HEARING TO EXAMINE CHILD WELFARE REFORM PROPOSALS

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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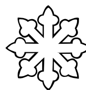

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HEARING TO EXAMINE CHILD WELFARE REFORM PROPOSALS

TUESDAY, JULY 13, 2004

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:06 p.m., in room B–318 Rayburn House Office Building, Hon. Wally Herger (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
June 06, 2004
No. HR–12

CONTACT: (202) 225–1025

Herger Announces Hearing to Examine Child Welfare Reform Proposals

Congressman Wally Herger (R–CA), Chairman, Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing to examine child welfare reform proposals. **The hearing will take place on Tuesday, July 13, 2004, in room B-318 Rayburn House Office Building, beginning at 1:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include State officials and other individuals familiar with child welfare issues. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee for inclusion in the printed record of the hearing.

BACKGROUND:

The Subcommittee recently held several hearings to examine high-profile cases involving failures to protect children in New Jersey and Maryland, as well as reporting and oversight issues that reflect on broader program trends and child welfare concerns. These hearings provided a detailed review of Federal and State efforts to ensure that children are in safe, permanent, loving homes. Some reviews noted that Federal foster care and adoption programs provide $7 billion in funding to the States for foster care and adoption needs, but only approximately $700 million for services designed to prevent abuse and neglect of children in or at risk of foster care; recent proposals have suggested changes in Federal funding patterns to ensure services are available to support families and better protect children, thereby minimizing the need for more expensive foster care placement. Other proposals would expedite placements for children across State lines to prevent lengthy stays in foster care and move children to permanent homes.

In announcing the hearing, Herger stated, “Efforts to better protect children and strengthen families are needed to prevent abuse and neglect occurring within the child welfare system. Witnesses at our hearings have called for Federal action to correct the current disparity in funding available for children once they are removed from their families as compared to funding to support families and hopefully prevent any disruption. This hearing will explore specific proposals to correct the inequity—changing child welfare’s focus to better support families and protect children.”

FOCUS OF THE HEARING:

The focus of the hearing is to explore recent proposals to reform child welfare financing and move children more quickly into safe, permanent homes.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select *"108th Congress"* from the menu entitled, *"Hearing Archives"* (*http://waysandmeans.house.gov/Hearings.asp?congress=16*). Select the hearing for which you would like to submit, and click on the link entitled, *"Click here to provide a submission for the record."* Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Tuesday, July 27, 2004. **Finally,** please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman HERGER. Good afternoon and welcome to today's hearings. The gentleman from Texas, Mr. DeLay, who is very interested in child welfare issues is here with us today. I welcome Mr. DeLay and I thank you for the work that you have done to improve the lives of vulnerable children. Based on the precedent set when Mr. Payne of New Jersey, who is not a Member of our Committee, joined us on the dais at our November 6, 2003, child welfare-related hearing, without objection, Mr. DeLay is allowed to sit on the dais and may question the witnesses.

Mr. CARDIN. Mr. Chairman, let me just join you in welcoming our distinguished leader. He has been the leader in this Congress

on foster care issues and it is a real pleasure to have his wisdom with us today on the Subcommittee.

Chairman HERGER. Thank you. Without objection. Today, we will review proposals to reform our Nation's child welfare programs because the status quo isn't adequately protecting our most vulnerable children. Since November, this Subcommittee has held five hearings on this topic. Two of these hearings focused on specific failures to protect child safety in New Jersey and Maryland. The other hearings examined how State and Federal officials monitor programs that protect children and whether these programs adequately ensure the safety of vulnerable children. We have heard from 41 witnesses, plus more than 60 other individuals and organizations provided input about problems with our Nation's child welfare system.

No one thinks the status quo is acceptable. Every week, stories of children lost, abused, or worse yet, killed appear in newspapers across America. We owe it to them and to the half-million children in foster care to improve this system. The Federal Government provides more than $7 billion in foster care and adoption funds every year to the States. In comparison, as Mr. McDermott noted in our last hearing, funding for prevention and support services is only about $700 million. As a result, rather than focusing on the prevention of abuse and neglect, today's funding structure encourages the removal of children and break-up of families. That is unacceptable.

In May, the nonpartisan Pew Commission on Children in Foster Care offered recommendations to overhaul the financing of child welfare programs. I am pleased that former Congressman Bill Frenzel, Chairman of the Commission, has joined us today to outline this proposal. I thank him, another former colleague, Vice Chairman Bill Gray, and the other members of the Commission for their outstanding work in this area.

The Commission's report argues that additional resources and flexibility are critical to ensure that children are protected and families stay together. As we have heard, the Administration has proposed changes that also would provide more resources and flexibility for States to provide additional services. Several of our colleagues have introduced legislation that would increase funding for certain activities within the child welfare system.

Today's witnesses will discuss these proposals. I also have provided our witnesses and the minority a copy of draft legislation I am developing that builds on the Pew Commission's recommendations and the Administration's proposal. This legislation has three main principles. First, it would provide adoption assistance for all children adopted from the public child welfare system regardless of their family's income. Second, it likewise would provide foster care assistance for all children regardless of income, while at the same time providing new incentives to keep children from languishing in foster care. Third, it would give States more flexibility and more resources to protect children and strengthen families, encourage greater accountability, and reward improved performance in protecting children.

In all, this legislation increases funding and flexibility for States to operate improved programs that do a better job protecting children. We welcome comments on this proposal, as well. I have re-

ceived the testimony of our witnesses and I expect that as the hearing progresses today, we will clarify how the draft bill would prevent children from needlessly lingering in foster care for extended periods of time. I hope to introduce this legislation shortly, including with the addition of helpful suggestions proposed today.

[The opening statement of Chairman Herger follows:]

Opening Statement of The Honorable Wally Herger, Chairman, and a Representative in Congress from the State of California

Good afternoon and welcome to today's hearing.

Today we will review proposals to reform our nation's child welfare programs because the status quo isn't adequately protecting our most vulnerable children.

Since November, this Subcommittee has held five hearings on this topic. Two of these hearings focused on specific failures to protect child safety in New Jersey and Maryland. The other hearings examined how state and federal officials monitor programs that protect children, and whether these programs adequately ensure the safety of vulnerable children.

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First, it would provide adoption assistance for all children adopted from the public child welfare system, regardless of their family's income.

Second, it likewise would provide foster care assistance for all children regardless of income, while at the same time providing new incentives to keep children from languishing in foster care.

Third, it would give states more flexibility and more resources to protect children and strengthen families, encourage greater accountability, and reward improved performance in protecting children.

In all, this legislation increases funding and flexibility for states to operate improved programs that do a better job protecting children.

We welcome comments on this proposal as well. I have reviewed the testimony of our witnesses, and I expect that as the hearing progresses today we will clarify how the draft bill wouldprevent children from needlessly lingering in foster care for extended periods of time. I hope to introduce this legislation shortly, including with the addition of helpful suggestions proposed today. Mr. Cardin, Mrs. Johnson and I have met to discuss this legislation, and I remain hopeful we can proceed in a bipartisan way.

