To encourage kinship guardianship placements and support payment rate equity for such placements, to improve oversight of State child welfare programs funded under the Social Security Act, to strengthen national data on child fatalities from maltreatment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. HATCH (for himself and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To encourage kinship guardianship placements and support payment rate equity for such placements, to improve oversight of State child welfare programs funded under the Social Security Act, to strengthen national data on child fatalities from maltreatment, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Child Welfare Over-

SEC. 2. DE-LINKAGE OF ELIGIBILITY FOR KINSHIP GUARDIANSHIP ASSISTANCE FROM AFDC INCOME LIMITATIONS AND DECREASE IN MINIMUM NUMBER OF MONTHS REQUIRED TO BE RESIDING IN A RELATIVE HOME BEFORE BEING ELIGIBLE FOR ASSISTANCE.

(a) Child’s Eligibility for a Kinship Guardianship Assistance Payment.—Section 473(d)(3)(A)(i)(II) of the Social Security Act (42 U.S.C. 673(d)(3)(A)(i)(II)) is amended by striking “eligible for foster care maintenance payments under section 472 while residing for at least 6” and inserting “residing for at least 3”.

(b) Conforming Amendment to Limitation on Amount of Payment.—Section 473(d)(2) of such Act (42 U.S.C. 673(d)(2)) is amended by striking “foster care maintenance payment” and all that follows through the period and inserting “highest foster care maintenance payment which could have been paid on behalf of the child if the child were eligible for foster care maintenance payments under section 472.”.

(c) Application of Foster and Adoptive Parent Records Checks Requirements.—Section 471(a)(20)(C) of such Act (42 U.S.C. 671(a)(20)(C)) is amended—

(1) by striking “criminal records checks, including fingerprint-based checks of national crime infor-
mation databases (as defined in section 534(e)(3)(A) of title 28, United States Code),” and inserting “checks described in subparagraph (A)”; and

(2) by inserting “, including procedures that re-quire that a child shall not be placed in the home of any relative guardian if any such checks reveal in-formation which would prohibit a prospective foster or adoptive parent from being finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance pay-ments are to be made under the State plan under this part” after “under this part”.

SEC. 3. REINVESTING PENALTIES TO IMPROVE SUCCESSFUL COMPLETION OF REVIEWS OF CHILD AND FAMILY SERVICES PROGRAMS AND OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM IMPROVEMENT PLANS.

Section 1123A(b)(4) of the Social Security Act (42 U.S.C. 1320a–2a(b)(4)) is amended—

(1) in subparagraph (A), by striking “, ap-proved by the Secretary, designed to end the failure to so conform” and inserting “designed to end the failure to so conform that is developed with and ap-proved by the Secretary, and which, in addition to specifying all of the ways in which the State pro-
gram was determined to have failed to conform, identifies priority areas that, if successfully com-
pleted under the corrective action plan, will be con-
sidered to have brought the State into substantial conformity’’;

(2) in subparagraph (C), by striking ‘‘suspend’’ and all that follows through the semicolon and in-
serting ‘‘, in lieu of withholding of any Federal matching funds under this section while such a cor-
rective action plan is in effect, require that the State spend an amount that is not less than the amount of the Federal matching funds that will be withheld if the State fails to successfully complete the correc-
tive action plan on the priority areas identified in the corrective action plan;’’; and

(3) in subparagraph (D), by striking ‘‘if the failure to so conform is ended by successful comple-
tion of’’ and inserting ‘‘and spending requirement if the failure to so conform is ended by successful com-
pletion of the identified priority areas of’’.

SEC. 4. STATE CHILD WELFARE CASELOAD AND WORKLOAD STANDARDS.

(a) In General.—Section 471(a)(22) of the Social Security Act (42 U.S.C. 671(a)(22)) is amended—
1 (1) by striking “that, not later than” and insert-
2 serting “that—
3 “(A) not later than”;
4 (2) by adding “and” after the semicolon; and
5 (3) by adding at the end the following:
6 “(B)(i) not later than January 1, 2020,
7 the State, in consultation with the Secretary
8 and national organizations with expertise in
9 caseload and workload issues, and based on the
10 most recent research, best practices, and such
11 other data or information relating to caseload
12 and workload issues as the State and Secretary
13 determine appropriate, shall develop and imple-
14 ment caseload and workload standards for case
15 workers for children on whose behalf aid, serv-
16 ices, or assistance may be provided under part
17 B or this part that are based on the unique
18 needs and circumstances of the State and that
19 establish minimum standards with respect to—
20 “(I) the number of active initial as-
21 sessments or investigations per month per
22 caseworker;
23 “(II) the number of active, ongoing
24 cases per caseworker and the rate of new
families assigned to a caseworker for every
open family case;

