BY THE COMPTROLLER GENERAL

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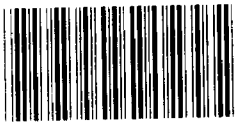
Report To The Congress

OF THE UNITED STATES

Guyana Tragedy Points To A Need For Better Care And Protection Of Guardianship Children

About one-third of the 913 individuals who died in the 1978 Peoples Temple tragedy in Guyana were children, few of whom were wards of adult members of the Peoples Temple. The tragedy raised many questions about the adequacy of protection afforded children under the guardianship of adults not related to them.

The Peoples Temple tragedy points to a need for the Department of State to establish specific procedures for reviewing passport applications for guardianship children. Furthermore, the Department of Health and Human Services should increase the protection afforded California guardianship children and make sure that they are not placed in homes with more children than can be adequately cared for. The Department should also recover Federal overpayments to States for guardianship children not eligible for foster care maintenance assistance.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report describes how the Departments of State and Health and Human Services can help improve the care and protection of guardianship children. This report also discusses (1) the placement of foster and guardianship children with Peoples Temple members and (2) excessive Federal payments to California on behalf of guardianship children.

Our review was made at the request of the Chairman, Subcommittee on Child and Human Development, Senate Committee on Labor and Human Resources.

We are sending copies of this report to the Director, Office of Management and Budget, and the Secretaries of State and Health and Human Services.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CONGRESS

GUYANA TRAGEDY POINTS TO A NEED FOR BETTER CARE AND PROTECTION OF GUARDIANSHIP CHILDREN

D I G E S T

The Chairman, Subcommittee on Child and Human Development, Senate Committee on Labor and Human Resources, requested GAO to review the placement of foster children with members of the Peoples Temple. After finding that some of the children had guardians, GAO expanded its review to examine guardianship children in California.

GAO found that:

--No children, while in foster care, died in Guyana. However, a few of the victims of the tragedy were wards of Peoples Temple members and were taken to Guyana without court approval.

--California guardianship children frequently did not receive all the protection intended for them by State law.

--California received Federal foster care maintenance payments for guardianship children who did not meet Federal eligibility criteria.

--The health and safety of some children may have been jeopardized by placing them in small foster family homes which housed children in excess of capacity.

CHILDREN WITH THE PEOPLES TEMPLE

Of the 294 children who died in Guyana in November 1978, GAO found that:

--None was in foster care when they died. Seventeen had been in foster care, but were terminated from such care (returned to parent or guardian, or adopted) before the tragedy. (See p. 8.)

--Twenty-one were wards of Peoples Temple members. Nineteen of them had apparently been relocated to Guyana without the court approval required for changing the residence of guardianship children outside California. (See p. 13.)

--Peoples Temple adult members and their children usually did not travel to Guyana together. However, no fraudulent activities relative to taking children to Guyana were identified by U.S. Passport Services' investigations. (See pp. 14 and 15.)

To exercise better control over the travel of children, the U.S. Passport Services should verify before issuing passports that, where required, guardians have obtained court approval to take their wards outside the country. (See p. 16.)

SERVICES TO CALIFORNIA GUARDIANSHIP CHILDREN

To determine the type of protective services provided to California guardianship children, GAO reviewed such activities in three counties. In two of the counties, required suitability reports on petitioners for guardianship of nonrelative children, usually were not prepared, and other protective services were not available to all the children. (See p. 21.)

Those suitability reports that were prepared included good assessments of whether the petitioner could meet the child's psychological and social needs, but these reports could have more comprehensively addressed the child's physical well-being. (See p. 23.)

State regulations covering assessment and reassessment of guardianships were inadvertently terminated in January 1980. Even when in effect, the State regulations had not been fully implemented. (See p. 25.)

In fulfilling the Federal role as an advocate for the welfare of the Nation's children, the Secretary of Health and Human Services (HHS) should direct the Office of Human Development Services to encourage California to

--reiterate to State court judges the importance of county social workers' preparing suitability reports on petitioners for nonrelative guardianship children,

--help the counties expand suitability report criteria to more fully address the physical well-being of guardianship children, and

--reissue regulations specifically covering guardianships and require compliance by county social service agencies. (See p. 27.)

FEDERAL OVERPAYMENTS FOR GUARDIANSHIP CHILDREN

Guardianship children do not meet the Federal eligibility criteria for foster care maintenance payments if their care and placement is not the responsibility of the California Department of Social Services, the State agency designated to carry out the federally funded foster care program.

Federal overpayments occurred in the three California counties reviewed because the counties obtained Federal reimbursement for guardianship children whose care and placement were not the responsibility of the Department of Social Services. These overpayments totaled $320,000 for 104 children.

The overpayment period per child ranged from 1 month to 6 years. (See p. 29.)

The Secretary of HHS should direct the Office of Human Development Services to:

--Issue instructions to all the States notifying them that guardianship children are not eligible for Federal reimbursement for foster care maintenance payments when responsibility for such children is removed from the responsible State agency.

--Obtain retroactive adjustments for Federal overpayments that were made for California guardianship children.

--Determine if other States are receiving Federal overpayments for ineligible guardianship children, and act to identify and recover these overpayments. (See p. 33.)

PLACEMENTS IN EXCESS OF CAPACITY

Children have been placed in 16 State-licensed small family homes that housed more children than they were licensed for. This situation occurred because guardianship children were not being considered or included in the maximum number of children that the homes were licensed for. (See p. 38.)

The Office of Human Development Services should work with California to assure that federally eligible children are placed only in licensed facilities that fully meet State health and safety requirements. (See p. 41.)

HHS, DEPARTMENT OF STATE, AND STATE OF CALIFORNIA COMMENTS

HHS and the Department of State agreed to take actions that, for the most part, were in line with what GAO had recommended.

The State of California has taken or planned to take actions in areas where GAO pointed out that there was a need for action.

However, while the State did not agree with GAO's conclusion that guardianship children should be counted in determining whether a licensed home had children in excess of capacity, it planned to take a number of actions relating to the licensing procedures for foster family homes. GAO believes that the State's procedures will enable foster home operators to continue to obtain increased capacity by seeking guardianship of their foster children without providing the protections of large family or group home licensing requirements.

Contents

ABBREVIATIONS

AFDC	Aid to Families with Dependent Children
GAO	General Accounting Office
HHS	Department of Health and Human Services

CHAPTER 1

INTRODUCTION

This report discusses the circumstances of the placement of foster and guardianship children with the Peoples Temple members who died in Jonestown, Guyana; problems associated with the care and protection provided for guardianship children in three California counties under State law and regulations; and excessive Federal payments made to California for the care of guardianship children.

On February 28, 1979, the Chairman, Subcommittee on Child and Human Development, Senate Committee on Labor and Human Resources, requested us to review the placement of foster children with Peoples Temple members. (See app. I.) In accordance with the Chairman's request, our initial objectives were to determine:

--The extent and circumstances of such placements.

--The amount of Federal funds used to place and/or support these children.

--The circumstances under which foster children were removed from the United States to Guyana.

--Whether any foster children died in Jonestown.

--Whether any Federal funds were diverted from their statutory purpose.

On May 31, 1979, we testified before the Subcommittee in Los Angeles on the results of the initial phases of our review. At the time of our testimony, we agreed to expand our review to determine the:

--Legal requirements and restrictions placed on nonrelative guardians by California statutes.

--Extent and adequacy of reviews of potential nonrelative guardians by social services agencies.

--Extent and adequacy of continuing social services agency evaluations of nonrelative guardianship children in unlicensed homes.

--Extent of foster care payments to nonrelative guardians and the Federal portion thereof.

The following sections provide background on the Peoples Temple, foster care, guardianships, and freedom of citizens to leave the country.

BEGINNING, GROWTH, AND DEMISE OF THE PEOPLES TEMPLE

Since the mass murders/suicides in Jonestown, much has been written about the Peoples Temple and its leader, Rev. James Jones, Sr. Rev. Jones started his own church in Indiana in the 1950s. By the early 1960s, the church, now referred to as the Peoples Temple, was listed as affiliated with the Christian Church (Disciples of Christ). In the mid-1960s, an envisioned nuclear holocaust prompted Rev. Jones to settle with more than 100 followers in northern California. A temple was built in Redwood Valley, a small community in Mendocino County near Ukiah. Within a few years, Rev. Jones opened facilities in San Francisco and Los Angeles--later, the headquarters of the Peoples Temple was moved to San Francisco. Peoples Temple members included attorneys who assisted Rev. Jones and other members on legal questions ranging from obtaining guardianships of children to operating nonprofit corporations that were primarily engaged in acquiring property for the Peoples Temple.

Rev. Jones became involved in political activities and was publicly identified with many political figures. In late 1976, he was appointed Chairman of the San Francisco Housing Authority Commission by the city's mayor. In August 1977 a national magazine article criticized life in the Peoples Temple. By this time, the Peoples Temple membership of about 1,000 had begun to migrate to the agricultural development community that Rev. Jones had established in Guyana in late 1973. Nearly half of the Peoples Temple members migrated to Guyana in July and August 1977. In late 1977 Rev. Jones resigned from the San Francisco Housing Authority Commission while he was in Guyana.

Small numbers of Peoples Temple members were still arriving monthly at the agricultural development community when the tragedy at Jonestown occurred on November 18, 1978, and 913 Peoples Temple members died.

HOW CHILDREN ENTER AND EXIT FOSTER CARE

Children who reside outside the home of a parent or, in some cases, the home of a specified relative are referred to as foster children. States provide financial assistance to foster parents when the foster child is placed by a court and/or through a State-approved placement agency.

Children normally enter foster care by (1) a court directing placement because of the child's behavior and/or home situation or (2) the parents voluntarily allowing an agency, such as a welfare department, to place the child outside the home. Also, a child can enter the foster care system in California when a nonrelative legal guardian applies for foster care maintenance payments.

Children exit from foster care by (1) returning home, (2) being adopted, (3) becoming the ward of a guardian, (4) reaching majority, or (5) other ways, such as marrying or joining the military services. After children exit foster care, the State social services agencies do not have any further responsibilities to them unless services are requested in the children's behalf or a complaint is filed with the social services agencies concerning the children's well-being.

FEDERAL FUNDING OF FOSTER CARE PROGRAM

Title IV-A of the Social Security Act (42 U.S.C. 608) makes Federal matching funds available to the States under the Aid to Families with Dependent Children (AFDC) program for foster home care of dependent children. In fiscal year 1979, Federal funding for title IV-A foster care was $241 million.

The Federal Government also contributes to the support of foster children through titles IV-B (42 U.S.C. 620) and XX (42 U.S.C. 1397) of the Social Security Act. These programs provide Federal matching funds to support child welfare services and social services to adults and children. In fiscal year 1979, Federal funding was $56.5 million for the title IV-B child welfare services program and $2.9 billion for the title XX social services program. The total State and Federal titles IV-A, IV-B, and XX funds allocated for foster care was almost $1.2 billion nationwide for fiscal year 1977, the latest year for which this information is available.

As indicated earlier, there are several ways for a child to enter foster care. Only court-directed placements, however, are eligible for Federal financial participation in the AFDC foster care maintenance payment program. Also, for a case to be eligible for Federal funding, there must be a plan containing information on the foster child's needs and a redetermination of Federal eligibility every 6 months. No Federal regulations require visits by social services caseworkers to check on the well-being of foster children.

While there is no Federal program specifically dedicated to aiding children living with guardians, Federal title IV-B funds can be used for maintenance payments to guardians, and title XX funds can be used to provide services to guardianship children. In chapter 4, we explain why guardianship children are not eligible for title IV-A Federal foster care maintenance payments. The Federal programs for aiding children are administered by the Department of Health and Human Services' (HHS') 1/ Office of Human Development Services and Social Security Administration.