Another proposal we will explore today is H.R. 4504, the *Orderly and Timely Interstate Placement of Foster Children Act of 2004*. This bill is sponsored by our distinguished Majority Leader, Tom DeLay and I am pleased to join him and our

colleagues Mrs. Johnson, Mr. Camp, Mr. Lewis, and Mr. Cantor in cosponsoring this important legislation.

On average, it takes a full year longer for a child to be adopted through an interstate placement, compared with a placement within the same state. We must do more to ensure that all children are not lingering in foster care when a loving home is readily available for them. This proposed legislation we're discussing today takes an important step in that direction.

I thank all our witnesses for joining us today and for their dedication and work to ensure a safe, permanent, loving home for vulnerable children.

Mr. Cardin, Mrs. Johnson and I have met to discuss this legislation and I remain hopeful we can proceed in a bipartisan way. Another proposal we will explore today is H.R. 4504, the Orderly and Timely Interstate Placement of Foster Children Act of 2004. This bill is sponsored by our distinguished Majority Leader, Tom DeLay, and I am pleased to join him and our colleagues, Mrs. Johnson, Mr. Camp, Mr. Lewis, and Mr. Cantor, in cosponsoring this important legislation.

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Mr. CARDIN. Yes. Thank you, Mr. Chairman. Let me thank you for conducting this hearing in regards to the adoption issues. I just want to applaud the efforts that have been made in this Congress to advance the issue. The Majority Leader has certainly been a true leader on this issue and we very much appreciate the continued progress that we can make in this regard. In regards to the foster care system, Mr. Chairman, let me point out I thank you for holding this hearing and thank you for the other hearings that we have held. We have put a national spotlight on our foster care system because we know that we need to change it. We know that there hasn't been the leadership in this Nation to deal with our most vulnerable children, and you and the Majority Leader and others have said we can do a lot better.

We have held a lot of hearings to try to understand the problem and we have seen firsthand the problem in our foster care system. We have seen that the Attorney General of Texas, when he said that in many cases, we take children out of abused homes and we put them into foster care that is no better than the homes that we took them out of. We saw that firsthand with the Jackson children in New Jersey, who were malnourished for years and developed at one-half of their normal size. No one took action to change that.

We saw firsthand the problems in Maryland, where a foster child had a child that was abused and taken away from her. She then had twins and showed up in the emergency room as the children were being delivered, no prenatal care. The hospital had all the red flags going up why those twins should not have been returned to that child, and yet they were and they were killed. We have seen firsthand the problems in our foster care system with the inadequate attention paid to our most difficult children and not paying attention to red flags that go up, and we know that we can do better and we must do better and we wonder whether if we have re-

formed our system here at the Federal level, we could have prevented some of these tragedies.

We need to do things differently here in Washington, as my good friend from Connecticut continues to remind us, that we just can't continue to put money into the current system, that we need to change the way that we do business here in Washington and our expectations of what will happen at the State level. We have got to change the way we do business at the State level. Literally, the lives of our children are at stake.

Chairman Herger, I congratulate you for submitting a draft bill. We need to do things differently here in Washington and you give us a bill on which we hopefully can work together in order to move forward. I think it is constructive. You provide more resources and you modernize the eligibility system. I hope it is still a work in progress, Mr. Chairman. You pointed out in your opening statement that you wanted helpful suggestions and I will make some helpful suggestions and I hope that we will be able to continue to make changes in this legislation.

The first point I would point out is that the proposed cap on the foster care payments to me changes the fundamental responsibility at the national level to be a safety net in regards to the children who enter our foster care system, and let me remind you that we have not been very good historically in projecting baseline expenditures. I know that you have intended this to be a proposal that actually would put more money into the child welfare system, but let me remind you that we have projected a 19-percent growth in foster care between 1988 and 1993 and, in fact, it was a 163-percent increase. We didn't recognize the epidemic of the crack cocaine babies, and that could obviously happen again. That is one area that I hope that we can modify. I find that to be a fundamental issue that needs to be included.

Secondly, improving the workforce issues. We have seen over and over again that the caseworkers, the people who have the most important responsibility of dealing directly with our children—if they were pediatricians, we would demand that they have certain training. Yet as caseworkers, we put them out there with a minimal amount of training. The turnover is less than 2 years for people who are actually in the field providing the services. The caseloads in some cases are two to three times the national standards. We need to have in our legislation here ways that we reward workforce improvement, and I would hope that we could work in the legislation that we develop to include that.

Then we need to help relatives of children that can't be returned to their home, the subsidized guardianship issue. You have suggested that in a revenue neutral way. I don't think that works, because we are trying to increase the number of children actually who are going to be receiving services, and I would hope that we could work to improve your legislation in that regard. Mr. Chairman, I could be so bold as to suggest that we just adopt the bill that I filed earlier that reformed the child welfare system. I thought that was a very good bill——

[Laughter.]

It helps States correct deficiencies identified in the Federal review. It improved the child welfare workforce. It addressed the con-

nection between substance abuse and child abuse. It increased resources for preventive activities. It provided assistance for legal guardianship, and it updated the foster care eligibility standards, a pretty good bill. Let me just suggest that the experiences that we went through on welfare reform might serve us well as we look at child welfare reform. We passed reform in 1996 that was truly bipartisan. Yet in the last 3 years, we have been unable to pass a bipartisan bill in the House of Representatives. As a result, no legislation has been enacted and our States are really suffering under short-term extensions when we all know we need long-term extensions. If I could be so bold to suggest that I think that my legislation that I would like to see move has virtually no chance of enactment. I understand that.

[Laughter.]

I want to get bills passed. I think the Pew Foundation has brought forward a proposal that can be passed in both the House and the Senate and enacted into law and it is something that we should take a very serious look at. The Pew Foundation maintains the guaranteed payment within the foster care payment structure, which to me is fundamental in reaching a bipartisan agreement. There are other issues I hope that we can address, but if we want to get a bill enacted this year with the current membership of this Congress and the White House, then I think when you get Bill Frenzel and Bill Gray to agree on a bill, we should take very serious consideration of it. Both of these individuals are giants in the Congress of the United States on fiscal responsibility and on the right role that the Federal Government should play in critical issues. There is no more distinguished person I served with in the Congress than Bill Frenzel, nor a more conservative Member of the Congress that I served with than Bill Frenzel, and I think he has given us good guidance for a way that we really could get something accomplished and to the President's desk and signed into law, and I think we should take that good advice.

Lastly, Mr. Chairman, let me point out that in foster care, we are the parents. We have the responsibility. We made the decision that we are going to intercede in the care of a child, and that is an awesome responsibility. We are not carrying that out today and we need to do better and I think it starts with legislation here in Washington, and we have a responsibility to those children to figure out a bipartisan bill that can be enacted into law with the current membership of our government, and I think the Pew Foundation has given us a way to get that done. Thank you, Mr. Chairman.

