

PROPOSED ICPC: FREQUENTLY ASKED QUESTIONS

1. A child placement compact already exists. Why should we replace it?

The existing Interstate Compact on the Placement of Children was adopted in 1960 to address states' concerns regarding their ability to assure that children placed across state lines are afforded the same protections and services as children placed intrastate. Existing laws did not provide enough protection. Because a state's jurisdiction ends at its borders, necessary protections could not be compelled for a child placed beyond those borders. While the compact has served for nearly 50 years, its governing processes and structure are now seriously outdated and in need of revision to ensure timely and appropriate placement of children.

2. Why is it important to replace the compact right away?

The existing interstate agreement has been severely compromised by individual state actions. States have unilaterally determined the meaning and coverage of the compact, changed the statute, and changed the process and procedures for interstate placements. There is no longer common agreement between states concerning placements of foster and adoptive children. Further, the current compact lacks the ability to hold states accountable for following existing compact rules that they have mutually enacted. It is entirely possible that the existing compact could become so ineffective that a nationwide system for ensuring the protection of children would no longer exist. As early as July 1, 2007 (or upon passage by the 35th state, whichever is later), states that have passed the compact will join together and begin developing the rules and administrative processes that signatory states must follow.

3. Will the proposed compact eliminate the problems experienced under the current compact, and how will it ensure compliance by member states?

The proposed compact will not eliminate all the issues related to the interstate placement of children. Many of the factors that complicate the interstate placement of children are underlying struggles in the overall child welfare system, which continually contends with capacity, staffing, training, and resource issues. In addition, there are systems in the states that add additional layers of complexity, specifically the courts and education. However, the proposed compact will provide a critical legal foundation that will strengthen rulemaking and enforcement authority. Compliance will be encouraged by the use of a range of measures, from technical assistance and alternative dispute resolution, including mediation and arbitration, to suspension, termination, and legal action in federal court with fees and costs awarded to the prevailing party. In addition, the proposed compact will have a staff and committee structure in place that will permit swift identification of potential problems and a manageable process for addressing concerns of member states in a timely manner. This ability to address accountability and compliance concerns meaningfully during the early stages should identify and avert major conflicts.

4. Some states do not have centralized child welfare systems. What effect does this have on interstate compact enforcement?

One of the difficulties in comparing child welfare systems between states is that they are organized so differently. Some states have centralized systems, some may be decentralized, but state controlled, and still others may rely on county and local jurisdictions to administer child welfare programs. An interstate compact, however, is state law and a disagreement between states is just that...between states that have enacted the same compact. Therefore, all branches of state government and its political subdivisions must follow the mandates of the compact.

5. Who will be my states compact administrator and how much authority will they have in the rule-making process?

The compact administrator will be that person appointed by the “executive head of the state human services administration with ultimate responsibility for the child welfare program under Article VIII (b), subject to qualifications determined by each state.

6. The Interstate Commission will develop the rules after the proposed compact becomes operational. Doesn't that presume that states will “sign up blindly” before knowing the rules? Why is this necessary?

States, through the newly created Interstate Commission, cannot write the rules and regulations until the proposed compact exists and the initial member states are known. This also means that states must pass the legislation and then trust the process of the member states to develop a majority of the rules during the compact’s first twelve months of existence. If all the rules were developed before the compact is enacted, any changes to the rules would require that each state enact new legislation each time a rule change is agreed upon. This is, however, not a new concern. States are currently obligated to follow the current administrative rules as developed and passed by compact administrators through the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC). Although these rules were passed without any “sunshine” provisions or due process, as outlined in the proposed compact, it is expected that many of the current rules will serve as guidance for developing new rules. For more information on the current rules, please visit: <http://www.aphsa.org>. It is also important to note that the proposed compact creates a process for rules to be made and enforced and when necessary, to be modified without returning to each state legislature. As a safeguard for state authority, the drafters created a provision for a majority of state legislatures to nullify any rule passed by the Interstate Commission.

7. Can any of the language in the proposed compact be changed or must all states use identical language? Can my state pass only certain parts of the revised compact?

Generally, the compact language must be identical with regard to the substantive provisions of the agreement. Since the compact is contractual in nature, there must be a “meeting of the minds” as to the terms of the agreement in order for it to take effect. While allowances may be made for the format, the operative language of the agreement must be identical from state to state; otherwise material differences in language in any state statute purporting to adopt the compact could render it “void” or “voidable.”

8. Does the compact language conform to state constitutional language?

The compact language was drafted recognizing state constitutional requirements common to most state constitutions such as separation of powers, delegation of power, and debt limitations. The validity of the state authority to enter into compacts and delegate authority to an interstate agency was specifically recognized and unanimously upheld by the U.S. Supreme Court in *West Virginia vs. Sims*, 341 U.S. 22 (1951). This decision also approved a provision nearly identical to the provisions of Article XIII of the revised compact concerning constitutional debt limitations. Under Article XVII (b)(3) provisions of the compact exceeding the constitutional limits imposed on the legislature of any state are ineffective.

9. Aren't we creating an expensive bureaucracy without the promise of anything better than what we already have?

Key issues for the existing compact are accountability for member states and the ability to enforce compact rules. An interstate compact that cannot assure compliance by member states is, in effect, a “toothless tiger.” Despite remarkable efforts by those working in the current compact administration to hold the system together, governance issues have evolved to the point that greater compact authority is essential for the agreement between states to function effectively. This illustrates the continued and enhanced need for a national office and staff to oversee administrative issues. The size of such a staff is anticipated to be small, although the compact will create an administrative structure that will hold member states accountable for compliance. This will be done primarily through the efforts of the state representatives to the newly created national commission and its executive and standing committees.

10. How much will the proposed compact cost my state?

Actual costs per state will not be known until the compact is enacted by at least 35 states and the Interstate Commission (IC), by vote of member states, has made their initial set of decisions. It is estimated, based on cost data from the Council of State Governments (CSG) who is supporting the implementation of similar compacts, that the work to organize and operate the IC the first year will cost an estimated \$500,000. However, member states (through their voting representative to the Interstate Commission) will approve an actual budget and state assessment structure as part of their initial commission activities, just as they will annually in succeeding years. While the proposed budget

figure is a reasonable and informed estimate, it is possible that member states could decide on a budget that is higher or lower and they could alter the allocation formula. It is also important to note that states are protected from unauthorized spending (Article XIII) in that the commission may not incur obligations prior to securing adequate funding; nor may they pledge the credit of any of the compact states, except by and with the authority of the compact state.

11. What happens if my state does not pass the compact? Will we still be able to make interstate placements?

Once the 35th state adopts the “new” compact, none of those states will be party to the “old” compact and their contractual relationship with other states will be limited to states who have also passed the new compact. However, under the terms of the new compact, the old compact’s rules will remain in effect among both old and new compact states for the first twelve months until new rules can be adopted. This will allow interstate placements to be made in both old and new compact states during that twelve-month period. After that time, new compact rules promulgated under the new agreement will only allow new compact states to do business with each other. It is hoped that the remaining states will pass the legislation during the twelve-month transition period. Any states that have not joined the new compact after the transition period has expired would have no meaningful way to place children in new compact states and no means to prevent those states from sending children to such a nonmember state without permission, rules, or notice.