CALIFORNIA'S FOSTER CARE PROGRAM

The California Department of Social Services has overall responsibility for administering the State's foster care program for children. However, under State delegation, the counties operate their own foster care programs. The State gives the counties administrative guidance, program oversight, and fiscal support in operating their programs.

In fiscal year 1979, California spent about $50 million of Federal funds authorized under titles IV-A and XX and about $170 million of State and county funds for its foster care program involving about 28,000 children. The State did not spend any of its title IV-B funds for foster care.

1/Effective May 4, 1980, a separate Department of Education commenced operating. Before that date, the activities discussed in this report were the responsibility of the Department of Health, Education, and Welfare.

CALIFORNIA GUARDIANSHIP OF CHILDREN

Guardianships in California are based on authority provided in the State probate code. For purposes of this report, a guardian is defined as an adult appointed by a court to take care of the person or estate, or person and estate of a minor. Any person may petition the court for guardianship of a minor. Our review concentrated on nonrelative guardianships of persons or persons and estates. Sections 1440 and 1443 of the California Probate Code include requirements for preguardianship suitability investigations by the county agency responsible for public social services. Section 1500 of the code requires court permission for the guardian to establish a minor's residence outside the State. No statewide figures are available on the actual number of relative or nonrelative guardianships in California. Records on guardianships are on file only at the county probate courts.

RIGHT OF CITIZENS TO LEAVE COUNTRY

Before leaving the country, citizens ordinarily come into contact with only one Government organization--the Passport Services of the Department of State. The Passport Services' primary responsibility is to issue passports to U.S. citizens. A concurrent responsibility is to prevent issuance of a passport to an applicant who is not the person the applicant claims to be or in any other case where fraud is suspected.

Anyone 13 years of age or older may execute a passport application in his or her own behalf. A parent, a legal guardian, or a person in loco parentis (in the place of a parent) must personally appear and execute an application for a child under 13.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our review of Peoples Temple children in Guyana was made at the Department of State headquarters, HHS headquarters, the HHS San Francisco Regional Office, the San Francisco Passport Services, the California Department of Social Services, and 13 California counties. We coordinated our work with the review efforts of the HHS Inspector General and the California attorney general.

From two Department of State lists of verified and unverified Peoples Temple members who died in Guyana and from a list compiled by a Peoples Temple attorney of persons who migrated to Jonestown, we identified 294 names of children under 18 years old who died in Guyana. We used this list to identify and analyze foster care and/or guardianship children.

All of the names of the Peoples Temple members who migrated to Guyana were checked against the State's Medi-Cal files. (Medi-Cal is the State Medicaid program funded under title XIX of the Social Security Act.) In addition, we subpoenaed and examined county welfare records of the children that were identified in the Medi-Cal files. With the assistance of State and county officials, we identified the children who had a welfare history and reviewed the available case files for these children. Available court records on Peoples Temple guardianship children who migrated to Guyana were also obtained.

Our review of guardianship activity in California was made from August through November 1979 at the State Department of Social Services and in three counties--Alameda, Los Angeles, and San Diego--and included an analysis of:

--Probate court records of over 200 guardianship children to determine extent of preguardianship protection provided.

--Social services files of 385 of the over 600 children in nonrelative guardianship status as of November 1979 to determine extent of Federal participation in maintenance payments.

--Several foster family homes or other facilities to determine if guardianships were being used to circumvent foster care licensing requirements.

In San Diego County, our review included files of all 72 nonrelative children available. However, because of the large number of nonrelative guardianship children in Alameda and Los Angeles Counties, we limited our review to files of 136 of the 233 children in Alameda County and files of 177 of about 300 children in Los Angeles County. The files of the nonrelative guardianship children in Alameda County were not readily available for our review. Consequently, we reviewed all of the files of children (136) that were given to us by the county during our review at the county offices. In

Los Angeles, we selected for review 9 of the 20 suboffices that had the largest number of nonrelative guardianship children and reviewed the files of all of the 177 children at those suboffices.

The objectives of our review are discussed on pages 1 and 2.

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HHS, the Department of State, the State of California, and officials of the California Judiciary were given an opportunity to comment on our draft report. Written comments were received from HHS on October 22, 1980; from the Department of State on October 27, 1980; and from the State of California on October 24, 1980. These comments, which are set forth in appendixes II, III, and IV, respectively, have been considered by us in preparing this report. Specific comments concerning our recommendations are summarized at the end of each chapter. A California Judiciary official informed us orally on October 21, 1980, that the officials had no comments to offer on the draft report.

CHAPTER 2

CIRCUMSTANCES OF THE TRAGIC DEATHS OF PEOPLES TEMPLE CHILDREN

The exact number and names of all the children who died in Guyana will never be known. More than 200 of the young victims of the tragedy were not individually identified before burial in California. We identified 294 names of persons under the age of 18 years who reportedly died with the Peoples Temple group in Guyana in November 1978.

Most of the children had some history of welfare aid in California before migrating to Guyana. Seventeen had previously been in foster care, but had been terminated from foster care (returned to parent or guardian, or adopted) before the Guyana tragedy. Of the 21 children who died in Guyana who were wards of nonrelative Peoples Temple members, 19 were there without the court approval required to change their residence to Guyana. Information regarding Peoples Temple children is discussed in the following sections of this chapter.

MANY OF THE PEOPLES TEMPLE CHILDREN HAD RECEIVED WELFARE ASSISTANCE

Of the 294 children identified as probable victims in Guyana, more than three-fourths (228) had a welfare history in California--206 were previously recipients of both cash grant and noncash aid programs, and 22 were previously recipients of such noncash aid programs as food stamps and Medi-Cal. Of the 206 children in cash grant programs, 189 were previously in the AFDC family group/unemployed parent program, and 17 were previously in foster care.

Demographics and other data on the 17 former foster children who died in Guyana

None of the 17 former foster children who died in Guyana were under the care and custody of the California

Department of Social Services while in Guyana. 1/ Since they had been terminated from the foster care program before migrating to Guyana, no foster care maintenance payments were made on their behalf while they were in Guyana. 2/

Sex, ethnic background, and age

Of the 17 Peoples Temple children who had been in foster care, 10 were female and 7 were male. Fourteen of the children were black, and three were white. At the time of death, two children were from 5 to 7 years old, three were from 8 to 10 years old, six were from 11 to 13 years old, and six were from 14 to 16 years old.

First contact with Peoples Temple

Four of the 17 children came into contact with the Peoples Temple by placement actions of county agencies. However, all four exited from foster care through adoption or other court action. Three children were adopted by their Peoples Temple foster parents. The fourth child was a juvenile delinquent placed into a facility operated by Peoples Temple members. The probate court later made this child the ward of a Peoples Temple member and gave approval for the guardian to take the child to Guyana. (See p. 11 for detailed discussion of this case.)

The other 13 children were first exposed to the Peoples Temple by members of their own family, usually the mother.

1/On page 14, we discuss a California attorney general report which addresses a broader Department of Social Services responsibility for Peoples Temple children in Guyana.

2/One child was in foster care while in Guyana, but she survived because she was in Georgetown, Guyana, when the tragedy occurred. In this case foster care maintenance overpayments for 7 months occurred (no Federal funds involved), and the State has taken action to recover these overpayments.

Time spent in foster care

The time spent in foster care by the 17 children ranged from 5 to 156 months. The average time spent in foster care was just under 2 years, excluding two children who were in foster care for 13 years each. The breakdown:

Time in foster care	Number of children
Less than 1 year	5
1 to 2 years	4
2 to 3 years	2
3 to 4 years	4
13 years	2
Total	17

Ten of the 17 children spent all of their time in foster care with Peoples Temple members--including the 2 who were in foster care for 13 years each. The other seven children's foster parents were not Peoples Temple members.

Time out of foster care before migration to Guyana

Four of the children had left foster care less than 6 months before departure, two from 6 months to 1 year, four from 1 to 2 years, six from 4 to 5 years, and one over 6 years.

For the four children who had left foster care within 6 months before their migration to Guyana, we obtained the following information.

--A child's foster parent or guardian took the child to Guyana in July 1977. County foster care payment checks were issued in July and August 1977 and sent to the foster parent's former address in California, but were returned to the county by the Postal Service. The county terminated the child from foster care as of June 30, 1977, because the foster parent or guardian failed to maintain contact with the county. The foster parent or guardian had obtained court approval to take the child to Guyana.

--In July 1977, a U.S. district court judge placed a mother on 3 years' probation and released her to the Peoples Temple agricultural development community in Guyana. The Federal judge permitted the mother to take her 5-year-old child to Guyana. The child had been living with foster parents from October 1976 to July 1977, when foster care payments were terminated because the child was returned to the mother. Passport documents show that the child was taken to Guyana in August 1977 by nonrelative Peoples Temple members; the mother did not arrive in Guyana until January 1978.

--A child who was a ward of the juvenile court had been living with foster parents from June 1974 to March 1976, when the court removed him from foster care to place him in a juvenile detention facility. In April 1976, a nonrelated Peoples Temple member obtained guardianship and court approval to take the child to Guyana. In June 1976, the child, now 13 years old, went to Guyana apparently unaccompanied. We found no evidence that the guardian ever went to Guyana. A newspaper reported that the guardian left the Peoples Temple group shortly after his ward went to Guyana.

--A child was in foster care from May 1973 through March 1977. During this period, she was under two separate guardianships with different nonrelated guardians who were Peoples Temple members. In August 1977 the child arrived in Guyana accompanied by nonrelative adult Peoples Temple members. Her guardian did not migrate to Guyana until March 1978.

The other two children whose foster care status was terminated within 1 year before going to Guyana were in foster care from July 1964 to June 1977. In July 1977, their foster mother began procedures to adopt the two children. State subsidized adoption payments were made to the adoptive parent concurrent with the termination of foster care maintenance payments. The two children were taken to Guyana by their adoptive mother in April 1978, the same month that their adoption was finalized.

For most of the other children, foster care payments were terminated because the children had returned to a relative, usually their mother, before they migrated to Guyana.

Children's family status and persons accompanying children to Guyana

At the time of departure to Guyana, 4 of the 17 children had been reunited with and were accompanied to Guyana by one or both of their parents or a relative; six of the children had been living with a relative, but were not accompanied by a relative; two children were accompanied by their adoptive mother; one child was accompanied by her legal guardian; three children had legal guardians, but did not depart with their guardians; and one child had been adopted, but did not depart with his adoptive parents.

Passport applications frequently indicated trip to Guyana was for vacation

We reviewed the passport applications that were available for 16 of the 17 foster care children to obtain information on their reported reasons for leaving the United States. The passport applications showed that 10 of the children were leaving for a "vacation" for a period of from 20 days to 6 months. Of the other six children, three were reported leaving for Peoples Temple agricultural mission work, one for Peoples Temple human services work, and two did not give a reason for leaving. Peoples Temple members migrating to Guyana commonly stated on their passport application that the purpose of the trip was for a vacation. On the passport application, the section for stating the purpose of travel is optional.

Extent of foster care maintenance payments for the former foster children

Foster care maintenance payments for 3 of the children had been claimed by the State for Federal participation, while the other 14 were funded solely by the State and counties. Payments to the foster care parents of the 17 children who spent some time in foster care totaled $66,000 for the total period of foster care. This included $42,000 paid to foster parents associated with the Peoples Temple. About $5,800 of the $66,000 was provided from title IV-A funds for the three federally funded foster care children. Included in the $5,800 was $750 of Federal funds for a child placed in foster care with a person who was not

a Peoples Temple member. This child was a voluntary placement and was later determined by the State to be ineligible for Federal funding.