Chairman HERGER. Thank you, Mr. Cardin. Before we move on to our testimony, I want to remind our witnesses to limit your oral statement to 5 minutes. However, without objection, all the written testimony will be made a part of the permanent record. This afternoon, we will hear from the Honorable Bill Frenzel, Chairman of the Pew Commission on Children in Foster Care; Dr. Robin Arnold-Williams, Executive Director of the Utah Department of Human Services on behalf of the American Public Human Services Association (APHSA); Patricia Wilson, Director of the Southern Regional Office for the Child Welfare League of America (CWLA); and since

we have someone from the State of Texas, would the Majority Leader like to introduce our final witness?

Mr. DELAY. Thank you, Mr. Chairman. Mr. Chairman, Mr. Cardin, and Members of the Subcommittee, I greatly appreciate your courtesy in allowing me to sit on this dais to hear testimony on the very important bills, and I thank you, Mr. Chairman, for calling this hearing today to discuss important reforms in the child protection system. I appreciate the comments made by both you, Mr. Chairman, and Mr. Cardin.

With all States failing the Child and Family Services reviews and the increase in child fatalities, it is time to closely examine the system. There is a general agreement that the way we fund child protection is perverse. We pay for more beds and we get more kids in care, not more kids cared for. It is time to change all of that. I am especially thankful that today we are going to hear testimony on my bill, cosponsored by the Chairman and many Members of this Subcommittee, to reform the Interstate Compact on the Placement of Children.

This legislation is designed to help children find the loving families they need so that they can grow up able to love. Mr. Chairman, we keep track of chickens going across State lines. It is time we started doing the same for children. Mr. Chairman, I would like to submit for the record a sampling of the letters of support for H.R. 4504. These are letters that indicate broad support for this bill from organizations like the National Foster Care Association and the National Association of Psychiatric Health Systems and others.

Chairman HERGER. Without objection, they will be included.

[The information follows:]

National Foster Parent Association
Gig Harbor, Washington 98335
June 14, 2004

Congressman Tom DeLay
242 Cannon HOB
Washington, D.C. 20515

Dear Congressman DeLay:

On behalf of the Board of Directors for the National Foster Parent Association. I am writing to express the heartfelt thanks of the hundreds of foster to mifies who care for our most vulnerable children for your leadership in introducing H.R. 4504, ti,e Orderly and Timely Interstate Pfacemert of Foster Children Act of 2004. This legislation will ensure that children waiting to be placed in safe, loving homes in other states do not experience unnecessary bureaucratic delays that rob tnem of the opportunity to establish nurturing connections with relative care givers or adoptive parents in a timely manner. Moreover, the legislation will ensure that a child's foster or kinship parents (including preadoptive parents) have the right to be heard at the juvenile court proceedings that determine the future of our Nation's neediest children. As the individuals with the most day-to-day contact with foster children and the most likely candidates to provide permanent homes for children who cannot return to their families of origin, we value the opportunity to participate in the court proceedings that affect them. Research studies show that inclusion of children's care givers can have a positive affect on court decisionmaking and we appreciate your leadership in ensuring that juvenile court judges throughout the country have the benefit of our perceptions.

Our organization, the National Foster Parent Association, works to strengthen foster families through nationally focused legislative advocacy, training and education, publications, and networking among foster parents, state and local foster

parent associations, and child welfare organizations. We fufiy support. H.R. 4504 and look forward to its passage.

Sincerely,

Karen Jorgenson
Administrator

Legal Advocates for Permanent Parenting
San Mateo, California 94404
June 17, 2004

Congressman Tom DeLay
Majority Leader
United States House of Representatives
242 Cannon HOB
Washington, DC 20515

Dear Congressman DeLay:

I am writing in support of H.R.4504, the Orderly and Timely Interstate Placement of Foster Children Act of 2004. As an organization of attorneys, law professors and other legal professionals, most of whom have both personal and professional experience with foster care and/or adoption, we believe the legislation will improve outcomes for our Nation's most vulnerable children.

H.R. 4504 will encourage states to implement procedures to ensure that foster children waiting to be placed in safe, nurturing homes in other states do not experience unnecessary delays. Fiscal incentives to states for the completion of timely home studies will result in many children finding permanency in a timely manner.

In addition, H.R. 4504 will ensure that those individuals providing day-to-day care for foster children have a right to be heard at the juvenile court proceedings affecting the children in their homes. Research shows that inclusion of children's care givers in the judicial process provides judges with important information on how children are faring in out-of-home care. Participation in decisionmaking activities is also related to recruitment and retention of quality families to provide care for our Nation's 550,000 foster children. Data indicates that foster families cite a lack of inclusion in the process as a prime reason leading to their decision to discontinue fostering children. Finally, children who are unable to return to their families of origin but who nevertheless find permanent, loving homes overwhelmingly do so in the homes of their foster or kinship parents.

In light of the important issues H.R. 4504 addresses, our organization supports urges its passage.

Very truly yours,

Regina Deihl
Executive Director

Straight from the Heart, Inc.
Vista, California 92083
June 17, 2004

Congressman Tom DeLay
Majority Leader
United States House of Representatives
242 Cannon HOB
Washington, DC 20515

Dear Congressman DeLay:

I am writing in support of H.R. 4504 and thank you for your attention to the important issues contained in this bill.

My husband and I have been foster/adoptive parents for over 26 years in Vista, California. We have cared for over 100 foster children and had the honor of adopting 8 wonderful children through the foster care system. I currently am the director of Straight From The Heart, Inc., a non-profit resource center for foster children and the families that care for them. In my capacity as a mentor for other foster parents, I regularly encounter frustrated families who are waiting and waiting for ICPC's to be completed so that their foster children may have permanence. A child can wait as long as 9 months before getting on a plane to their permanent families. This is so difficult for the children and families and I am pleased that you are taking action to speed up this process of permanence for our children.

On a more personal note, I wanted to let you know how very important it is for foster parents to have a voice in court for the children they foster. Our eighth adopted child came to us as a newborn with Down Syndrome, heart surgery, endocrine imbalances, high heart rate, breathing difficulties, blindness, deafness, low muscle tone and of course drug exposure. She lived her first 34 days in intensive care unit at a Children's Hospital. She required early intervention in the form of Occupational, Physical and Developmental Therapies, and has Deaf and Hard of Hearing, Speech and Language, and Vision Consultants to meet her needs. We are entrusted with responsibilities of meeting the medical, physical, emotional needs of this special child, working with the birth parents, social workers, attorneys, doctors, therapists and so forth—and yet are not considered important enough to truly be a member of the "team".

I assure you that no one member of the team knows more about the child than the caretaker. We are there for the nightmares, the bedwetting, the panic attacks, the acting out behaviors, the depression and the grief they suffer due to their abuses. We do the therapies, doctor appointments, homework, little league and the visitation with the birth parents. It makes no sense to ignore the caretaker as a vital member of the team, yet that is so often the reality for foster parents across this nation. Vital information is kept from us that hinders us from doing our jobs under the guise of "confidentiality". Foster parents struggle to have a voice in court. Some court rights have been given to us but need to be strengthened so that we can have our voices heard by the judge who makes life changing decisions for these children. The foster care system will improve with openness and inclusion of all members of the team who impact the life of the children we serve. There is no social worker, attorney, judge or doctor who impacts the lives of these children more than the foster parents who nurture them day in and day out.

