legal custody of a child in order to receive payments
19 under this part for services provided for the child outside
20 the child’s home.”.

21 **SEC. 4. MATERNAL AND CHILD HEALTH SERVICES.**

22 Section 505(a) of the Social Security Act (42 U.S.C.
23 705(a)) is amended—

24 (1) in paragraph (4), by striking “and” after
25 the semicolon at the end;

1 (2) in paragraph (5), by striking the period at
2 the end and inserting “; and”; and

3 (3) by inserting after paragraph (5) the follow-
4 ing paragraph:

5 “(6) provides that—

6 “(A) the State shall not require any parent
7 or legal guardian to transfer custody of a child
8 in order to have the child placed outside the
9 home of the parent or legal guardian, if the sole
10 reason for the placement is the need to obtain
11 services provided through the State under this
12 title for the child’s emotional, behavioral, or
13 mental disorder or developmental or physical
14 disability;

15 “(B) any such placement of a child shall
16 be made pursuant to a voluntary placement
17 agreement (as defined in section 472(f)(2));

18 “(C) the State shall have responsibility for
19 the placement of any child subject to a vol-
20 untary placement agreement (as so defined),
21 and for the care of any child so placed; and

22 “(D) the State shall apply procedural safe-
23 guards to assure each child so placed of
24 dispositional hearings of the type, and at the
25 times, specified in section 475(5)(C).”.

1 **SEC. 5. MEDICAID.**

2 Section 1902(a) of the Social Security Act (42 U.S.C.
3 1396a(a)) is amended—

4 (1) by striking “and” at the end of paragraph
5 (61);

6 (2) by striking the period at the end of para-
7 graph (62) and inserting “; and”; and

8 (3) by inserting after paragraph (62) the fol-
9 lowing new paragraph:

10 “(63) provide that the State agency shall pro-
11 vide assurances satisfactory to the Secretary that—

12 “(A) the State does not require any parent
13 or legal guardian to transfer custody of a child
14 in order to have the child placed outside the
15 home of the parent or legal guardian, if the sole
16 reason for the placement is the need to obtain
17 medical assistance for the child under the State
18 plan for the child’s emotional, behavioral, or
19 mental disorder or developmental or physical
20 disability;

21 “(B) any such placement of a child shall
22 be made pursuant to a voluntary placement
23 agreement (as defined in section 472(f)(2));

24 “(C) the State shall have responsibility for
25 the placement of any child subject to a vol-

1 untary placement agreement (as so defined),
2 and for the care of any child so placed; and

3 “(D) the State shall apply procedural safe-
4 guards to assure each child so placed of
5 dispositional hearings of the type, and at the
6 times, specified in section 475(5)(C).”.

7 **SEC. 6. SOCIAL SERVICES.**

8 Title XX of the Social Security Act (42 U.S.C. 1397–
9 1397f) is amended by adding at the end the following:

10 **“SEC. 2008. PROHIBITION AGAINST REQUIRING PARENTS**
11 **TO SURRENDER CUSTODY OF THEIR CHIL-**
12 **DREN IN ORDER TO OBTAIN SERVICES FOR**
13 **SUCH CHILDREN.**

14 “The Secretary shall not make any payment to a
15 State under this title if the State does not have in effect
16 laws and procedures which—

17 “(1) prevent the State from requiring any par-
18 ent or legal guardian to transfer custody of a child
19 in order to have the child placed outside the home
20 of the parent or legal guardian, if the sole reason for
21 the placement is the need to obtain any service for
22 the child for the child’s emotional, behavioral, or
23 mental disorder or developmental or physical disabili-
24 ty, which is furnished in whole or in part through
25 the use of funds provided under this title;

1 “(2) any such placement of a child shall be
2 made pursuant to a voluntary placement agreement
3 (as defined in section 472(f)(2));

4 “(3) the State shall have responsibility for the
5 placement of any child subject to a voluntary place-
6 ment agreement (as so defined), and for the care of
7 any child so placed; and

8 “(4) the State shall apply procedural safe-
9 guards to assure each child so placed of dispositional
10 hearings of the type, and at the times, specified in
11 section 475(5)(C).”.

12 **SEC. 7. EFFECTIVE DATE.**

13 The amendments made by this Act shall take effect
14 on October 1, 1995.

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