PEOPLES TEMPLE MEMBERS WERE LEGAL GUARDIANS FOR SOME OF THE YOUNG VICTIMS OF GUYANA

Twenty-one of the 294 children who died in Guyana were wards of nonrelative guardians at the time of their deaths. Seven of the 21 children were included in the 17 children with some history of foster care previously discussed. In addition to these 21 guardianship cases, other children had been wards of nonrelative Peoples Temple members. Peoples Temple members had filed guardianship petitions for more than 50 children. Such children, other than the 21 who were wards at the time of their deaths, reached majority or were returned to their parents before the migration to Guyana.

Guardianships used to circumvent foster care licensing procedures

In the early 1970s, children were being placed in foster care in unlicensed homes of Peoples Temple members in Mendocino County by placement agencies of other California counties, primarily Alameda County. To stop such placements, Mendocino County officials advised the counties that this practice was contrary to State and county regulations, which required that foster children be placed in licensed facilities. Peoples Temple attorneys and members then began filing petitions with probate courts for guardianship of children for Peoples Temple members. Children were placed in the homes of Peoples Temple members who, as guardians, were exempt from the foster care licensing requirement. Only one of the seven homes receiving foster care maintenance payments for guardianship children had a foster care license.

Guardianship children were taken out of country without court approval

Nineteen of the 21 children who died while under California guardianship arrangements had been taken out of the United States for relocation in Guyana without the court approval required by California statutes for change of residence. Guardians of the other two children, both former foster children, had obtained court approval to take their wards to Guyana.

Section 1500 of the California Probate Code requires the guardian to obtain probate court approval to change the residence and domicile of the ward outside the State. The code does not require court approval for absences from the State if residence and domicile are not changed.

Proof of court permission to take guardianship children out of the country not required by Passport Services

The primary purpose of the U.S. Passport Services is to help U.S. citizens obtain passports. The principal documentation required is proof of identity and of U.S. citizenship. Passport officials attempt to verify that the person applying for the passport is the person purported to be, that the person is not a fugitive, and that the passport is not being obtained for illegal purposes. Passport Services does not have procedures that require documentation of court approval for a guardian to take his or her ward outside the United States.

The Passport Services' San Francisco agency processed Peoples Temple members' applications in accordance with existing laws and regulations. Passport officials said that the number of children and elderly persons going to the jungles of Guyana was considered unusual, so they monitored applications from Peoples Temple members for potential passport fraud and kept their national office advised of passports issued to Peoples Temple members.

A California attorney general report 1/ on the Peoples Temple discusses the contact between Department of State and California officials concerning the children taken to Guyana. The report states that there were discussions between California and State Department personnel regarding complaints against Peoples Temple activities in Guyana, including possible foster children being there. However, no fraudulent activities concerning children were established by the Passport Services.

1/"Report of Investigation of People's Temple," April 1980.

MOST OF THE PEOPLES TEMPLE CHILDREN DID NOT TRAVEL TO GUYANA WITH A PARENT OR GUARDIAN

In migrating to Guyana, the children and the persons who had legal responsibility for the well-being of the children--biological or adoptive parent, other adult relative, or legal guardian--usually traveled separately. An analysis of Department of State passport data and other documentation concerning travel of the 294 children to Guyana showed that:

--96 traveled with parents.

--9 traveled with other relatives.

--2 traveled with legal guardians.

--147 traveled with someone other than parents, guardians, or other adult relatives.

--40 travel arrangements were unknown.

Thus, over half of the children for whom we were able to obtain data went to Guyana without being accompanied by a parent, other adult relative, or guardian.

Peoples Temple files in the custody of the court-appointed trustee in San Francisco contained documents authorizing travel of children. Typically, there were three documents for each child that were signed by a parent or a guardian:

--Limited power of attorney.

--Release of liability.

--Consent to travel and visit.

These documents had the effect of virtually turning the children over to the control and custody of almost anyone within the Peoples Temple. Without ruling on the legality of such documents, in November 1979 a California deputy attorney general told us that the existence of such authorization could establish the voluntary intent of those persons with legal custody of the children to allow other Peoples Temple members to take their children to Guyana.

CONCLUSIONS

Peoples Temple children were commonly transported to Guyana with nonrelative Peoples Temple members. While children frequently went to Guyana without their parent or guardian, no fraudulent activities involving taking the children to Guyana were identified by Passport Services investigations.

We did not identify any children who were under the supervision and care of the California Department of Social Services when they died in Guyana. We identified 17 children, under 18 years of age when they died, who had previously been recipients of foster care maintenance payments. All of the children had been terminated from the foster care program before migrating to Guyana (returned to parent, adopted, or placed in guardianship).

Twenty-one children were wards of nonrelative Peoples Temple member guardians when they died in Guyana. Guardians of only 2 of these children had obtained court approval for their wards to settle in Guyana--the other 19 children had apparently been relocated to Guyana without the court approval required for changing the residence of guardianship children outside California. No regulations require Passport Services to verify that guardians have obtained court permission to take their wards outside the United States.

RECOMMENDATION TO THE SECRETARY OF STATE

We recommend that the Secretary require the U.S. Passport Services to adopt policies and procedures to verify, before issuance of passports, that where required by State law, guardians have obtained court approval to take their wards outside the country for travel and/or residence abroad.

DEPARTMENT OF STATE COMMENTS AND OUR EVALUATION

The Department of State said that its procedures could be adapted for processing passport applications of minors in guardian situations to accomplish the purpose of our recommendation. The Department also said that, under its procedures, a person who is not a parent of the minor applicant must provide proof of the legal relation to the child before a passport is issued and that passports will not be issued

if Passport Services is notified in advance that an adult who is a parent, guardian, or person in loco parentis and is normally entitled to travel outside the United States with the child, no longer has that right. The Department added that Passport Services would be willing to inform the States of the availability of this measure to prevent the issuance of a passport to a minor whose guardianship order does not allow travel outside the United States.

We believe that the State Department proposal will help prevent children who are under court-approved guardianship arrangements and who do not have the right to travel outside the United States from obtaining passports to leave the country. However, we believe that there is a need to assure that passports are not given to guardianship children when no advance notice is given to the Passport Services that a child is not permitted to travel outside the country and when State law, such as the California law, requires that guardianship children obtain court approval to reside outside the United States. Therefore, when the Department informs the States of the measure that it has available, the States should be requested to provide pertinent information on State laws regarding the preexisting conditions that are required for taking guardianship children out of the country. The Passport Services should use the information obtained from the States in developing its policies and procedures to insure that passports are not given to guardianship children contrary to State law.

CHAPTER 3

CALIFORNIA'S PROCEDURES FOR HANDLING NONRELATIVE GUARDIANSHIPS ARE NOT ADEQUATE TO ENSURE THE WELL-BEING OF CHILDREN

Since some of the children who died in Guyana were under court-approved guardianship arrangements, our review was expanded to examine the care and protection provided for nonrelative California guardianship children. We found that, although probate court and social services agency protection was potentially available to all children entering or already in nonrelated guardianships in California, neither the probate courts nor the social services agencies were adequately providing this protection.

California probate laws and Department of Social Services regulations include various procedures that can contribute to the well-being of children who are, or are about to become, wards of nonrelative guardians:

1. Suitability reports--State law requires the county public social services agency to report on the suitability of a potential nonrelative guardian's home before guardianship is granted.

2. Continuing periodic reviews--Regulations of the State Department of Social Services require the county public social services agency to perform semiannual assessments of homes after guardianship is granted if foster care maintenance payments are being made to the guardian on behalf of the child.

3. Probate court reviews--Probate court judges grant guardianships and can periodically review such placements. Biennial probate court reviews are required for guardianship children who have estates.

However, these procedures were not consistently implemented, and children frequently did not receive the protection available.

Many children have become wards of nonrelative guardians who had previously obtained community care (foster care) licenses. To obtain licenses, the homes had been investigated by State or county social services agencies. Thus, in addition to the three types of protective procedures discussed above, children entering these homes obtain a fourth type of protection.

To see how well nonrelative guardianship children were being protected, we looked at the probate court files of 208 children in three California counties. Of these, 106 were recipients of foster care maintenance payments, and 102 were not. The petitions for guardianship on all 208 children were submitted after the requirement for suitability reports became effective in 1976.

Except for court reviews of children with estates, the only protective procedure required under State law is a report on the suitability of placing a specific child in the home of a nonrelative who has petitioned the court for guardianship of the child. The other procedures, such as foster care licenses, while not required, can contribute to the well-being of guardianship children.

CALIFORNIA LAW NOT CONSISTENTLY FOLLOWED AS TO WHEN AND HOW PREGUARDIANSHIP SUITABILITY ASSESSMENTS SHOULD BE DONE

California law does not require nonrelative petitioners for guardianship to obtain foster care licenses. Instead, the law requires suitability reports to be prepared to assess the suitability of the homes of nonrelative petitioners. However, such reports generally were not prepared. Therefore, children have been placed in nonrelative guardianships without benefit of an adequate investigation that might help the court assure that the child's needs would be met.

State and county officials have made different interpretations of the State probate code section requiring suitability reports on petitioners applying for guardianship of nonrelated children. While State officials believe that the county social service agency should prepare a report in every nonrelative guardianship case, some county probate judges believe that reports should be done only when the child may also be involved in adoption proceedings or when directed by the court.

The probate code section governing suitability reports states:

> "Sec. 1440.1 Petition for adoption; reports
>
> If a petition states that an adoption petition has been filed, a report with respect to the suitability of the petitioner for guardianship shall be filed with the court by the agency investigating the adoption. In any other case the local agency designated by the board of supervisors to provide public social services shall file a report with the court with respect to the petitioner of the same character required to be made with regard to an applicant for foster family home licensure."

In a September 16, 1975, letter explaining the intent of the originating bill submitted for the Governor's approval, its author, California State Senator Nicholas Petris, wrote:

> "This bill provides that in all cases where a petition for guardianship over a minor is filed by a nonrelative (who was not named in a will as guardian) a report on the suitability of the petitioner must be filed with the court."

Senator Petris then went on to explain who must file the report: the agency investigating adoptions if an adoption petition had also been filed, or the foster home licensing agency if no adoption petition had been filed.

The State Department of Social Services has interpreted the law in accordance with the intent expressed by Senator Petris in his September 1975 letter. In a February 1976 policy memorandum, the department communicated this to the California county social services agencies. This policy memorandum also explained several of the law's other provisions, describing the flow of information necessary to implement the law, such as the (1) guardianship petitioner's attorney must submit a copy of the petition to the State Department of Social Services' Adoptions Operations Bureau and (2) Adoptions Operations Bureau must, in cases where no adoption is pending, notify the applicable county social services agency that a petition has been filed, so that the

local agency can begin the suitability investigation. Meanwhile, the probate court receives the petition and sets a hearing date, which becomes the deadline for the social services agency to complete the report.

Only one of three counties routinely makes preguardianship suitability investigation

Of the three counties reviewed--Alameda, Los Angeles, and San Diego--only Los Angeles County routinely performed preguardianship suitability investigations. Probate judges of the other two counties did not interpret the law according to Senator Petris' stated intent that a report be provided to the court in each case. Rather, they interpreted the law to mean that they should get suitability reports from the local social services agency only when requested or when an adoption petition has been filed for the child.