Thank you for caring about our children and caretakers and for putting that concern into action in H.R. 4504. Your efforts are truly appreciated.

P.S. I have included a copy of our daughters court report that I submitted to the judge during one of her hearings as an example of the types of information foster parents can share with the court concerning the children in our care.

Sincerely,

Patty Boles
Director

Alexandria Juvenile and Domestic Relations District Court
Alexandria, Virginia 22314
July 8, 2004

Majority Leader Tom Delay
H 107 Capitol
Washington, D.C. 20515

Dear Congressman DeLay:

I am pleased to write this letter in support of H.R. 4504, entitled the "Orderly and Timely Interstate Placement of Children Act of 20O4". The Interstate Compact on the Placement of Children (ICPC or the Compact) is vital to the safe movement of certain at risk children from one state to another. While the ICPC is involved in a variety of case types, the primary area of concern with the Compact isthe movement of children in foster care between states. While assisting in protecting children, the ICPC also helps assurethat they receive necessary services once they arrive at their new place of residence.

For too many years, however, the process involved in the movement of these vulnerable children who are in foster care has taken too long thus delaying permanency for them. Despite repeated studies of problems inherent in the ICPC, very little progress has been made to make it work more effectively since it came into use over 40 years ago.

During the summer of 2003, The National Council of Juvenile and Family Court Judges (NCJFCJ) and the American Bar Association passed. Resolutions supporting the need for improvements in the ICPC. Over the past few years I have been, involved in efforts to improve the ICPC, including the drafting and passage of the Resolutions mentioned above.

In addition NCTFCT will be considering the attached Resolution, that I have drafted at its upcoming Annual Meeting later this month. When the proposed Resolution passes, I will he pleased to provide you with a signed copy of it.

While the proposed Federal legislation will not and cannot solve all of the problems inherent in the ICPC, it addresses as much as it reasonably should, given that

the ICPC is a state compact. If the improvements offered through this legislation and the funding mentioned in the legislation i states will have every reason to ensure that the process is done expeditiously and that delays in movement of children are sharply reduced.

Sincerely,

Stephen W. Rideout
Chief Judge

RESOLUTION

WHEREAS, the INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) has been adopted by all fifty states, the District of Columbia, and the U.S. Virgin Islands; and

WHEREAS, the ICPC has been found in many cases to cause delay in the placement of children with family member's who live in another state *from* where the child currently resides, interstate adoptions, and placement in residential facilities in these other states; and

WHEREAS, the National Council of Juvenile and Family Court Judges on July 17, 1996, adopted a Resolution that supported improvements in the ICPC; and

WHEREAS, since the passing of that Resolution, problems continued to exist with the effective implementation of the ICPC and the understanding of the ICPC by judges, lawyers, and social workers who are involved with these cases; and

WHEREAS, the National Council of Juvenile and Family Court Judges and the American Bar Association, at their Annual Conferences in July and August 2003 adopted Resolutions supporting improvements in regard to the ICPC; and

WHEREAS, proposed Federal legislation entitled the "Orderly and Timely Interstate Placement of Foster Children Act of 2004" has been introduced, which seeks to improve the ICPC process; that the proposed legislation, which is attached hereto, among other things (1) seeks to have the states expeditiously revise the ICPC to better serve the interests of children and reduce mnecessary paperwork (2) seeks to have ICPC home studies completed within 60 days of the receipt of the request in the receiving state either by the state agency of private provider (3) seeks to have the states make its decision concerning the interstate movement of the child in a timely manner (4) provides incentive moneys for timely ICPC home studies performed by the states (5) provides mechanisms for timely registry checks for prospective placements (6) requires states to provide health and education records to any child who leaves foster care by reaching the age of majority under state law (7) allows courts access to parent locator services to locate parents in foster care or adoptive placement cases, and (S) requires states to notify foster parents, pre-adoptive parents, and relative care givers of a child in foster care of any proceedings to be held with respect to the child; and

WHEREAS, the National Council of Juvenile and Family Court Judges approves of the proposed legislation and encourages its passage by the Congress of the United States and enactment into Iaw:

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

RESOLVED, That the National Council of Juvenile and Family Court Judges supports the proposed legislation and encourages its passage by the Congress of the United States and enactment into law.

National Association of Psychiatric Health Systems
Washington, DC 20004
July 8, 2004

Representative Tom DeLay
House Majority Leader
H–107 Capitol Building
Washington, DC 20515

Dear Majority Leader DeLay,

The National Association of Psychiatric Health Systems (NAPHS) is pleased to support H. R. 4504, a bill that will improve protections for children and hold states accountable for the orderly and timely placement of children across state lines. This measure will improve and streamline the Interstate Compact on the Placement of Children (ICPG).

NAPHS represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective treatment for children, youth, and adults with mental and substance use disorders. Members are behavioral healthcare pro-

vider organizations, including 500 specialty hospitals, general hospital psychiatric and addiction treatment units, and mental health residential treatment centers.

NAPHS strongly supports the limitation of the applicability of the Interstate Compact for the Placement of Children (1CPC) to children in foster care under the responsibility of the state except those seeking placement in a residential facility or hospital primarily to access clinical mental health services.

Article II of the current ICPG clearly states that "placement" means the arrangement for the care of a child in a family home or a child caring agency or institution but does not include any institution caring for the mentally ill or any hospital or other medical facility. Unfortunately, regulations later adopted are contradictory and difficult to interpret—leading to confusion for States and providers,

The inappropriate application of the ICPG to mental health residential placements has caused significant delay and harm to children and youth with serious mental health disorders without providing any additional protections or benefits.

Mental health residential care and hospital programs differ from out-of-state adoptions or foster care placements in every way. Mental health residential treatment programs, like hospitals, are *temporary* and *operate* under an *array* of State *and federal laws and regulations aswell as accrediting standards.*

Such placements are designed to provide active treatment in a therapeutic environment so that the child will be able, in the foreseeable future, to achieve treatment goals and be returned to thestate for follow through on next steps.

Children needing such placement are in crisis and cannot wait for the ICPC process that could take an extended period of time. An unintended consequence of such delays is that children may deteriorate further or be held in inappropriate settings such as juvenile detention while waiting. Last, the placing state agency utilizes contracts or similar documents that detail, assure, and monitor treatment and services. *Contracts are time limited and ensure that payment is reasonable and made according to state standards.* (Further information on why the ICPC should not cover such placements is attached for your use and inclusion in the record as appropriate.)

H.R. 4504 would eliminate confusion caused by the current ICPC and assure that public or private placements of children and youth made to residential care and hospitalsare not subject to the ICPC when the programs provide 24-hour care approved by the State for the purpose of providing clinical mental health services Again, thank you for your leadership on this issue. We are committed to working with you and are very supportive of H. R. 4504.