“(III) the number of combined assessment or investigation and ongoing cases per caseworker;

“(IV) the number of families per caseworker being provided intensive family-centered or preservation services;

“(V) the number of cases per caseworker that involve children with intensive caseworker or supervision needs; and

“(VI) supervisor to caseworker ratios;

and

“(ii) not later than January 1, 2025, and every 5 years thereafter, the State shall update the standards developed and implemented under clause (i), in consultation with the Secretary and national organizations with expertise in caseload and workload issues, and based on the most recent research, best practices, and such other data or information relating to caseload and workload issues as the State and Secretary determine appropriate.”.

(b) APPLICATION TO INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—Section 471(a)(22)(B) of the Social
Security Act (42 U.S.C. 671(a)(22)(B)), as added by subsection (a), shall apply to—

(1) Indian tribes, tribal organizations, or tribal consortiums that have a plan approved under section 471(a) of the Social Security Act (42 U.S.C. 671(a)) in accordance with section 479B of such Act (42 U.S.C. 679c); and

(2) Indian tribes, tribal organizations, or tribal consortiums that have a cooperative agreement or contract with a State for the administration or payment of funds under part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.).

SEC. 5. TRAINING CHILD WELFARE WORKERS.

(a) IN GENERAL.—Section 474(a)(3)(A) of the Social Security Act (42 U.S.C. 674(a)(3)(A)) is amended—

(1) by striking “75 per centum of so much of such expenditures as are for the training” and inserting “50 percent of so much of such expenditures as are for the short- and long-term training”; and

(2) by inserting “or of personnel employed or preparing for employment by State-licensed or State-approved child welfare agencies, without regard to whether such personnel provide or will provide services to foster or adoptive children on behalf of whom foster care maintenance payments or adoption as-
sistance payments may be made under this part, in areas directly related to the responsibilities of such personnel, including making a case plan, carrying out case reviews, engaging families, connecting families with appropriate substance abuse treatment, preparing for judicial proceedings, determining eligibility, treating child behaviors or other problems, carrying out or participating with child abuse and neglect investigations and other responses, coordinating and connecting children with health services, helping children access psycho-social services as needed, providing post-permanency services, providing child welfare services in a trauma-informed manner, working in multidisciplinary teams, and collaborating with law enforcement,” after “subdivi-

(b) Conforming Amendment.—Section 474(a)(3)(B) of such Act (42 U.S.C. 674(a)(3)(B)) is amended by striking “, the members of the staff of State-licensed or State-approved child care institutions providing care, or State-licensed or State-approved child welfare agencies providing services,” and inserting “or the members of the staff of State-licensed or State-approved child care institutions providing care”.

SEC. 6. STRENGTHENING NATIONAL DATA ON CHILD FATALITIES FROM MALTREATMENT.

(a) IV-B REQUIREMENT TO ANNUALLY REVIEW CHILD FATALITIES FROM MALTREATMENT.—Section 422(b)(19) of the Social Security Act (42 U.S.C. 622(b)(19)) is amended—

(1) by striking “contain a description” and inserting “contain—

“(A) a description”;

(2) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(B) assurances that the State shall—

“(i) annually engage in a multidisciplinary review of all child fatalities from maltreatment in the State that occurred during the previous year in accordance with the requirements of section 429A; and”.

(b) ANNUAL REVIEW REQUIREMENTS.—Subpart 1 of part B of title IV of the Social Security Act (42 U.S.C. 621 et seq.) is amended by adding at the end the following:
"SEC. 429A. ANNUAL REVIEW OF CHILD FATALITIES FROM MALTREATMENT."

(a) REQUIREMENTS.—In order to satisfy the requirements of section 422(b)(19)(B)(i), a State shall require the State’s multidisciplinary child death review team or other multidisciplinary team established by the State that is comprised of child welfare workers, child protective services workers, prosecutors, law enforcement, coroners or medical examiners, public health care providers, pediatricians with expertise in child maltreatment and the child welfare system, substance abuse treatment providers, and other individuals integral to the child welfare system (in this section referred to as the ‘review team’) to annually review all child fatalities from maltreatment in the State that occurred during the most recently ended fiscal year and for which all administrative or judicial review is complete or no longer timely. Any child fatality from maltreatment in the State that occurred during the most recently ended fiscal year but for which administrative or judicial review is not complete or remains timely shall be reviewed by the review team in the first annual review period that occurs after all administrative or judicial review is complete or no longer timely.