As a result of the probate courts not requiring the submission of suitability reports and the failure of the county social services agencies to prepare suitability reports unless directed to do so by the probate judges, such reports were not prepared for most children, as shown in the following table.

County	Number of cases reviewed that required preparation of suitability reports	Suitability reports prepared
Alameda	101	3
Los Angeles	56	42
San Diego	51	3
Total	208	48

Thus, in Los Angeles County, 42 of 56 (75 percent) of the petitioners for nonrelative guardianship were reviewed for suitability. In contrast, only 6 of 152 (less than 4 percent) of the petitioners in the other two counties--Alameda and San Diego--were reviewed for suitability. Two factors seem to account for this difference. First, Los Angeles County probate judges actively enforced the requirement for the local social services agency to prepare and issue suitability reports. In fact, the judges went beyond the State

law requirements by directing the petitioners' attorneys to notify the local social services agency directly to make the suitability review, instead of, or in addition to, notifying the State Adoptions Operations Bureau. Secondly, Los Angeles County judges have demonstrated a willingness to delay the guardianship hearings to allow the social services workers time to prepare the suitability reports.

When the direct notification to the county social services agencies was not required by county probate judges (such as in Alameda and San Diego Counties), the required procedure for the State Adoptions Operations Bureau to notify the county social services agency of the guardianship petition was frequently untimely. As a result, the local agency often did not have time to make the suitability review and report before the guardianship hearing date. Thus, suitability reports were not prepared unless the judges (such as those in Los Angeles County) required them and were willing to set guardianship hearing dates to accommodate the review. Court officials stated that, without suitability reports, a judge normally grants a nonrelative guardianship of a child based on the merits of the petition and the lack of relative opposition to the petition.

ALTHOUGH NOT REQUIRED, OTHER PROTECTION IS AVAILABLE TO SOME CHILDREN

We assessed the use of other procedures that could have contributed to the well-being of the 160 guardianship children for whom suitability reports were not prepared. We found that other protective procedures existed to contribute to the well-being of 129 of the 160 children as shown below.

Protective procedure	Number of children
Continuing periodic reviews and foster home licensure investigation	65
Continuing periodic reviews, only	19
Foster home licensure investigation, only	45
	129

Thus, 31 of the children reviewed (160 minus 129) did not benefit from the required suitability report or any of the other protective procedures potentially available.

SUITABILITY REPORTS AND LICENSING EVALUATIONS COVER DIFFERENT ISSUES-- ELEMENTS OF BOTH MAY BE NEEDED

State law requires that the suitability reports be of the same character as those made regarding an applicant for foster family home licensure. However, the suitability report criteria developed by Los Angeles and San Diego Counties were quite different from foster home licensing criteria. The licensing criteria covered primarily the physical aspects of the home. On the other hand, the suitability report requirements and actual investigations were much more comprehensive in appraising the social and psychological aspects of the home environment. They also evaluated the merits of guardianship as a placement alternative for the child and the petitioner's motives in seeking guardianship.

Primarily from the perspective of the child's physical well-being, the licensing criteria included three important items not covered by suitability report requirements: (1) evidence of a criminal record check, (2) a physician's certification of the health of the petitioner and other home residents, and (3) a fire clearance for the housing of nonambulatory children. Suitability reports could be strengthened by incorporating these licensing criteria.

ONGOING REVIEWS OF GUARDIANSHIPS NOT PERFORMED CONSISTENTLY

Preguardianship suitability reports and placement of children with guardians who have foster care licenses do not provide assurances of the continued well-being of children in guardianships. Two types of periodic reviews can provide this ongoing protection: probate court reviews and county social services agency reviews.

California probate courts have not routinely reviewed guardianships unless the children have estates, and social services agency involvement with guardianship children has not been consistent. These findings are discussed in the following sections.

Probate courts do not routinely review guardianships unless the children have estates

California State probate law does not specify whether probate courts must periodically review guardianships of children who do not have estates. Although the probate code refers to periodic reviews of guardianships, it addresses only matters of financial accounting in cases where the guardian has taken custody of the child's estate. It does not address the guardian's "accountability" for a child's physical, social, or psychological welfare. Sections 1904 and 1553 of the California Probate Code require that, at the end of 1 year from their appointments, guardians must present their accounts to the court for settlement and allowance. Thereafter accounts must be presented to the court as often as required by the court, but at least biennially.

The lack of a requirement for continuing periodic needs assessments of ongoing guardianships is of particular concern for children not receiving foster care maintenance payments and not living in licensed homes. (Examples of such children are the 31 children shown as receiving no protection on p. 22.) When financial assistance was provided or the home was licensed, the Department of Social Services regulations required periodic contact with the home. However, where no money or license was involved, both the probate court and the social services agency could lose all contact with the child. Contact would only be reestablished if a complaint was made that the child was being neglected or abused.

Social services involvement with guardianship children is not consistent among counties

Although the probate courts do not monitor ongoing guardianships of children without estates, some children--those whose nonrelative guardians were receiving foster care maintenance payments--were afforded some protection through the visits of social services staff. These visits can indicate when the child's needs are not being met and could alert the social services agency of the need to apply appropriate protective service measures, such as involuntary removal of the child for abuse or neglect.

State Department of Social Services regulations 1/ used by county workers in reviewing the eligibility of guardians for financial assistance stated that financial assistance could not be provided until county social workers, in accordance with the "Standards for Social Services," had determined that the home or facility met the child's physical, social, and psychological needs. One section of the standards required the local department of social services to assess a child's needs and determine whether they were being met in the foster home. Another section stated that an initial assessment must be made for each child and that reassessments should be made as frequently as needed but at least every 6 months. This last clause, which established a condition on eligibility for financial assistance, meant that homes receiving assistance for their ward(s) must be reviewed by a social worker, in addition to a (financial) "eligibility" worker, at least every 6 months or lose their funding.

While Alameda and San Diego Counties were enforcing these regulations, the Los Angeles County Department of Public Social Services operated with the understanding that it had little authority for supervising guardianships, since the probate court gave legal responsibility for the child's care to the guardian. Consistent with this understanding, Los Angeles County interpreted the State's financial eligibility regulations as follows: The Department of Public Social Services could initially deny a guardian funds if the first social assessment found the home unsuitable or if the guardian did not cooperate with the social worker. However, once the home was found suitable and funding was approved, the department would not stop payments if the guardian did not allow the social worker to reassess the home. Rather, the rate of financial support would be reduced to the base level (minimum rate paid by the county), and the case would then remain open only for providing the monthly maintenance payment.

1/Although the department did not intend to reduce protection for children in guardianship arrangements, in January 1980 its regulations covering guardian situations were revised and reference to guardians was inadvertently deleted. Current State regulations do not provide guidance for handling guardianships. A State official advised us that actions will be taken to reinstate the State regulation covering guardianships.

CONCLUSIONS

County public social services agencies did not always report to the court on the suitability of petitioners for guardianship of nonrelative children. This noncompliance with California State law was attributed to (1) judges not requiring the reports and (2) insufficient time to prepare the reports before the guardianship hearing dates. The result was that most of the children we reviewed in two of the three counties did not receive the protections provided by State law.

When prepared, suitability reports included an assessment of whether the proposed guardianship arrangement would meet the child's psychological and social needs. We believe the assessment should be expanded to address more fully other areas, such as evidence of criminal records check, physician certification of health of petitioner and other residents of the home, and a fire clearance for the home if the petition is being filed for a nonambulatory child.

While suitability reports were intended for all nonrelative guardianship children, two other types of protection exist for many children. First, some children, because their guardians receive foster care maintenance payments on their behalf, benefit from continuing periodic reviews of the guardianship home by county social workers. Second, the guardians of many of the children were previously investigated for a foster care license. Nevertheless, 15 percent of the children in our review received none of the three major types of protection offered by State laws and regulations.

Although no cases of abuse were noted, one of the counties we reviewed had a policy which would allow foster care maintenance payments to continue to guardians who did not let county social workers periodically visit the home to assess whether the child's needs were being met. This policy was contrary to State regulations and should be corrected. Recent revisions to State regulations inadvertently deleted guidance to the counties on how to handle guardianship cases. According to a State official, this oversight will be corrected.

RECOMMENDATIONS TO THE SECRETARY OF HHS

HHS has acknowledged its role as an advocate for the welfare of all the Nation's children. In fulfilling this role, HHS could be instrumental in improving the protection provided to guardianship children. To accomplish this goal, we recommend that the Secretary direct the Office of Human Development Services to encourage California to:

--Reiterate to the probate court judges the importance of county social workers' preparing suitability reports on petitioners for nonrelative guardianship children.

--Help the county social services agencies expand criteria on suitability reports to cover more fully the physical well-being of children, such as criminal checks and health certificates for petitioners and fire clearances for petitioners' homes.

--Reissue regulations governing guardianship situations and require compliance by county social services agencies.

HHS AND STATE OF CALIFORNIA COMMENTS AND OUR EVALUATION

HHS

According to HHS, we were correct in stating that California should emphasize the importance of having county social workers prepare meaningful suitability reports on the petitioners for guardianship children to further ensure the children's well-being. However, concerning our recommendation that it encourage California to reissue its regulations, HHS misinterpreted it to mean that we are recommending that HHS issue Federal regulations governing guardianships where the care and maintenance of such children is not the responsibility of the State agency's federally funded foster care program. HHS, therefore, said it lacked legal authority to issue the regulations, and it did not inform us of any actions it would take in response to our recommendation.

State of California

The Director, California Department of Social Services, agreed with our recommendations and stated that the following actions have been or will be taken:

--Asked the California attorney general to issue, and circulate to all probate court judges, a legal opinion on the Probate Code concerning the necessity for preparing a suitability study before awarding guardianships.

--Issued directives to county social services departments reiterating and redefining their role and responsibilities in conducting home suitability studies. These directives also address the need to cover the physical well-being of children when conducting home suitability studies. Also, the directives instruct the counties to notify the court of any delay and to seek postponement of the hearing if necessary to enable them to file the report before the granting of guardianships.

--To alleviate the problem of insufficient time allotted to counties to prepare suitability studies, the department has sponsored State legislation to increase from 15 to 60 days the time frame for completion of the studies.

--Regulations governing guardianship situations are being prepared to replace the regulation inadvertenly deleted. In addition, a State law was recently enacted which specifies requirements to be met before children living with nonrelated legal guardians are eligible for financial assistance: (1) the legal guardian must cooperate with the county welfare department in developing a needs assessment, updating the assessment every 6 months, and carrying out the service plan, and (2) the county social services department must complete the needs assessment, update it every 6 months, and carry out the service plan.

CHAPTER 4

CALIFORNIA IS RECEIVING FEDERAL FOSTER CARE REIMBURSEMENT FOR INELIGIBLE GUARDIANSHIP CHILDREN

Guardianship children do not meet the criteria for Federal reimbursement of foster care maintenance payments under title IV-A. The Social Security Act requires, among other things, that the care and placement responsibility for foster children reside with the State IV-A agency (in California, the Department of Social Services). We reviewed cases for 385 nonrelative guardianship children in three California counties to determine whether Federal reimbursement was being claimed. We found that the counties improperly requested and received Federal reimbursement for foster care maintenance payments for guardianship children amounting to about $320,000. Generally, the counties were not aware of the Federal requirement to terminate from Federal financial participation guardianship children no longer under the care and placement of the State IV-A agency.

The following sections discuss the requirements for AFDC Federal financial participation and our findings in the three counties reviewed.