Sincerely,

Mark Covall
Executive Director

Consortium for Children
San Rafael, California 94901
July 9, 2004

Congressman Tom DeLay
242 Cannon 11013
Washington, DC 20515

Dear Congressman DeLay:

Consortium for Children would like to express our support for your bill H.R. 4504 titled "Orderly and Timely Interstate Placement of Children Act of 2004".

Placement across jurisdictions (states and counties) is a last choicefor most public agency adoption practioneers. Home Studies take an inordinate amount of time, the paperwork for interstate placement of children is burdensome and the timeframes lengthy. Interstate placement of children, as it currently exists, does not serve children or their prospective permanent families well.

Due to the cumbersome and lengthy nature of inter jurisdictional placements public child wel f are agencies go to great length to identify permanent families within their own.jurisdiction before looking outside their purview. This practice can and does limit choices for children as well as extend their stay in the foster care system, Children who are waiting for permanent families should be viewed as "citizens cif the nation" and all potential families be equally considered as a resource for a child no matter where they reside.

H.R. 4504 will go a long way in ameliorating many of the issues mentioned above. The specified time frarnes flor home study completion, involving the judiciary, and Federal incentives mentioned in your hill should help ease the process as well as the perceptions about the inter-state placement cif children and, as a result, shorten their stay in foster care.

For the above reasons the Hoard of Directors of'Consortium for Children supports H.R. 4504.

Sincerely,

Kate Cleary
Executive Director

KidsPeace
Orefield, Pennsylvania 18069
July 9, 2004

Representative Tom DeLay
House Majority Leader
H–107 Capitol Building
Washington, DC 20515

Dear Majority Leader DeLay,

KidsPeace is pleased to support H.R. 4504, a bill that will improve protections for children and hold states accountable for the orderly and timely placement of children across state lines. This measure will improve and streamline the Interstate Compact on the Placement of Children (ICPC).

KidsPeace is a private charity dedicated to serving the critical behavioral and mental health needs of children, preadolescents and teens. Founded in 1882, KidsPeace provides specialized residential treatment services and a comprehensive range of treatment programs and educational services to give hope, help and healing to children facing crisis.

KidsPeace strongly supports the limitation of the applicability of the Interstate Compact for the Placement of Children (ICPC) to children in foster care under the responsibility of the state except those seeking placement in a residential facility or hospital primarily to access clinical mental health services.

Article II of the current ICPC clearly states that "placement" means the arrangement for the care of a child in a family home or a child caring agency or institution but does not include any institution caring for the mentally ill or any hospital or other medical facility. Unfortunately, regulations later adopted are contradictory and difficult to interpret—leading to confusion for States and providers.

The inappropriate application of the ICPC to mental health residential placements has caused significant delay and harm to children and youth with serious mental health disorders without providing any additional protections or benefits.

Mental health residential care and hospital programs differ from out-of-state adoptions or foster care placements in every way. Mental health residential treatment programs, like hospitals, are *temporary* and *operate* under an *array* of State *and federal laws and regulations as well as accrediting standards.*

Such placements are designed to provide active treatment in a therapeutic environment so that the child will be able, in the foreseeable future, to *achieve treatment goals and be returned to the state for follow through on next steps.*

Children needing such placement are in crisis and cannot wait for the ICPC process that could take an extended period of time. An unintended consequence of such delays is that children may deteriorate further or be held in inappropriate settings such as juvenile detention while waiting. Last, the placing state agency utilizes contracts or similar documents that detail, assure, and monitor treatment and services. *Contracts are time limited and ensurethat payment is reasonable and made accordingto state standards.* (Further information on why the ICPC should not cover such placements is attached for your use and inclusion in the record as appropriate.)

H.R. 4504 would eliminate confusion caused by the current ICPC and assure that public or private placements of children and youth made to residential care and hospitals *are not subject to the ICPC* when the programs provide 24-hour care approved by the State for the purpose of providing *clinical mental health services.* Again, thank you for your leadership on this issue.

Sincerely,

C.T. O'Donnell, II
President and Chief Executive Officer

National Council of Juvenile and Family Court Judges
Reno, Nevada 89507
July 8, 2004

Majority Leader Tom DeLay
H 107 Capitol
Washington, D.C. 20515

Dear Congressman DeLay:

On behalf of the Executive Committee of the National Council of Juvenile and Family Court Judges (NCJFCJ), I am pleased to write this letter in support of H.R. 4504, entitled the "Orderly and Timely Interstate Placement of Children Act of 2004". As our organization will not hold its meeting to approve the attached Resolution until later this month, I am unable at this time to provide you with any other documentation of support from our organization. When the Resolution is passed, I will be happy to provide you with a signed copy of it.

The Interstate Compact on the Placement of Children (ICPC or the Compact) is vital to the safe movement of certain at risk children from one state to another. While the ICPC is involved in a variety of case types, the primary area of concern with the Compact is the movement of children in foster care between states. While assisting in protecting children, the ICPC also helps assure that they receive necessary services once they arrive at their new place of residence.

For too many years, however, the process involved in the movement of these vulnerable children, who are in foster care, has taken too long thus delaying permanency for them. Despite repeated studies of the problems inherent in the ICPC process, very little progress has been made to make it work more effectively since it came into use over 40 years ago.

Over the past few years our organization through the Advisory Committee of the Permanency Planning Department has supported efforts to improve the ICPC. During the summer of 2003, NCJFCJ and the American Bar Association passed Resolutions supporting the need for improvements in the ICPC.

While the proposed Federal legislation will not and cannot solve all of the problems inherent in the ICPC, it addresses as much as it reasonably should, given that the ICPC is a state compact. If the improvements offered through this legislation are put in place and the funding mentioned in the legislation is appropriated, states will have every reason to ensure that the ICPC Home Study process is done expeditiously and that delays in the interstate movement of children are sharply reduced.

Sincerely,

James A. Ray
President

Mr. DELAY. Thank you, Mr. Chairman. I would also like to welcome my old colleague, Mr. Frenzel, who I had also the distinctive pleasure of serving with such a distinguished gentleman over the years and really appreciate the work that he has done in this area with the Pew Foundation. I also would like to welcome Sam Sipes to the hearing. In the interest of full disclosure, Sam is actually a personal friend of mine. I don't know if that helps him or hurts him, but he also is working with my wife and myself in trying to find new ways of providing safe, permanent, and loving homes for foster children by creating a community of foster homes in my district. His organization is helping us. In fact, it may be a partner in that.

Sam is President and Chief Operating Officer of the Lutheran Social Services of the South (LSS), which is a nonprofit organization that each year serves more than 25,000 of the children, elderly, and poor in Texas and Louisiana Protection Services, LSS has a 123-year history of serving the State of Texas, my home State. Sam holds a master's degree in social work from the University of Texas at Austin and I am just very thankful that he is here today representing LSS and I am very grateful for his support of H.R. 4504. I thank you, Mr. Chairman, for the time.