(b) REPORT AND RECOMMENDATIONS.—The review team shall—
“(1) for each child fatality from maltreatment in the State subject to review, make findings regarding the causes of child’s fatality and other factors that impacted the child’s fatality, the circumstances of the fatality, the characteristics of the victim, the perpetrators, including their relationship to the child, and the parents or guardians of the child, whether there were previous familial interactions with child protective services and the outcomes of those interactions, whether the child had any siblings and how many, and the social services, public cash or in-kind assistance, health (including mental health) services, substance abuse treatment, or other public or private services provided to or on behalf of the child prior to the child’s death;

“(2) submit all findings and data made in accordance with paragraph (1) to the Child Death Review Case Reporting System (in this section referred to as the ‘CDR Reporting System’) operated by the National Center for Fatality Review and Prevention;

“(3) based on the findings made in accordance with paragraph (1), develop recommendations for preventing future child fatalities from maltreatment; and
“(4) submit an annual report to the State Governor, the State Legislature, and, if the incident reporting threshold established under subsection (c) is met, to the Secretary, that contains the findings and data submitted to the CDR Reporting System under subparagraph (2) (de-identified) and the recommendations developed under paragraph (3).

“(c) Annual Incident Reporting Threshold.—

“(1) State-specific thresholds.—The Secretary annually shall establish a national reporting incident threshold for each State for purposes of protecting the privacy of families and other living individuals whose information is part of the findings and data submitted under subsection (b)(2) and the annual report to the State Governor and State Legislature required under subsection (b)(4). In establishing such threshold for a State, the Secretary shall ensure that the reporting threshold is sufficient to prevent the re-identification of living individuals who could be identified in the information contained in the annual report required under subsection (b)(4).

“(2) Application.—If the number of child fatalities from maltreatment in a State in a fiscal year is below the reporting threshold established for the
13 State for the fiscal year, the State shall not submit
the annual report required under subsection (b)(4)
to the Secretary but shall submit to the Secretary—

“(A) the findings and data submitted to
the CDR Reporting System under subsection
(b)(2) for the purpose of making such findings
and data accessible as a public use data set on
the national website required under subsection
(g) after redacting any personal identifying in-
formation; and

“(B) the recommendations developed under
subsection (b)(3).

“(d) FUNDING.—Amounts expended by a State dur-
ing each quarter beginning after December 31, 2017, for
administrative costs (as defined in section 422(c)(1)) to
carry out this section and section 422(b)(19)(B) shall be
deemed to be amounts expended during such quarter as
found necessary by the Secretary for the proper and effi-
cient administration of the State plan under part E for
purposes of Federal matching payments under section

“(e) INDIAN TRIBES, TRIBAL ORGANIZATIONS.—The
Secretary, in consultation with the Assistant Secretary-In-
dian Affairs of the Bureau of Indian Affairs of the De-
partment of Interior and tribal child welfare organiza-
tions, shall determine how and the extent to which the re-
quirements of this section shall apply to Indian tribes and
tribal organizations (as defined in section 4 of the Indian
Self-Determination and Education Assistance Act (25

“(f) NONAPPLICATION.—The limitations on pay-
ments for administrative costs under sections 424(e) and
472(i) shall not apply to State expenditures made to carry
out this section.

“(g) NATIONAL WEBSITE.—

“(1) IN GENERAL.—The Secretary, in coordina-
tion with the National Center for Fatality Review
and Prevention, shall publish on a website that is
available to the public and maintained and updated
at least annually—

“(A) each annual report submitted to the
Secretary under subsection (b)(4); and

“(B) the findings and data submitted to
the CDR Reporting System under subsection
(b)(2) (with any personal identifying informa-
tion or information that identifies the submit-
ting State redacted) in a manner that is acces-
sible as a public use data set for purposes of re-
search to identify risk factors and to prevent
future deaths of children from maltreatment.
“(2) NOTICE TO CONGRESS.—The Secretary shall notify Congress when information on the website required under paragraph (1) is updated.”

(c) CONFORMING AMENDMENT.—Section 425 of the Social Security Act (42 U.S.C. 625) is amended by striking “426, 427, and 429” and inserting “422(b)(19)(B), 426, 427, 429, and 429A”.

SEC. 7. DEVELOPMENT OF NATIONAL DEFINITION STANDARDS RELATING TO CHILD FATALITIES FROM MALTREATMENT.