CERTAIN CONDITIONS MUST BE MET FOR CHILDREN TO BE ELIGIBLE FOR FEDERAL FINANCIAL PARTICIPATION

To be eligible for AFDC Federal financial participation, a child must meet the Federal requirements in sections 406 or 408 of the Social Security Act. Federal aid under title IV-A AFDC is available to

--a dependent child (1) who has been deprived of parental support, (2) who is living with a specified relative, (3) who is under 18 (or under 21 if regularly attending school), and (4) whose family meets income eligibility requirements--this category is referred to as AFDC family group/unemployed parent program--or

--a dependent child removed from his or her home by judicial determination (1) whose placement and care are the responsibility of the agency specified by the title IV-A plan, (2) who was placed in a State licensed or approved foster care facility, and (3) whose family meets income eligibility requirements--this category is referred to as AFDC foster care.

Nonrelative guardianship children are not eligible for Federal financial participation under either aid program. Guardianship children are not eligible for the AFDC family group/unemployed parent program unless the guardian is a relative as specified in section 406. Similarly, guardianship children are not eligible for AFDC foster care because the probate courts remove federally eligible foster children from the care of the State agency and give the responsibility of caring for the children to the guardians. The responsibility for placement of these children is also taken from the State agency and retained by the court. To remove such a child from his or her guardian, the State agency must obtain court review and approval.

At the time of our review, HHS was not aware that California was receiving reimbursement for guardianship children under the Federal foster care program. Also, HHS had not issued any instructions to California notifying it that guardianship children were not eligible for Federal reimbursement under the program.

CALIFORNIA COUNTIES RECEIVING FEDERAL REIMBURSEMENT FOR INELIGIBLE GUARDIANSHIP CHILDREN

Each of the three counties we reviewed had received Federal reimbursement for foster care maintenance payments on behalf of guardianship children. These Federal overpayments occurred when the county agencies did not terminate children from Federal foster care financial participation when they became wards of guardians. Such children originally met the requirements for Federal financial participation under section 408 of the Social Security Act. After becoming wards of guardians, they remained eligible for State foster care maintenance payments, but lost their Federal eligibility.

State regulations allow payments to nonrelative guardians under foster care provision

California Department of Social Services regulations allow nonrelative guardians to request and receive foster care maintenance payments for their wards. Every 6 months the county agencies are required to assess whether the needs of the child are being met in the guardian's home.

Federal overpayments for guardianship children identified at three counties reviewed

The following sections describe our findings on nonrelative guardianship children reviewed in each county.

Alameda County

As of November 1979, 233 children were in nonrelative guardianship status in Alameda County receiving maintenance payments under the State's foster care provisions. Upon reviewing case files on 136 of them, we found that Federal foster care maintenance payments were made for 61 children after guardianship was granted. In most cases, dependency was terminated within a few months after guardianship was granted, and in some cases, Federal financial participation was also terminated. The Federal overpayments ranged from 1 to 75 months per child and totaled $173,000.

Foster care maintenance payments for 39 of the 61 guardianship children were still being federally supported at the time of our review. Alameda County officials said these children will continue to be classified as federally eligible, and adjustments to reimburse the Federal Government for the overpayments will not be made unless the county is directed to do so by the State Department of Social Services.

Los Angeles County

As of November 1979, about 300 children were in nonrelative guardianship status in Los Angeles County receiving maintenance payments under the State's foster care provisions. We reviewed case files on 177 of them and found that Federal foster care maintenance payments were made for 26

children after guardianship was granted and dependency was terminated. Federal overpayments ranged from 1 to 79 months per child and totaled $107,000.

Foster care maintenance payments for 20 of the 26 guardianship children were still being federally supported at the time of our review. Los Angeles County officials stated that appropriate actions have begun to classify all guardianship children as non-Federal and that adjustments to reimburse the Federal Government were being made in all cases.

San Diego County

As of November 1979, 72 children were in nonrelative guardianship status in San Diego County receiving maintenance payments under the State's foster care provisions. We reviewed all the case files and found that Federal foster care maintenance payments had been made for 17 children after guardianship was granted and dependency was terminated. The Federal overpayments ranged from 1 to 57 months per child and totaled $40,000.

None of the guardianship children were being federally supported at the time of our review. San Diego County policy was revised to appropriately indicate that guardianship children are not eligible for Federal financial participation in foster care maintenance payments. The county has not received Federal reimbursement for foster care maintenance payments for guardianship children since February 1979. County officials stated that adjustments to reimburse the Federal Government for the overpayments received for guardianship children will be made only if the county is directed to do so by the State Department of Social Services.

CONCLUSIONS

The three California counties we reviewed had received Federal reimbursement for foster care maintenance payments made on behalf of guardianship children who were not eligible for Federal financial participation.

Alameda County officials indicated that they will continue to claim these children as eligible for Federal financial participation unless directed otherwise by the State Department of Social Service. The other two counties reviewed have taken action to terminate guardianship children from

Federal reimbursement, and one, Los Angeles County, has initiated actions to reimburse the Federal Government for the overpayments involved. These overpayments occurred because the counties were not aware of the requirement to identify and terminate the Federal eligibility of guardianship children who were no longer under the care and placement responsibility of the State Department of Social Services.

Because of the problems noted in the three California counties, we believe that Federal overpayments for guardianship children could be occurring in other California counties and other States. HHS needs to issue clarifying instructions to all the States explaining that guardianship children lose their eligibility for Federal foster care maintenance payments when the care and placement responsibilities of such children are taken from the State title IV-A agency. Also, HHS officials need to survey the situation nationwide to assess the overall significance of Federal overpayments for ineligible guardianship children.

RECOMMENDATIONS TO THE SECRETARY OF HHS

To ensure that Federal financial participation in maintenance payments to foster children is made only for those meeting the Federal criteria, we recommend that the Secretary direct the Office of Human Development Services to:

--Issue instructions to all the States notifying them that guardianship children are not eligible for Federal reimbursement for foster care maintenance payments when responsibility for such children is removed from the State title IV-A agency.

--Follow up on Federal overpayments for ineligible guardianship children and work with California to identify and make retroactive adjustments for the overpayments in the three counties reviewed and the counties not reviewed.

--Determine whether other States are erroneously including guardianship children as federally eligible for foster care. If so, act to identify and recover the overpayments.

HHS AND STATE OF CALIFORNIA COMMENTS AND OUR EVALUATION

HHS

Regarding our first recommendation, HHS stated that:

> "GAO is correct that Federal financial participation in maintenance payments for foster care should be made only for those children meeting Federal criteria. Existing regulations clearly define the conditions under which States can claim Federal financial participation for foster care maintenance. Pursuant to the recently-enacted Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), regulations are being developed which will further define the requirements for FFP [Federal financial participation] for foster care maintenance. The new legislation and regulations pertaining thereto, will also require States to arrange for a periodic, independently conducted audit of this program, to occur no less frequently than once every three years. This law, and the regulations to follow, also mandate a minimum set of reporting requirements to this Department relative to the status of the program. It is expected that there will be no lack of clarity in determining for whom Federal payments may be made for foster care maintenance. In addition, program reviews conducted by this Department will reveal any lack of adherence to the requirements for Federal financial participation."

Concerning our second recommendation, HHS stated that Social Security Administration regional staff will be directed to determine whether there were ineligible guardianship children for whom the State claimed Federal financial participation under the AFDC foster care program. HHS said the review will also determine whether the guardianship status of the children terminated the placement and care responsibility of the State or local agency administering the State plan or any public agency with whom the State or local agency had an agreement which included provisions for assuming development of a

plan of care. A disallowance will be made for cases that are determined to have been ineligible for AFDC foster care payments under title IV-A.

As to our third recommendation, HHS stated that the Office of Human Development Services, which assumed responsibility for the AFDC foster care program on October 1, 1980, from Social Security's Office of Family Assistance, will make efforts to ensure that only children who meet the program's eligibility requirements are included in the States' claims for Federal participation. HHS added that the Office of Family Assistance will request HHS' Audit Agency to review States' expenditures for AFDC foster care for periods before October 1, 1980, and to take appropriate action.

We believe that actions to identify the disallowance of ineligible Federal foster care payments should not be delayed because of provisions of Public Law 96-272, enacted on June 17, 1980, entitled the Adoption Assistance and Child Welfare Act of 1980, which affect future payments to States for foster care. This legislation provides that the fiscal year 1978 Federal foster care payments to States are to be used as the ceiling and basis for payments to States for fiscal year 1981 and later years. The legislation also provides that payments made to States in fiscal year 1981 and beyond will not be subject to recovery for excessive payments resulting from overstated fiscal year 1978 payments. Therefore, action should be taken to reduce the 1978 base-year payments for any overpayments as soon as possible.

State of California

The State said that Federal eligibility currently exists in certain guardianship cases where the detention order making a child the responsibility of the county social services department is not dismissed but guardianship is awarded. We agree with the State since, in these cases, the care and supervision of the guardianship child remains with the county social services department. The State agreed that Federal foster care maintenance funds are not available for other children living with nonrelated legal guardians. The State also expressed the view that HHS should implement regulations which provide for title IV-A funding for such children.

The State also requested that all action relative to recovery of funds be postponed until (1) HHS issues instructions to the States and (2) the State of California has reviewed each case GAO found to be ineligible for Federal funds.

As previously discussed, we believe that actions should be initiated as soon as possible to follow up on ineligible payments because of the impact of Public Law 96-272 on determining payments to States for foster care starting in fiscal year 1981.

CHAPTER 5

GUARDIANSHIPS HAVE BEEN USED TO OBTAIN CHILDREN IN EXCESS OF THE NUMBER AUTHORIZED BY FOSTER HOME LICENSING REGULATIONS

The operators of 16 State-licensed small family homes appeared to have more children than authorized by community care (foster care) licensing criteria. More children were in these homes because guardianship children were not counted or considered as foster care children. Transfer of licensing responsibility at the State level along with failure to address the problem allowed these placements to continue for many years. Potentially, the health and welfare of all the children are jeopardized when residing in a home with more than the number of children the house is licensed for. In early 1980, the State initiated action to review these homes.

During our review of guardianship children, we noted that certain homes contained many of these children. (See chs. 3 and 4.) Using this information, we reviewed licensing records and identified 16 homes in Los Angeles County where the number of children appeared to exceed licensed capacity. No such homes were identified in Alameda and San Diego Counties.

MANY OF THE CHILDREN IN THESE HOMES ARE PARTIALLY SUPPORTED BY FEDERAL FUNDING

The operators of the 16 small family homes receive moneys from the California Departments of Social Services and Developmental Services for taking care of children with developmental disabilities (including mental retardation, cerebral palsy, epilepsy, and autism). The homes receive foster care maintenance payments for the guardianship children and the nonguardian foster children placed in the home. Developmentally disabled children are difficult to place and require more attention than most foster children. Los Angeles County pays individuals that take disabled children a premium rate of up to $743 per month per child depending on how much extra attention the child requires. Payments for many of these children include Federal foster care or Supplemental Security

Income funding. In December 1979, the 16 homes had 122 children for whom they were receiving foster care maintenance payments. Federal and State payments to each of the 16 homes ranged between $30,000 and $80,000 per year, with total annual payments to all the homes of about $1 million.

CHILDREN RESIDE IN 16 FOSTER HOMES IN EXCESS OF EVALUATED CAPACITY

Social services placement agencies have placed children in each of 16 small family homes in Los Angeles County having in excess of six children, the capacity of each of these State-licensed homes.

Community care licensing laws are meant to prevent children from being placed in residences that do not meet certain health and safety standards. The standards that apply vary with the number of children for which the home is licensed. In California no more than six children, in addition to the operator's own children, can reside in a small family home. None of the homes had more than six nonguardian foster children. However, operators of the 16 homes were able to circumvent the the licensing laws and house more than six children by obtaining guardianship on some children and still have up to six nonguardian foster children placed in their homes. This occupancy of children in excess of evaluated capacity of the homes has occurred because State and local social services personnel have not counted the guardianship children among the children placed in the homes in determining compliance with licensing capacity.