Chairman HERGER. Thank you, Mr. DeLay. With that, our first witness is the Honorable Bill Frenzel, Chairman of the Pew Commission on Children in Foster Care.

STATEMENT OF THE HON. WILLIAM FRENZEL, CHAIRMAN, PEW COMMISSION ON CHILDREN IN FOSTER CARE

Mr. FRENZEL. Mr. Chairman, Mr. Cardin, ladies and gentlemen of the Subcommittee, Majority Leader DeLay, thank you very much for inviting me. After all those nice words, I will probably ascend directly into heaven before your very eyes.

[Laughter.]

I thank you for uttering them. My statement has been submitted. It is a little longer than the Iliad and somewhat shorter than the Clinton biography——

[Laughter.]

So, I am not going to read it. I will proceed, if I may. Probably while I was recognizing Congressman DeLay, I ought to say that our commission, of course, was not aware of his bill or the details of his bill as we were going forward, but we agree that that is an important field that has to be reformed and we are very glad that he has submitted a bill and that many of you seem to be interested in it. I am also speaking for Bill Gray, which you have already noted, and let the record state I am not trying to claim an extra 5 minutes.

[Laughter.]

Bill has been a great performer on our commission and he wishes he could be with us today. I am not going to repeat the words of our report except to say that our commission started and ended every session that it held with an examination of what we called our child-centered principles, and while we started with about 16 and worked our way down to probably half that number, in shorthand, we used the phrase on the first page of my testimony, and that is that every child needs a safe, permanent, loving family.

This was the centerpiece of our deliberation. Each time we took on a tough chore and had to reach a compromise where certain of our members had to give, we always reverted to our principles. We also had some special goals besides that. We wanted to be sure that we got the incentives right in the financing system, that is that States didn't have an incentive to keep children within the foster care system, that the incentives were to get out, that there was an incentive to improve workforce performance, that other incentives were included. One of our goals was flexibility. We wanted to be sure that the operators of the system who knew what they needed in their own areas had the opportunity to make choices in relation to the work that confronted them. Finally, we wanted to improve the accountability for the operators of the system because we think that is very important, too.

Mr. Chairman, our bills are very similar, that is, the Pew Commission's recommendation and the so-called Herger draft. We congratulate you for that. I don't know if you are brilliant or we are. I think, rather, it is that the same kinds of subjects come up whenever improvement of the foster care system is discussed and so perhaps we stumbled down the same alleys together and came to similar conclusions. There are a few places where I would like to make

some of those suggestions that you have invited from us and I think you will find them quite similar to some of the suggestions Mr. Cardin has already made.

In the first place, we suggested that an entitlement be retained for the foster care maintenance costs. We debated this very heavily, because we talked about full grant, retaining entitlements, capping entitlements, having entitlements decline, and so forth. We came to the conclusion as a matter of compromise that financing of these expenses is a shared Federal-State responsibility for which the States need some kind of a guarantee and some kind of a safety net, and I do not denigrate the safety net that you have put in your bill. It seemed to us that the operators really had to be on board and they were very strongly believing that they needed this continuing entitlement. The crack cocaine epidemic already mentioned is still green in their memories and they have their worries. They are also always nervous about grants being cut back or eliminated.

The other suggestion, main suggestion that we have with respect to your bill, Mr. Chairman, is our suggestion for subsidized guardianship. Thirty States have some form of guardianship which they support. The incentives in the system today build an over-reliance on foster care, and a State that is paying foster care, is being paid foster care by the Federal Government, has little incentive other than the adoption incentive to move children out.

We believe a subsidized guardianship payment will really help achieve permanence and these safe homes that we want for children. Now, we have taken great care to structure our recommendation so that there are very strong lines, deep lines drawn in the sand, which include, of course, that the child has to be in the system already, has to be in the system for a fairly long time, and that the court has to make a determination that neither reunification nor adoption are options, and that there has to be some kind of demonstrated attachment between the child and the guardian.

We do note that in the State of Illinois, a pioneer in the guardianship system, adoptions continued to rise. We don't look on them as competitive, but rather guardianship is an extra leg of the stool of permanence for these children. Now, we also included in our bill a permanence incentive and a workforce performance incentive. We hope that as you and the Committee leadership work on improving this bill—it seems impossible to think it could be improved.

[Laughter.]

We hope you will look at maybe changing the bill. We hope you will look at those particular items. Mr. Chairman, I can't say enough for your leadership in producing this draft and moving forward. The Commission, I am sure, is just delighted that you are taking this tack. We like what you are doing. Of course, as a Commission, we are stuck with our own recommendation. Naturally, we are going to be for us, but it doesn't mean we are not for you. We are very proud of you and we look forward to working with every Member of your Subcommittee and other Members of Congress, like Mr. DeLay, in moving a bill, and as has been suggested twice, we hope that it is a bipartisan bill because that is the history in this field. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Frenzel follows:]

Statement of The Honorable William Frenzel, Chairman, Pew Commission on Children in Foster Care

Chairman Herger, Mr. Cardin and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am testifying on behalf of the Pew Commission on Children in Foster Care. In particular, I am joined in my testimony by the Commission's Vice Chair, former Congressman Bill Gray, whose schedule did not permit him to attend today.

On behalf of the Commission, we thank the Members of the Subcommittee for their continued commitment to improving outcomes for children in foster care. We also thank the staff, both majority and minority, for their dedicated work on this issue.

The Pew Commission on Children in Foster Care shares this Committee's desire to protect children from abuse and neglect, and ensure that they all have safe, permanent families. Efforts to help children who have suffered abuse and neglect have traditionally benefited from strong bipartisan support, and today's hearing embodies the ongoing efforts of leaders from both parties and all branches and levels of government to ensure that the nation does a better job of caring for children in foster care.

Supported by a grant from The Pew Charitable Trusts, the Commission examined two key aspects of the foster care system: Federal child welfare financing and court oversight of child welfare cases. Our charge was to develop far-reaching, yet achievable recommendations to improve outcomes for children in the foster care system. On May 18 of this year, the Commission released its final report and recommendations. Our full report, "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care" and all supporting materials can be found on the Commission's web site at www.pewfostercare.org.

Throughout an intensive year of work, we were guided by the principle that every child needs a safe, permanent family. This was the starting point for the Pew Commission and a steady compass throughout our deliberations. We revisited this principle at every meeting to ensure that our final recommendations were totally focused on producing better outcomes for children.

Federal financing and court oversight are at the root of many of the problems that frustrate child welfare administrators, case workers and judges as they seek to move children quickly from foster care to safe, permanent homes—or to avoid the need to put them in foster care in the first place. Indeed, reform in these two areas could pave the way for significant improvements in how the nation cares for children who have been abused or neglected.

As a Commission, we sought to craft practical recommendations that could win the support of Congress, the Administration, State officials, State court leadership, and the children and families involved with the child welfare system. We are encouraged by the positive responses we have received thus far from these key audiences, and we are honored to have the opportunity to share our recommendations with this Subcommittee today.

