

STATE OF WISCONSIN
Department of Health and Family Services
Division of Children and Family Services

MEMO SERIES DCFS 97-05
(Amends DCS 95-45)
May 8, 1997
Re: RECENT FEDERAL
LEGISLATION AFFECTING
ADOPTION AND FOSTER
CARE PROGRAMS

TO: Area Administrators/Assistant Area Administrators
BPP Adoption Unit Supervisors
DCFS Bureau Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Licensed Child Placing Agencies Directors
Program Office Directors/Section Chiefs
Tribal Chairpersons/Human Services Facilitators

From Susan N. Dreyfus
Administrator

Recent federal legislation creates a tax credit for adoption expenses, clarifies the removal of barriers to interethnic adoptions and encourages relative placements. For each topic, we have included a copy of the information from the US Department of Health and Human Services Children's Bureau as well as a discussion of program implications for Wisconsin. We have identified other resources for your use in seeking more detailed information.

ADOPTION TAX ASSISTANCE:

DHHS Information:

Section 1807, entitled "Adoption Assistance," amends Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code. It allows for a \$5,000 tax credit (\$6,000 in the case of a child with special needs) for qualified adoption expenses paid or incurred by the taxpayer. The section provides additional information on the allowance of credit, limitations, carrying forward unused credit, definitions for "qualified adoption expenses" and "eligible child", special rules for foreign adoptions, filing requirements and application to an employer's adoption assistance programs.

Effective date: Tax years beginning on and after January 1, 1997.

IRS Information:

Attached is a recently released guidance from the Internal Revenue Service regarding the new adoption income tax credit.

DOCUMENT SUMMARY

This memo describes recent federal legislation regarding tax credit for adoption expenses, the removal of barriers to interethnic adoptions and relative placements.

Wisconsin Implications:

Tax credits related to certain adoption expenses are available for both federal and state income taxes. These tax credits will reduce the financial barriers to adoption that may discourage some prospective adoptive families. Wisconsin child welfare agencies are encouraged to share copies of the written materials provided by federal agencies to prospective adoptive parents. However, it is recommended that agency staff avoid giving direct advice on income tax matters.

Prospective and recent adoptive parents may seek additional information from the Internal Revenue Service (toll free telephone number 1-800-829-1040) regarding the federal income tax credit. Information about a state income tax credit can be obtained from the Wisconsin Department of Revenue.

The Department of Health and Family Services continues to provide reimbursement of some adoption expenses for families who adopt a child with special needs when an Adoption Assistance Agreement is signed prior to the adoption for a child who otherwise could not be adopted. Families eligible for this reimbursement may decide whether to claim a tax credit or seek the direct reimbursement. Expenses cannot be reimbursed if they have or will be claimed as a tax credit.

THE REMOVAL OF BARRIERS TO INTERETHNIC ADOPTION:***DHHS Information:***

Section 1808, entitled "Removal of Barriers to Interethnic Adoption," amended Title IV-E, section 471(a) of the Act with the following:

Section 1808(a), entitled "State Plan Requirements" added:

"(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of race, color, or national origin of the person, or of the child involved;

or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of race, color, or national origin of the adoptive or foster parent or the child, involved."

Section 1808(b), entitled "Enforcement" added section 474(d)(1):

"If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1123A, or otherwise, to have violated section 471(a)(18) with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months . . . the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year . . . by 2 percent . . . in the case of the 1st finding . . . 3 percent . . . in the case of the 2nd such finding . . . 5 percent . . . in the case of the 3rd or subsequent such finding . . . the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent."

This section also states, "Any other entity which is in a State that receives funds under this part and which violates section 471(a)(18) during a fiscal year quarter . . . shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds."

Section 1808(d), entitled "Conforming Amendment" repeals section 553 of the Howard M. Metzenbaum (Multiethnic) Placement Act of 1994 (42 U.S.C. 5115a) [regarding permissible considerations].

Effective date: Title IV-E State Plan requirements are effective January 1, 1997. The remaining provisions were effective August 20, 1996, the date of enactment.

Wisconsin implications:

These changes in federal law expand upon and revise the earlier Multiethnic Placement Act announced in Memo Series DCS-95-45 on October 3, 1995. We understand that this legislation may raise questions, especially in applying the law to individual case situations. We want to assist you by sharing the information we have received and any new interpretation as it becomes available. You are encouraged to consult your attorney for advice.

The new provisions create substantial penalties on a state if a public or private licensed adoption agency is determined to have denied the opportunity to become a foster or adoptive parent or delayed the placement of a child for adoption or into foster care on the basis of race, color or national origin of the adoptive or foster parent or the child involved. The state's Title IV-E grant can be reduced at a graduated rate of 2, 3 and 5% for each violation. Also, private agencies violating the prohibition would be required to remit to the federal agency any funds which were paid to them during the quarter.

In addition, the new legislation eliminated a previous provision about permissible considerations. The section that was eliminated had allowed consideration of race, color or national origin when an adoption or foster care agency made a narrowly tailored, individualized determination that the facts and circumstances of a particular case required the consideration of race, color, or national origin in order to advance the best interests of the child in need of placement.

Provisions from the Multiethnic Placement Act require agencies to engage in diligent recruitment of adoptive and foster care parents to assure that all children needing placement are served in a timely and adequate manner. The requirements for recruitment continue. Recent informational memos have provided suggestions on recruitment and the Department has funded a number of recruitment efforts. Agencies involved in placing children in foster and adoptive homes must continue their diligent recruitment efforts.

RELATIVE PLACEMENTS:

DHHS Information:

Section 505 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amends section 471 of title IV-E of the Act by adding the following new State Plan requirement:

"(18) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."***

***Note: A technical amendment to PRWORA has been submitted to change title V, Section 505(3) to read, "(19) provides that the State shall consider..." because the Small Business Job Protection Act (P.L. 104-188) also contained an amendment to section 471(a) of the Act which added paragraph 18, with different content.

Effective date: This amendment was effective August 22, 1996, the date of enactment of the statute.

Wisconsin Implications:

Wisconsin statutes establish a process to give consideration of a preference to a relative caregiver when determining a placement for a child. "If there is no less drastic alternative than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible." (Section 48.355(1) Stats.) Also, s. 48.38(4)(bm), Stats. requires that the permanency plan include a description of "The availability of a placement with a relative of the child and, if a decision is made not to place the child with an available relative, why placement with the relative is not appropriate." In addition, s. 48.833 includes a provision that "Before placing a child for adoption under this section, the department, county department or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child's permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department or child welfare agency."

Wisconsin child placing agencies are required to consider giving preference to an adult relative when selecting a placement for a child.

REGIONAL OFFICE CONTACT: Area Administrators

CENTRAL OFFICE CONTACT: **Foster Care:**
Division of Safety and Permanence
(608) 422-6937

Adoption:
Division of Safety and Permanence
(608) 422-6914