Requirements for large family homes are more stringent than for small family homes

Homes licensed for more than six children (large family homes) must meet more stringent requirements than homes licensed for six children or fewer (small family homes). These requirements include:

--Meeting more stringent fire regulations.

--Hiring a social worker as an ongoing consultant to the operator to plan for each child's daily activities.

--Hiring skilled employees.

--Keeping records on revenues and expenses.

Because of the more stringent requirements applicable to large family homes, the operators of the 16 homes have benefited by retaining their small family home classification. Simultaneously, they have operated more like a large family home without having to meet the requirements for large family home classification.

REORGANIZATIONS OF THE LICENSING AGENCIES AND VARYING INTERPRETATIONS OF REGULATIONS ALLOWED THE SITUATION TO CONTINUE

The problem of whether guardianship children should be counted for licensing purposes stems primarily from the ambiguity of regulations regarding the status of such children. This ambiguity has been perpetuated, in part, because the State agency responsible for licensing has changed twice in recent years. Before 1974, the State Department of Mental Hygiene had licensing responsibility for these homes. Under its policies, guardianship children were included in the maximum number of children that could be placed in a home. From 1974 to 1978, the State Department of Health was responsible for licensing small family homes. The regulations and policies of the Department of Mental Hygiene were no longer in effect, and the Department of Health foster care regulations did not refer to guardianship children. Therefore, some State licensing offices that had managers from the prior Department of Mental Hygiene staff continued to count guardianship children, but other licensing offices that did not have managers from the prior department did not count the guardianship children in determining compliance with the licensing capacity.

In 1978 licensing responsibility was again transferred, this time to the Department of Social Services, Community Care Licensing Division. Department of of Social Services regulations state that small family homes are licensed to provide care for not more than six foster children. These regulations, like the prior Department of Health regulations, do not instruct the licensing offices on whether or not guardianship children should be included or excluded from the maximum number of children that can be placed in a small family home.

The large number of children in these homes came to our attention in September 1979, and we visited two of the homes. At that time, we discussed the problem of placements with Los Angeles County licensing personnel. In December 1979, the State licensing office in Los Angeles requested the State Community Care Licensing Division's policy staff to resolve the problem, since placing children in homes in excess of licensing regulations results in overcrowding, inadequate services, and potential neglect of children.

In March 1980, a State Community Care Licensing Division memorandum directed the State licensing office in Los Angeles to consider guardianship children in the maximum number of children (six) that a small family home can be licensed for. Homes not in compliance with required criteria will be evaluated and will be required to obtain a large home license, if they are able, or reduce the number of children placed with them if they choose to remain a small family home.

CONCLUSIONS

The health and welfare of children are jeopardized when they are placed in a home in excess of the capacity to care for them. This may have occurred in 16 small family homes in Los Angeles County which have obtained guardianship for some children. Because of ambiguous regulations and inaction by the State licensing agency, children residing in the homes (including guardianship children) have exceeded the limitation of six for which they were evaluated and licensed.

After our review, the State Community Care Licensing Division issued instructions to assess the placement of children in foster homes when total number of children in the home may exceed its capacity for care. The instruction specified that guardianship children must be considered in establishing the number of children that each home is licensed for.

Although the 16 homes in Los Angeles County are being reviewed, the placing of children in homes in excess of licensed capacity could continue if any of the homes have the capacity to care for more than six children. We believe that foster home operators can continue to obtain increased capacity by seeking guardianship of their foster children without providing the protections of large family or group home licensing requirements.

RECOMMENDATION TO THE SECRETARY OF HHS

We recommend that the Secretary direct the Office of Human Development Services to work with California to see that Federal funding is provided only for children placed in licensed facilities that fully meet State health and welfare licensing requirements.

HHS AND STATE OF CALIFORNIA COMMENTS AND OUR EVALUATION

HHS

HHS concurred with our recommendation and said that a dialogue has been initiated between departmental staff and the State Department of Social Services regarding the review of licensing standards, procedures, and practices and the need for corrective action in this area.

HHS also said it would soon be issuing regulations governing the administration of the Adoption Assistance and Child Welfare Act of 1980 that will further define and reiterate the requirement that a foster home must meet the standards prescribed by the State licensing agency. Further, HHS said it would furnish ongoing technical assistance and guidance to the State agencies and assist them in reviewing their programs to ensure compliance with these standards.

State of California

While California did not agree with our conclusion that guardianship children should be counted in the six foster children that the homes are licensed for, it planned to take a number of actions dealing with the licensing procedures for foster family homes.

The State said that the Department of Social Services' Community Care Licensing Division would issue a release to all licensing agencies to reaffirm the importance of current State regulations for small family homes and children and foster family homes which require an evaluation of the presence of other members of the household to determine the extent to which these individuals impair or affect the ability of the foster parent(s) to adequately care for the foster children. Also, after the review, the presence of

another individual could result in a reduction of the licensed capacity based on the inability of the foster parent(s) to care for a specific number of foster children because of the needs of other household members.

In addition, the State plans to propose new regulations which will

--require notification to the licensing agency when additional members are added to the family,

--authorize the licensing agency to reduce capacity based upon these additions to the family, and

--require notification to the licensing agency if members of the household leave when those individuals were responsible for the provision of care and supervision.

We believe the State's proposed action and the plans to review each of the 16 homes to determine if their licensed capacity should be reduced because of the presence of the guardianship children should be beneficial. It does not appear, however, to address the principal issue that we believe should be considered--foster homes should not be allowed to obtain guardianships in order to house more than the number of children they are licensed for. The placing of children in homes in excess of licensed capacity could continue if the homes have the capacity to care for more than six children. We believe that foster home operators can continue to obtain increased capacity by seeking guardianship of their foster children without providing the additional protections of large family or group home licensing requirements.

We believe that HHS in its dialogue with the State should emphasize that federally funded children should not be placed in facilities that do not fully meet State health and welfare licensing requirements.

APPENDIX I

United States Senate

COMMITTEE ON HUMAN RESOURCES
WASHINGTON, D.C. 20510

February 28, 1979

Honorable Elmer B. Staats
Comptroller General
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Elmer,

A number of reports about the alleged placement of foster children in homes or facilities operated by the People's Temple or by its members -- and the deaths of an unknown number of these foster children in Jonestown, Guyana, -- have come to my attention in connection with hearings before the Subcommittee on Child and Human Development on abuse of children in out-of-home placements. The first day of these hearings was held in San Francisco, California, on January 4; a second day was held in Washington, D.C., on January 24, 1979.

I believe that it is important to learn whether there is any foundation for these reports and the extent to and purpose for which federal funds have been utilized in connection with any such placements. I am also deeply concerned about the implications of these reports for Congressional efforts to reform the foster care system. As you know, your report (No. HRD-77-40) in February of 1977 on foster children and the steps for Congress to consider taking to improve their care stimulated a great deal of Congressional and Administration interest in enacting reform measures. Although we were not successful during the last Congress in seeing these measures enacted, legislation dealing with this problem passed both the House and Senate during the 95th Congress (H.R. 13511 and H.R. 6693 as passed by the Senate, and H.R. 7200 and H.R. 11711 as passed by the House). I certainly plan a renewed effort during the 96th Congress to enact legislation in this area.

Hence, I am requesting that the General Accounting Office conduct an investigation of the allegations that foster children were placed in homes or facilities operated by the People's Temple or by its members; the extent to which federal funds, if any, were utilized for the placement or support (or both) of children in homes or facilities operated by the People's Temple or its members; the extent to which any such federal funds were diverted from their statutory purpose; whether any foster children died in Jonestown; the circumstances under which any foster children were placed in homes or facilities operated by the People's Temple or by its members (including what information was known to the local agency when the placement was made); and the circumstances under which any of those foster children were removed from the United States to Guyana (including what information was known to the local agency immediately prior to their removal and during their residency there).

If there appears to be any foundation to the reports regarding the placement of foster children in homes or facilities operated by the People's Temple or by its members, I would also like your opinion as to whether the reform measures which passed the Senate (or were proposed in S. 1928 or H.R. 7200 as passed by the House) during the last Congress could have -- if enacted and implemented years ago -- prevented or reduced the likelihood of this result. I would also appreciate any suggestions for improvements in the legislation which passed the Senate.

I would appreciate very much your immediate attention to this matter and your response on an expedited basis. If you have any questions, please contact Susanne Martinez, counsel to the Subcommittee on Child and Human Development (224-9181).

Thank you for your cooperation with the Subcommittee.

Sincerely,

Alan Cranston
Chairman
Subcommittee on Child and
Human Development

APPENDIX II

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

OCT 2 2 ...

Mr. Gregory J. Ahart
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "After the Peoples Temple Tragedy--Actions Required to Improve the Care and Protection of Guardianship Children." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard B. Lowe III
Inspector General (Designate)

Enclosure

GAO note: Page references in this appendix have been changed to agree with the final report.

APPENDIX II

DEPARTMENT OF HEALTH AND HUMAN SERVICES COMMENTS ON
GAO DRAFT REPORT "AFTER THE PEOPLES TEMPLE TRAGEDY--
ACTIONS REQUIRED TO IMPROVE THE CARE
AND PROTECTION OF GUARDIANSHIP CHILDREN"

GAO Recommendations (page 27)

HHS has acknowledged its role as an advocate for the welfare of all the Nation's children. In fulfilling this role, HHS could be instrumental in improving the protection provided to guardianship children. To accomplish this goal we recommend that the Secretary, HHS, direct the Office of Human Development Services to encourage the State of California to:

> Reiterate to the probate court judges the importance of county social workers preparing suitability reports on petitioners for non-relative guardianship children.
>
> Assist county social services agencies in expanding criteria on suitability reports to cover, more fully, the physical well-being of children, such as criminal checks and health certificates for petitioners, and fire clearances for petitioners' homes.
>
> Reissue regulations governing guardianship situations and require compliance by county social services agencies.

Comment

GAO is correct that States (including California) should emphasize the importance of having county social workers prepare meaningful suitability reports on the petitioners for guardianship children to further ensure the children's well-being. However, the Department lacks legal authority to issue Federal regulations governing guardianship when the care and maintenance of such children is not the responsibility of the State agency's federally funded foster care program.

GAO Recommendation - (Page 33)

That the Secretary, HHS, direct the Office of Human Development Services to determine whether other States are erroneously including guardianship children as federally eligible for foster care. If so, action should be taken to identify and recover the overpayments.

APPENDIX II

Comment

The Office of Human Development Services assumed responsibility for the AFDC-Foster Care program effective October 1, 1980. Through State Child Welfare Program Reviews, and other mechanisms, OHDS will make on-going efforts to ensure that only those children who meet this program's eligibility requirements are included in States' claims for Federal financial participation.

Regarding States who may have erroneously included guardianship children as federally eligible for foster care, prior to October 1, 1980, the Social Security Administration's Office of Family Assistance will request the Department's Audit Agency (through the Inspector General's Office) to review States' expenditures for AFDC-FC for periods prior to October 1, 1980 and to take appropriate action.

GAO Recommendation - (Page 33)

That the Secretary, HHS, direct the Office of Human Development Services to follow-up on Federal overpayments for ineligible guardianship children and work with the State of California to identify and make retroactive adjustments for the overpayments in the three counties reviewed and the counties not reviewed.