Financing Child Welfare

As you know, current Federal funding mechanisms for child welfare encourage an over-reliance on foster care, at the expense of other services to keep families safely together and move children swiftly and safely from foster care to permanent families. Toward this end, the Commission proposes a fundamental restructuring of existing financial resources, as well as targeted new investments that will provide real returns to our children and our nation. We call for strong incentives for States to focus on permanency, a secure and reliable Federal-State funding partnership, greater flexibility for States in how they can use Federal dollars to respond to the needs of children and families, and greater accountability for improving outcomes for children.

Mr. Chairman, we greatly appreciated the opportunity to review your very thoughtful discussion draft. Many of its provisions are consistent with the recommendations of the Pew Commission. Your draft is a very positive step forward, and we commend you for that. We also thank you for this opportunity to suggest some changes and additional provisions that reflect our recommendations and that we believe would enhance your legislative efforts to improve outcomes for children.

Let me begin with the Commission's financing recommendations.

We call for preserving both foster care maintenance and adoption assistance as an uncapped Federal entitlement to the States—but with some improvements, based on our strong conviction that *all* children who are abused or neglected deserve the joint protection of their State and the Federal government. Specifically, we call for eliminating income requirements for Federal foster care and adoption assistance—

or "de-linking" from the 1996 AFDC income standards—and for treating Indian tribes and U.S. Territories as States when it comes to administering child welfare programs for their children. We were pleased that you include both of these provisions in your draft legislation.

We also called for the de-link to be cost-neutral to both the Federal government and the States and to be structured in such a way that it avoids creating fiscal winners and losers among the States.

Our recommendation of cost neutrality in this provision was one of many difficult choices we had to make as a Commission. We were very cognizant of the Federal deficit and of the difficult budgetary climate in the States. We worried about creating the potential for States to supplant existing State foster care dollars with new Federal dollars, in essence shifting costs from the States to the Federal government without any net increase in child welfare funding. In the end, we decided that we wanted new investments in child welfare to go to preventing the need to place children in foster care and to services that will help children leave foster care quickly and safely.

Your draft currently caps foster care maintenance payments. We recommend maintaining that entitlement without a cap. The members of the Pew Commission feel strongly that protecting children who cannot stay safely in their own homes is a shared Federal-State responsibility—and that the Federal government should maintain its responsibility, especially if the need for foster care increases dramatically for reasons beyond the control of State policymakers, as was the case in the early 1990s.

Mr. Chairman, we recognize that you designate the TANF Contingency Fund as a safety net for States that experience severe increases in foster care. In a capped system, a contingency fund is essential. But in our deliberations, we concluded that an uncapped system was a better approach, in part because the Contingency Fund is hard for States to access in a timely manner and may not contain sufficient funds to respond to a nationwide surge in the need for foster care.

Nevertheless, we share your goal of reducing the over-reliance on foster care that the current funding structure encourages—we just differ in how to do so. The Pew Commission recommends options and incentives that together provide very powerful encouragement to the States to seek out safe alternatives to foster care. These include an additional route to permanency through subsidized guardianship, increased flexibility in how States can use Federal child welfare dollars to meet children's needs, the opportunity for States that reduce their foster care use to reinvest the Federal dollars saved in services to children, and the provision of bonuses to States that increase all forms of safe permanence. The experience of the very successful Adoption Incentive Program clearly demonstrates that, when the Federal government provides incentives to States to achieve certain goals, States will respond.

Mr. Chairman, you include two of these incentives in your discussion draft—creating a flexible Safe Children, Strong Families Grant and allowing States to reinvest unused foster care funds in that grant. We hope that you will also include our other two provisions as well, so that States have every opportunity and every reason to put their energy into reducing the need for foster care.

In particular, we strongly urge you to include our recommendation to provide Federal guardianship assistance to children who leave foster care to live with a permanent legal guardian. This would provide an additional route to permanence for some children in foster care. In developing this recommendation, we were particularly sensitive that it not adversely affect adoptions from foster care. We were therefore careful to draw "bright lines" that clearly define when a court could determine that guardianship would be appropriate for an individual child. Specifically, we say that guardianship assistance should be available only when all of the following circumstances exist:

- When a child has been removed from his or her home and the State child welfare agency has responsibility for placement and care of the child;
- When a child has been under the care of the State agency for a given period of time, to be determined by the State;
- When a court has explicitly determined that neither reunification nor adoption are viable permanency options for a particular child; and
- When a strong attachment exists between a child and a potential guardian who is committed to caring permanently for the child.

We further recommend that Federal requirements related to guardianship assistance be consistent with Federal requirements related to foster care and adoption. For example, States would have to conduct a criminal record check before a guardianship is approved.

Under the Title IV–E waiver program, several States have obtained waivers to test subsidized guardianship programs as part of an overall effort to increase permanence for children involved in the child welfare system. One of these States, Illinois, has completed an extensive evaluation of its guardianship program. The evaluation found that over five years, subsidized guardianship provided permanence for more than 6,800 children who had been in foster care, and that discussing all permanency options helped to increase the number of adoptions. In fact, during that same period, Illinois experienced increases in both guardianships and adoptions from foster care.

We were pleased that your draft bill includes a flexible grant that combines Title IV–E Administration and Training and Title IV–B and includes guaranteed funding increases every year. This is consistent with the Commission's recommended Safe Children, Strong Families Grant. States need both flexibility and additional funds to build a continuum of child welfare services. They also need the assurance that those funds will grow at a predictable rate. The Commission recommends that these funds grow according to an index—specifically, 2 percent plus the CPI. Your draft legislation calls for annual growth of $200 million for 10 years.

We further recommend that, when States safely reduce the use of foster care, they be permitted to reinvest the Federal dollars they would have expended into their Safe Children, Strong Families Grant—so long as they also reinvest the State dollars that are saved from reducing foster care. This provides another incentive for States to focus on permanence and provides an additional potential source of funding for the Safe Children, Strong Families Grant. Your draft bill includes a similar reinvestment provision. Because we recommend that foster care maintenance remain an uncapped entitlement, we would not allow these funds to be reserved for foster care maintenance in later years.

To promote innovation and improved practice, we call for new incentives for improvements in the child welfare workforce and for promoting all types of safe permanency. For States that meet certain workforce targets, the Federal government would provide a one percentage point increase in the match rate for the Safe Children, Strong Families Grant. The enhanced match rate would provide an incentive for States to continue to make investments in two critical areas: (1) improving the competence of the overall workforce and (2) lowering caseloads. If we are going to demand better outcomes from child welfare systems, then we must be prepared to invest in improving the quality of the child welfare workforce. Mr. Chairman, we urge you to consider adding these workforce incentives to your bill.

To help children move out of foster care and into safe, permanent families as quickly as possible, we also recommend that Congress create a new Permanence Incentive modeled on the successful Adoption Incentives Program recently reauthorized by this Subcommittee. Under our plan, States would receive incentive payments for increasing the percentage of children who leave foster care through one of three paths to safe permanence: adoption, guardianship, or reunification. To be eligible for any payment, States would have to maintain or increase its rates in all three areas.