(a) PROMULGATION OF NATIONAL DEFINITION STANDARDS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall promulgate proposed regulations establishing a set of national definition standards relating to child fatalities from maltreatment that States shall use to report data to the National Child Abuse and Neglect Data System established and maintained in accordance with section 103 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5104) and, not later than 6 months after the date on which the public comment period on the proposed regulations closes, shall issue final regulations establishing such standards.
(b) REQUIREMENTS.—In promulgating the regulations under subsection (a), the Secretary shall consult with representatives of—

(1) State and county officials responsible for administering the State plans under parts B and E of title IV of the Social Security Act;

(2) child welfare professionals with field experience;

(3) child welfare researchers;

(4) child development professionals;

(5) mental health professionals;

(6) emergency medicine physicians;

(7) child abuse pediatricians, as certified by the American Board of Pediatrics, who specialize in treating victims of child abuse;

(8) forensic pathologists;

(9) public health administration;

(10) public health researchers;

(11) law enforcement;

(12) a representative from the National Center for Fatality Review and Prevention; and

(13) such other organizations or entities as the Secretary determines appropriate.

(c) CONFORMING AMENDMENTS.—

(1) CAPTA.—
(A) NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM.—Section 103(c)(1)(C) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5104(c)(1)(C)) is amended—

(i) in clause (iii), by striking “and” after the semicolon;

(ii) in clause (iv), by adding “and” after the semicolon; and

(iii) by inserting after clause (iv), the following:

“(v) information on child fatalities from maltreatment in accordance with the set of national definition standards promulgated under section 7(a) of the Child Welfare Oversight and Accountability Act of 2017;”.

(B) ANNUAL STATE DATA REPORTS.—Section 106(d) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(d)) is amended by adding at the end the following:

“(19) The number of child fatalities from maltreatment and related information required to be reported in accordance with the set of national definition standards promulgated under section 7(a) of
the Child Welfare Oversight and Accountability Act of 2017.”

(2) SOCIAL SECURITY ACT.—

(A) IV-B PLAN.—Section 422(b)(19) of the Social Security Act (42 U.S.C. 622(b)(19)), as amended by section 6(a), is further amended by adding at the end the following:

“(ii) report information on child maltreatment deaths required by Federal law in accordance with the set of national definition standards promulgated under section 7(a) of the Child Welfare Oversight and Accountability Act of 2017.”

(B) ANNUAL REVIEW REQUIREMENTS.—

Section 429A of the Social Security Act, as added by section 6(b), is amended by adding at the end the following:

“(h) APPLICATION OF NATIONAL DEFINITION STANDARDS.—The review team shall use the set of national definition standards promulgated under section 7(a) of the Child Welfare Oversight and Accountability Act of 2017 to make and submit findings and data to the CDR Reporting System and to develop the recommendations required under subsection (b)(3).”
SEC. 8. ADDITIONAL REQUIREMENTS FOR THE ANNUAL REPORT TO CONGRESS BASED ON AFCARS AND OTHER DATA.

(a) PROVIDER-SPECIFIC CHILD OUTCOMES.—Section 479A(a) of the Social Security Act (42 U.S.C. 679b(a)) is amended—

(1) in paragraph (6)(C), by striking “and” after the semicolon;

(2) in paragraph (7)(B), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

“(8) develop a set of provider-specific child outcome measures (including with respect to child fatalities, child fatalities from maltreatment, maltreatment in care, recurrence of maltreatment within 6 months, exits from foster care by reason for the exit (adoption, guardianship, reunification, or emancipation), time to reunification, reentry rates, and average number of placements) that can be used to assess the performance of foster care providers, as defined in subsection (e), in providing services to children under this part or part B;

“(9) prescribe, not later than October 1, 2019, such regulations as may be necessary to ensure that States—
“(A) provide to the Secretary the data necessary for the Secretary to assess the performance of States and foster care providers (as so defined) with respect to the outcome measures developed under paragraph (8), as a condition of the State receiving funds under this part;

“(B) include with the data submitted to the Secretary under subparagraph (A) for each foster care provider (as so defined), information as to whether the provider is a for-profit or not-for-profit entity; and

“(C) review and consider the performance of each foster care provider (as so defined) with respect to such outcome measures prior to entering into or renewing any agreement with the provider that relates to the provision of services to children under this part or part B; and

“(10) include in the report submitted pursuant to paragraph (5) for fiscal year 2021 or any succeeding fiscal year, State-by-State data with respect to the outcome measures developed under paragraph (8) and the data and information submitted under paragraph (9).”.

(b) Public Availability of State-Specific Information.—Section 479A of the Social Security Act (42
U.S.C. 679b) is amended by adding at the end the following:

“(c) Public Availability.—The Secretary shall publish, in a manner that is accessible as a public use data set for purposes of research, the data, ratings, and performance measures collected and determined under this section with respect to each State on a website that is available to the public and maintained and updated at least annually.”.