Comment

Inasmuch as this recommendation pertains to a period of time when the Social Security Administration administered the foster care maintenance program, the Social Security Administration Regional staff will be directed to determine whether there were ineligible guardianship children for whom the State claimed FFP under the AFDC-Foster Care program. The review will include a determination as to whether the guardianship status of the children terminated the placement and care responsibility of the State or local agency administering the State plan or any public agency with whom the State or local agency had an agreement which included provisions for assuming development of a plan of care. A disallowance will be made for those cases which are determined to have been ineligible for AFDC-FC payments under Title IV-A.

APPENDIX II

GAO Recommendations - (Page 33)

To ensure that Federal financial participation in maintenance payments to foster children is made only for those meeting the Federal criteria, we recommend that the Secretary, HHS, direct the Office of Human Development Services to issue instructions to all the States notifying them that guardianship children are not eligible for Federal reimbursement for foster care maintenance payments when responsibility for such children is removed from the State Title IV-A agency.

Comment

GAO is correct that Federal financial participation in maintenance payments for foster care should be made only for those children meeting Federal criteria. Existing regulations clearly define the conditions under which States can claim Federal financial participation for foster care maintenance. Pursuant to the recently-enacted Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), regulations are being developed which will further define the requirements for FFP for foster care maintenance. The new legislation and regulations pertaining thereto, will also require States to arrange for a periodic, independently conducted audit of this program, to occur no less frequently than once every three years. This law, and the regulations to follow, also mandate a minimum set of reporting requirements to this Department relative to the status of the program. It is expected that there will be no lack of clarity in determining for whom Federal payments may be made for foster care maintenance. In addition, program reviews conducted by this Department will reveal any lack of adherence to the requirements for Federal financial participation.

APPENDIX II

GAO Recommendation - (Page 41)

That HHS direct the Office of Human Development Services to work with the State of California to see that planned corrective action is taken and that Federal funding is provided only for children placed in licensed facilities that fully meet State health and welfare licensing requirements.

Comment

The Department concurs with this recommendation. Dialogue has already begun between departmental staff and the State Social Services Agency regarding the review of licensing standards, procedures and practices, and to plan corrective action in this area. In addition, Departmental staff, in concert with State Social Services staff, will conduct follow-up reviews of other relevant areas. These will include social assessments for placements, Social Work supervision of placements and the types of children placed, monitoring of counties' placements, use and length of stay in emergency shelter care, the recruitment of foster parents, and establishing the extent to which foster parents are a resource. On site work will be initiated in January 1981.

The Department will soon be issuing regulations governing the administration of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) that will further define and reiterate the requirement that a foster home must meet the standards prescribed by the State licensign agency. We will furnish ongoing technical assistance and guidance to the State agencies and assist them in the review of their programs to ensure compliance with these standards.

DEPARTMENT OF STATE
Comptroller
Washington, D.C. 20520

October 27, 1980

Mr. J. Kenneth Fasick
Director
International Division
U. S. General Accounting Office
Washington, D. C.

Dear Mr. Fasick:

I am replying to your letter of September 18, 1980, which forwarded copies of the draft report: "After the Peoples Temple Tragedy--Actions Required to Improve the Care and Protection of Guardianship Children".

The enclosed comments on this report were prepared by the Assistant Secretary, Bureau of Consular Affairs.

We appreciate having had the opportunity to review and comment on the draft report. If I may be of further assistance, I trust you will let me know.

Sincerely,

Roger B. Feldman

Roger B. Feldman

Enclosure:
As stated

GAO DRAFT REPORT:
"AFTER THE PEOPLES TEMPLE TRAGEDY -- ACTIONS REQUIRED TO IMPROVE THE CARE AND PROTECTION OF GUARDIANSHIP CHILDREN"

The GAO draft report concerning the care and protection of guardianship children states on page 24 that "[t]here are no regulations that require Passport Services to verify that guardians have obtained court permission to take their wards outside the United States". The report recommends that Passport Services establish procedures for verifying whether the state laws governing guardianship relations requires specific court permission to take a ward out of the United States, and whether such permission was granted for each guardian applying for a passport for his or her ward.

While such a specific regulation as GAO recommends is not part of Passport Services procedures, present procedure is rigorous enough to be adapted for processing passport applications of minors in guardian situations to accomplish the purpose contemplated in GAO's recommendation. Under present procedure a person who is not a parent of the minor applicant must provide proof of the legal relation to the child before a passport is issued. Furthermore, passports will not be issued if Passport Services is notified in advance that an adult who is a parent, guardian or person in loco parentis and is normally entitled to travel outside the United States with the child no longer has that right. Such notification frequently occurs in child custody situations, where one of the child's parents does not have the legal right to travel with the child or to obtain a passport for him or her by virtue of a court order granting sole custody to the other parent.

Present passport regulations are fully compatible with denying passports based upon notice and the presentation of an order by a court establishing a guardianship relation for a child which does not permit the child's travel outside the United States. Such notice would be effective everywhere within the United States, and would be specifically applicable only to those few cases of guardianship where foreign travel is not permitted, while not inconveniencing the majority of guardians who have the right to travel abroad with the ward. Furthermore, it does not incur the risk of a guardian successfully evading the wishes of the court by misrepresenting the terms of the guardianship relation.

APPENDIX III

Passport Services would be willing to inform the States Attorneys of the states, territories and the District of Columbia of the availability of this measure to prevent issuance of a passport to a minor whose guardianship order does not allow travel outside the United States. Passport Services further proposes to emphasize to its agents that all guardianship situations do not contemplate or permit travel outside the United States, and to change the relevant internal regulations to reflect this situation.

October 23, 1980
Date

Diego C. Asencio
Assistant Secretary
Bureau of Consular Affairs

APPENDIX IV

ATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814
(916) 445-7046

October 24, 1980

Mr. Gregory J. Ahart, Director
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Ahart:

U.S. GENERAL ACCOUNTING OFFICE (GAO) REPORT TITLED, AFTER THE PEOPLE'S TEMPLE TRAGEDY -- ACTIONS REQUESTED TO IMPROVE THE CARE AND PROTECTION OF GUARDIANSHIP CHILDREN

This will provide you with the California Department of Social Services' comments concerning the findings and recommendations contained in the above mentioned report. Also attached is a detailed response to each of the report's findings. Please see Attachment A.

The four major issues identified in the GAO examination are:

1. The circumstances of the placement of foster and guardianship children with the People's Temple members who perished in Jonestown, Guyana.

2. Problems associated with the care and protection provided for guardianship children in California.

3. Alleged excessive federal payments made to California for the care of guardianship children.

4. Placement of children in foster care homes which also have guardianship children.

The first issue in your report concurred with the findings and conclusions of our own investigation into public and published allegations that 150 foster children died in Jonestown, Guyana on November 18, 1978. Our department's investigation, conducted by the Fraud Prevention Bureau, concluded in a report entitled, "Investigation Report on People's Temple," published in November 1979, that no children under the care or supervision of either the State Department of Social Services or any of the state's 58 county social services departments died in Guyana. A copy of our investigative report is attached. (See Attachment B)

The second issue identified by your investigators deals with procedures used by California's courts and state and county social services departments relative to the processing of guardianship petitions and the subsequent monitoring of guardianships after they are granted.

In this issue, your staff finds that a lack of protection exists for children placed in court ordered guardianships where the guardians are either receiving no public assistance or the guardian is related to the child.

Your report also finds, without citing any specific instances of neglect or abuse, a lack of consistency by the California courts in ordering home suitability reports from county social services departments. In addition, your report finds county social services departments inconsistent in monitoring nonrelative guardianships and inconsistent criteria being used in conducting the home suitability studies.

In response, we would like to firmly state for the record that neither California nor federal law calls for the continued monitoring of children once they are placed by the courts in the home of a relative or in a home where the guardian receives no public cash assistance.

In this issue, your staff has raised a long-standing, unanswered and potentially volatile social policy issue. In response, I ask you these questions:

- Should not government assume that a relative-guardian will properly care for a child who is their own flesh and blood?

- Should not the government encourage the public to revise the long-standing social policy of allowing children to enter into long-term public assistance dependency, and, instead, actively encourage the integration of the child back into the community by reunifying the family, or if that is not possible, to make him/her a permanent part of a family through the adoption or guardianship process?

At present, our department has no plans to ask the Legislature to embrace in state policy a system of monitoring the homes of legal guardians, who do not receive public cash assistance, or are related to the child.

California's guardianship children are presently protected by the same social welfare and criminal laws which protect all the state's children. This is true regardless of whether or not they are in the homes of the natural parents or in the homes of a legal guardian. Child abuse in California is a crime regardless of where it occurs.

The courts are an independent branch of state government. The executive branch of government, of which the State Department of Social Services is a part, has absolutely no authority to mandate that judges on a consistent basis request home suitability studies be conducted on each and every guardianship petition that comes before them. Our interpretation of the law is that all nonrelative guardianship petitions should receive a home suitability study before the courts make any guardianship decision, and only the Attorney General can force the courts to enforce that law. This apparently has not been done on a uniform basis.

In pursuit of our interpretation of the law, we have asked the California Attorney General to issue a legal opinion and circulate it to all Probate Court judges, spelling out the requirements of the State Probate Code concerning the necessity for a suitability study prior to awarding guardianships. (See Attachment C.) Likewise, we have issued directives to county social services departments

reiterating and redefining their role and responsibilities in conducting home suitability studies. These directives also reiterate and define uniform criteria to be used in conducting home suitability studies. A copy of those directives is attached. (See Attachment D.)

The third issue identified by your staff centers on alleged excessive federal payments made for care of guardianship children. Our attached detailed response addresses this question in depth, hence it does not require elaboration here. However, we would like for your to know that it is our belief the federal government should assume its financial responsibilities for guardianship children as contained in Public Law 96-272, and implement regulations to provide Title IV-A money to children living with nonrelated court appointed guardians.

The fourth issue raised by your staff recommends that State Department of Social Services' staff should automatically reduce the licensed capacity of a foster care facility by the number of the foster parents' guardianship children. We disagree. Department of Social Services feels that each case should be determined on its own merits. Existing state regulations require an evaluation of the presence of other members of the household to determine the extent to which these individuals impair or affect the ability of the foster parent(s) to adequately care for the foster children. After a review of the circumstances of a particular foster home applicant or licensee, the presence of another individual (including a guardianship child) can result in a reduction of the licensed capacity. Such a reduction would appropriately be based on the inability of the foster parent(s) to care for a specific number of foster children because of the needs of other household members.

We will take steps to re-emphasize and clarify these provisions of the law to state licensing agencies. These steps are outlined in detail in our attached point-by-point response.

If you should have any future questions concerning this response, please call Laura Williams, Chief of the Audits Evaluation and Financial Appeals Section. Her telephone number is (916) 323-0274.

Sincerely,

MARION J. WOODS
Director

Attachments: 1/

A. Technical Response - Item by item to GAO Report
B. California State Department of Social Services' Investigation Report on People's Temple
C. Letter to Attorney General regarding Suitability Reports for Probate Courts
D. All-County Letter - Providing Direction on Guardianship Suitability Studies
E. Preprint Senate Bill No. 14 Corrective Action - Proposed Legislation.
F. Los Angeles County Welfare Response to GAO Audit
G. Alameda County Welfare Response to GAO Audit
H. San Diego County Welfare Response to GAO Audit

1/Attachment B to H not included as appendix because of the large volume of material.