(e) Application to Indian Tribes and Tribal Organizations.—Section 479A of such Act (42 U.S.C. 679b), as amended by subsection (b), is further amended by adding at the end the following:

“(d) Application to Indian Tribes and Tribal Organizations.—The data collection and outcome measures requirements of this section shall apply to Indian tribes, tribal organization, or tribal consortiums that have a plan approved under section 471(a) in accordance with section 479B, in the same manner as such requirements apply to a State under this part.”.

(d) Definition of Foster Care Provider.—Section 479A of such Act (42 U.S.C. 679b), as amended by subsections (b) and (e), is further amended by adding at the end the following:
“(e) Definition of Foster Care Provider.—For purposes of paragraphs (8) and (9) of subsection (a), the term ‘foster care provider’ means any entity, other than a foster family home, that receives funds from a State under this part or part B for the provision of placement or supervision services for any child in foster care under the responsibility of the State.”.

SEC. 9. PRIVATE RIGHT OF ACTION FOR FAILURE TO COMPLY WITH CASE PLAN AND CASE SYSTEM REVIEW REQUIREMENTS.

(a) Private Right of Action.—Section 475A of the Social Security Act (42 U.S.C. 675a) is amended by adding at the end the following:

“(c) Private Right of Action.—

“(1) In general.—An individual who is or was a child in foster care under the responsibility of the State may obtain appropriate relief with regard to a failure to comply with a case plan requirement in section 475(1) or a failure to comply with a case review system requirement in section 475(5) that applies or applied to the individual while the child was such foster care not later than 5 years after the date on which the individual exits foster care by bringing a civil action in an appropriate district court of the United States. In the case of an indi-
individual with more than 1 period in foster care under
the responsibility of the State, each such period shall
be treated separately for purposes of applying the 5-
year deadline under the preceding sentence.

“(2) Exhaustion of Administrative Remedies.—An action under this subsection may be
commenced, and relief may be granted, only after
the individual commencing the action has sought or
exhausted any available administrative remedies.

“(3) Waiver of State Sovereignty.—

“(A) In General.—As a condition of a
State receiving funds under this part, the State
shall voluntarily and knowingly agree that—

“(i) an action under this subsection
may be maintained against, among others,
a party that is a State governmental enti-
ty; and

“(ii) relief in an action under this
subsection may include money damages
even if the defendant is such a govern-
mental entity.

“(B) State Governmental Entity De-

—In this subsection, the term ‘State
governmental entity’ means a State, a local gov-
ernment within a State, and any agency or
other governmental unit or subdivision of a State or of such a local government.

“(4) RELIEF.—In an action under this subsection, the court shall grant—

“(A) all necessary equitable and legal relief, including, where appropriate, declaratory relief and compensatory and punitive damages, to prevent the occurrence, continuance, or repetition of the designated failure and to compensate for losses resulting from the designated failure; and

“(B) to a prevailing plaintiff, reasonable attorneys’ fees and litigation expenses as part of the costs.”.

(b) RULE OF CONSTRUCTION.—The private right of action established under section 475A(c) of the Social Security Act with regard to a failure to comply with a case plan requirement in section 475(1) of such Act or a failure to comply with a case review system requirement in section 475(5) of such Act, as added by subsection (a) of this section, shall not be construed as an expression of congressional intent with respect to the creation of, or prohibition of, a private right of action with respect to a failure to comply with any other provision of title IV of Social Security Act.
SEC. 10. TRANSPARENCY IN CONTRACTING WITH PRIVATE CHILD WELFARE SERVICE PROVIDERS.

Section 422(b) of the Social Security Act (42 U.S.C. 622(b)), as amended by section 7(c)(2)(A), is amended—

(1) in paragraph (18), by striking “and” after the semicolon;

(2) in paragraph (19), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(20) provide that the State shall make publicly available on a website maintained by the State, in accordance with such procedures as are necessary to maintain the confidentiality and privacy of children and families provided assistance under this part or part E—

“(A) any agreement with a private foster care provider (as defined in section 479A(e)) that relates to the provision of services to children under this part or part E; and

“(B) with respect to each such provider with such an agreement, information as to whether the provider is a for-profit or not-for-profit entity.”.
SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsections (b), (c), and (d), this Act and the amendments made by this Act take effect on January 1, 2018.

(b) REINVESTMENT OF PENALTIES.—The amendments made by section 3 take effect on October 1, 2018, and shall apply to conformity reviews conducted with respect to fiscal years beginning with fiscal year 2019.

(c) PRIVATE RIGHT OF ACTION.—The amendment made by section 9(a) shall take effect on January 1, 2019.

(d) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan approved under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this section. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session
shall be deemed to be a separate regular session of the State legislature.