APPENDIX IV

ATTACHMENT A

CALIFORNIA STATE DEPARTMENT OF SOCIAL SERVICES RESPONSE TO THE GAO REPORT TITLED, AFTER THE PEOPLE'S TEMPLE TRAGEDY--ACTIONS REQUIRED TO IMPROVE THE CARE AND PROTECTION OF GUARDIANSHIP CHILDREN

FINDING NO. 1

No children, who were in foster care or under the supervision and care of the California Department of Social Services, perished in Guyana. However, a few of the victims of the tragedy who were taken to Guyana without court approval were Wards of People's Temple members.

GAO Recommendation:

GAO recommends that the Department of State have the U.S. Passport Service adopt policies and procedures which would verify, prior to issuance of passports, that where required by state law, guardians have obtained court approval to take their wards out of the country.

State's Response:

Since this recommendation is directed at a federal agency and does not affect SDSS, we have no comment.

FINDING NO. 2

Guardianship children in California frequently did not receive all the protection intended for them by state law because:

Item A. California law is not consistently followed as to when and how pre-guardianship suitability assessments should be done.

Item B. Although not required, protection (other than suitability reports) was not made available to some children, i.e., continuing periodic reviews of guardianships not receiving assistance payments and foster home licensure investigations on guardianship homes who were foster care facilities.

Item C. Ongoing reviews of guardianships were not consistent, i.e., the Probate Court reviewed only cases where financial accountability for the child's estate was involved; county social services departments were inconsistent in performing ongoing reviews of guardianship cases receiving assistance payments.

Item D. Suitability reports do not address the physical well-being of the child.

Item E. State regulations covering assessment and reassessment of guardianships were inadvertently terminated by the state in January 1980 and/or were not fully implemented in some counties.

APPENDIX IV

GAO Recommendation:

In fulfilling the federal role as an advocate for the welfare of the nation's children, the Secretary of HHS should direct the Office of Human Development Services to encourage the State of California to:

- reiterate to state court judges the importance of county social workers preparing suitability reports on petitioners for nonrelative guardianship children,
- assist the counties in expanding suitability report criteria to more fully address the physical well-being of guardianship children, and
- reissue regulations specifically covering guardianships and require compliance by county social service agencies.

State's Response:

Item A. The GAO report concludes the inconsistent application of state law relative to preguardianship suitability reports by county social services departments was caused by: 1) failure of the Probate Court judges to require the reports because of inconsistent court interpretation of the Probate Code, and 2) insufficient time (15 days) alloted to counties to prepare the reports prior to hearing dates.

The Department wishes to clarify that under California statutes, the attorney for the person seeking guardianship is required to file a copy of the petition for guardianship with SDSS. If a suitability study is required, SDSS notifies the county social service agency that such a report must be completed.

This notification process does not always work because of the short time frame between when SDSS receives a copy of the petition and the scheduled court hearing date for the petition. In addition, some court judges have interpreted the Probate Code as not requiring suitability studies in all cases and therefore have not required the study be presented during the court proceedings. We have no jurisdiction over the courts. However, we firmly believe a report should be filed in every nonrelative guardianship case and have been proceeding to process all guardianship petitions received by this Department on that basis. In order to reaffirm this Department's role in guardianship proceedings and to pursue means of encouraging consistent court interpretation in that area, we have taken the following actions:

1. We have completed and distributed an All-County Letter (Attachment 1) reiterating the requirements of the Probate Code and the need to file such a report. The letter instructs counties on detailed procedures and information to be contained within the report and provides the time frames within which the report must be submitted to the courts. It also instructs counties to notify the court of any delay and to seek postponement of the hearing if necessary to enable them to file the report prior to granting of guardianships.

APPENDIX IV

2. To encourage consistent interpretation of the Probate law by the courts, we have requested the State Attorney General to issue a legal opinion on the pertinent Section of the Probate Code and distribute that opinion to all Probate Court judges. (Attachment 2.)

3. To alleviate the problem of insufficient time alloted to counties for preparation of the studies, the department has sponsored state legislation (SB 14 Preprint) to amend the current 15-day time frame for completion of the studies to allow for 60 days. (See Attachment 3)

Item B. The report states there are no continuing periodic reviews of guardianship cases.

Once the guardianship has been granted the child becomes a ward of the guardian. If the child is not receiving assistance payments, the county social services department has no further contact with or jurisdiction over the child. SDSS and county social service departments have no legal authority to monitor such placements unless, of course, protective intervention is necessary as a result of suspected abuse or neglect.

The report also states there are no continuing foster home licensure investigations of guardianship homes that were previously foster care homes. SDSS regulations contained in Title 22, California Administrative Code, Division 6, Section 80105 (II) excludes from licensing those living situations where care providers are legal guardians (or natural parents) for all of the children in their care. (See Attachment 4.) If a licensed foster care home operator becomes the legal guardian of all foster care children in the home, the home is no longer subject to state licensing requirements. Neither the state nor county licensing agency have statutory authority to continue conducting licensing studies in those situations.

Item C. The report states that ongoing reviews of guardianships are not performed consistently and states that two types of periodic reviews either by the Probate Court, or by county social services departments, could provide ongoing protection.

As noted in the report, annual or biennial court reviews of all guardians are not required by the Probate Code. To effect such a requirement would necessitate a change in the current code. In cases where the child does not receive AFDC-BHI or other services from the California Department of Social Services, this Department has no jurisdiction over the child and any periodic review would have to be conducted by the court establishing the guardianship.

When the child in guardianship placement receives AFDC-BHI payments, the county social services department must complete a routine six-month reassessment of AFDC-BHI eligibility and assure that the needs of the child are being met. SDSS recently completed a statewide survey of foster care cases, reviewing case record compliance for AFDC-BHI six-month eligibility determination. Based on this survey, corrective action is planned for those counties found to be out of compliance with the six-month reassessment mandate.

APPENDIX IV

Item D. The report states that suitability studies should address the physical well-being of the child. The department agrees and has reiterated this requirement which is contained in the Probate Code to the counties in All-County Letter No. 80-59, dated October 1, 1980. The letter requires onsite evaluations of unlicensed homes similar to those conducted for foster family homes. (See Attachment 1.)

Item E. SDSS is in the process of implementing regulations similar to the one identified as being deleted. However, it should be noted that while the regulation which was deleted stipulated that aid payments could not be provided for a child placed under certain circumstances (one of which was guardianship) unless a determination had been made that the home/facility met the physical, social and psychological needs of the child, it did not create the requirement for such a determination. Such a determination is required in Section 30-206.151 of the SDSS Manual of Policies and Procedures. (See Attachment 5.) The Department of Social Services did not intend, in any way, to reduce protection for children in guardianship arrangements. State Assembly Bill 2749 (Statutes of 1980, c. 1166) clarifies state law with regard to children who may be aided under the AFDC-BHI Program, and provides statutory authority which addresses AFDC-BHI eligibility for children living with non-related legal guardians. Specifically, this law requires that the following requirements be met before AFDC-BHI payments are made:

a. The legal guardian must cooperate with the county welfare department in developing a needs assessment, updating the assessment every six months, and in carrying out the service plan.

b. The county social services department must complete the needs assessment, update it every six months and carry out the service plan.

FINDING NO. 3

California received federal foster care maintenance payments for guardianship children who did not meet federal eligibility criteria.

GAO Recommendation:

The Secretary of HHS should direct the Office of Human Development Services to:

Item A. Issue instructions to all the states notifying them that guardianship children are not eligible for federal reimbursement for foster care maintenance payments when responsibility for such children is removed from the State Title IV-A Agency.

Item B. Obtain retroactive adjustments for federal overpayments that were made for guardianship children in California.

Item C. Determine if other states are also receiving federal overpayments for ineligible guardianship children, and if they are, take action to identify and recover the overpayments.

State's Response:

Item A. The state believes this recommendation to be inconsistent with the statements contained in the report defining HHS' role as that of an advocate of children in need of care and protection. We firmly contend that HHS could be instrumental in improving the protection provided to guardianship children nationwide and that action should be taken immediately to achieve those improvements. We also believe that this is the appropriate time for HHS to consider the intent of PL 96-272 which clearly is to encourage the utilization of stable placement for children such as guardianships provide.

As an advocate for all of the nation's children, HHS should ensure that the protection extended to guardianship children includes aid payments as well as services. Children living with nonrelated guardians should be currently eligible for Title IV-A funding. HHS should implement regulations which provide for Title IV-A funding for such children. Currently, federal funding is refused for children living with nonrelated legal guardians under Title IV-A and is not provided for under the proposed Title IV-E.

Notwithstanding the state's contention that federal funding should be made available for all nonrelative guardianship cases, it is the state's position that federal eligibility does currently exist at least in certain guardianship cases where the detention order making a child the responsibility of the county social services department is not dismissed but guardianship is awarded. When this occurs, care and supervision remains with the county social services department and federal financial participation should be available for children meeting all other eligibility requirements.

Item B. The state cannot address this finding directly without reviewing each individual case record for the children for which the alleged overpayments were made and examining the circumstances leading to guardianship status. We would also ask that all action relative to recovery of funds be postponed until HHS has issued instructions to the states as suggested in the GAO Recommendation, Item A; and until such time as the state has had the opportunity to review each individual case found by the GAO to be ineligible for federal funds.

Item C. The state has no comment.

FINDING NO. 4

The health and safety of some children have been jeopardized by placing them in small foster family homes which housed children in excess of licensed capacity.

APPENDIX IV

GAO Recommendation:

The state has initiated action to stop the out-of-home placement of children (including guardianship children) in homes in excess of licensed capacity. However, the Secretary of HHS should direct the Office of Human Development Services to follow-up on and work with the State of California to ensure that federally eligibile children are placed only in licensed facilities that fully meet state health and safety licensing requirements.

State's Response:

SDSS does not agree that guardianship children should always be counted as placements against the licensed capacity of the foster care facility. However, state law does recognize that in some situations the presence of other children or adults in the home affects the care provided to the foster children. Current state regulations for both Small Family Homes-Children and Foster Family Homes (Title 22, California Administrative Code, Section 81005 and Section 85101), require an evaluation of the presence of other members of the household to determine the extent to which these individuals impair or affect the ability of the foster parent(s) to adequately care for the foster children. (See Attachment 6.) After a review of the circumstances of a particular foster home applicant or licensee, the presence of another individual (including a guardianship child) can result in a reduction of the licensed capacity. Such a reduction would appropriately be based on the inability of the foster parent(s) to care for a specific number of foster children because of the needs of other household members.

As an interim response to the GAO findings, the Department of Social Services' Community Care Licensing Division will issue a release to all licensing agencies to reaffirm the importance of these regulations and provide instructions for reducing licensed capacity if it is determined that the presence of other household members impairs the ability to provide care to the foster children. This will be done on a case-by-case basis and reductions in capacity will only occur if the individual case evaluation supports this action.

The long range action plan is to propose new regulations which will more definitively outline those circumstances where a reduction in capacity is necessary by identifying those "other" individuals including adults, who also require a significant amount of care and supervision thereby limiting the ability of the foster parent(s) to care for the maximum allowed number (six) of foster children. Such proposed regulations could result in some circumstances of a greater reduction of capacity than a reduction based on the GAO's suggested mathematical formula of reducing capacity by one person for each guardianship child.

In addition, the regulations will:

1. Require notification to the licensing agency when additional members are added to the family composition;

2. Authorize the licensing agency to reduce capacity based upon these additions to the family's compositions; and

APPENDIX IV

3. Require notification to the licensing agency if members of the household leave when those individuals were responsible for the provision of care and supervision (i.e., if the foster parents become separated).

We believe that these short and long range actions responsibly address the findings of the GAO's Report relative to the issue of considering guardianship children in determining licensed capacity.

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