Finally, we call for stronger accountability through improvements to the current Child and Family Services Reviews process, which we hope you will include in your bill. Specifically, we recommend that the CFSR's include more and better measures of child well-being and use longitudinal data to yield more accurate assessments of performance over time. We call on Congress to direct the National Academy of Sciences to convene an expert panel to recommend the best outcomes and measures to use in data collection. In addition, we recommend that the U.S. Department of Health and Human Services direct a portion of any penalties resulting from the review process into a State's Program Improvement Plan.

Strengthening Courts

Let me turn now to the courts. The Commission recognized that when effective financing reforms are coupled with important court reforms, the result is better outcomes for children. Mr. Chairman, we were delighted to see provisions in your draft that reflect this same understanding.

For years, the courts have been the unseen partners in child welfare—yet they are vested with enormous responsibility. No child enters or leaves foster care without a judge's decision. Courts are responsible for ensuring that public officials meet their legal responsibilities to keep children safe, secure permanent homes for them, and promote their well-being when they are under the State's protection.

Despite this critical role, the dependency courts often lack sufficient tools, information, and accountability to move children swiftly and safely out of foster care and into permanent homes. The Pew Commission's recommendations focus on ensuring

that courts have what they need to fulfill their responsibilities to children and to the public trust.

First, we call on every dependency court to adopt performance measures and use this information to improve their oversight of children in foster care. When judges can track and analyze their caseloads, they can identify and deal with sources of delay that keep children in foster care longer than may be necessary. They can also identify groups of children in their caseload who may require special attention. Case tracking also provides critical information to Chief Justices as they assess the needs and overall performance of the dependency courts. We built our recommendation here on substantial work done by the American Bar Association's Center on Children and the Law, the NationalCenter for State Courts, and the National Council of Juvenile and Family Court Judges.

Your discussion draft includes provisions related to the Court Improvement Program. In particular, it includes tracking court performance measures as an important component of the program, which we applaud. It also includes guaranteed funding for the Court Improvement Program at a higher level than is currently projected—about $7 million in new funds every year. We recommended $10 million in the first year specifically to jump-start tracking of court performance measures and such sums as necessary in future years. We commend you for guaranteeing Court Improvement Program funding for 10 years, and hope you will consider increasing the funding level and designating funds specifically for tracking court performance measures. The success of the Court Improvement Program is strong evidence of the value of investing in improvements in the nation's dependency courts.

Second, although they share responsibility for these children, courts and agencies often don't do a good job of communicating or working together. We recommend incentives and requirements for effective collaboration between courts and child welfare agencies on behalf of children in foster care. These include new requirements that States and courts describe this collaboration in their State plans and Court Improvement Program plans, as well as joint training and the establishment of State foster care commissions that can promote this collaboration. Your discussion draft includes requirements for State plans, and we urge you to add court-agency collaboration to that list. We also urge you to consider additional funding to promote joint training by courts and child welfare agencies. The Pew Commission recommended an additional $10 million to courts, both for training court personnel and for joint training of court and child welfare staff.

Third, we recommend several measures to give children and parents a stronger voice in court and more effective representation. For example, we call on Congress to appropriate $5 million for expansion of the Court Appointed Special Advocates program. We also call on State courts to require training for attorneys practicing in this field and for courts to be organized in a way that permits and encourages direct participation by children in proceedings that affect their lives.

Conclusion

Children deserve more from our child welfare system than they are getting now. For this to happen, those on the front lines of care—caseworkers, foster parents, judges and others—need the support necessary to do their jobs more effectively. And the public needs to know that, with this support, every part of the chain of care—from the Federal government to the States to the courts—can reasonably be held to high standards of accountability for the well-being of children.

The Commission's firm resolve is to ensure that all of our recommendations—taken together—promote greater safety, permanence, and well-being for abused and neglected children, while also ensuring greater public accountability for what happens to every child whose life we touch. Our proposals are the result of hard choices and difficult compromises. This Subcommittee faces similar challenges. We hope our work can provide common ground for your discussions going forward.

In closing, we would like to thank the Subcommittee again for the opportunity to discuss our recommendations. On behalf of the Pew Commission on Children in Foster Care, we look forward to working with every Member of this Subcommittee and their staff to implement reforms to improve outcomes for children in foster care.

Chairman HERGER. Thank you very much, Mr. Frenzel. Again, I want to thank you for your longtime work in the U.S. Congress and specifically for your work in this area, which is so important for those young people, those children most in need. Thank you

very much for your work, and the work of your commission. Now, Dr. Arnold-Williams to testify.

STATEMENT OF ROBIN ARNOLD-WILLIAMS, EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF HUMAN SERVICES, SALT LAKE CITY, UTAH, ON BEHALF OF THE AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION

Dr. ARNOLD-WILLIAMS. Mr. Chairman and Members of the Subcommittee, I am pleased to join you today to testify on behalf of the APHSA. The Child and Family Service Review (CFSR) baseline results reveal the many challenges States face in achieving safety, permanency, and well-being for children in our care, but improvements are being made and we have achieved noteworthy increases in adoptions and family reunifications.

State Administrators have focused efforts and resources on implementing the requirements of the Adoption and Safe Families Act (ASFA) (P.L. 105–89), and developing program improvement plans (PIPs) to achieve improved outcomes for children. At the same time, fewer children are supported with Federal funds due to the "look back" provision. In Utah, since 2002, our Title IV–E penetration rate for foster care has dropped from 54 to 50 percent and adoption has fallen from 77 to 72 percent. The APHSA has consistently supported a full Federal-State partnership for every child in the child welfare system and we commend you for proposing legislation that addresses that goal.

However, the draft legislation proposes to reduce all State Federal medical assistance program (FMAP) rates by 35 percent for foster care and by 15 percent for adoption. Under this mandatory approach, States would be dissimilarly affected. States that have a high Title IV–E penetration rate would be more negatively impacted. We understand your fiscal constraints. Therefore, we urge the Subcommittee to give States the option to either retain current law or opt into the new formula.

The draft legislation would impose an annual cap on funds available for Title IV–E foster care maintenance. We commend the Chairman for allowing the funding to increase over time and for allowing State reinvestment of any savings. However, we have several concerns. First, for States that have already reduced their foster care caseloads, the potential for savings and thus reinvestment is limited. Second, we believe each State should have a baseline that reflects their projected annual rate of growth, independent of an a national one. Third, we applaud recognition that Title IV–E funds ought to be used for services as well as for maintenance payments. However, crises, such as the increasing use of methamphetamines in several States, have resulted in caseload increases and limit the savings for reinvestment.

Finally, the National Contingency Fund triggers may be set so high that an individual State may never be able to access them. Again, we recommend making the guaranteed payment level a State option and not a mandate. We must strongly oppose the provision capping Federal funding for caseworkers and training. Child welfare staff courageously work in one of the most challenging professions in this country and we struggle to recruit, retain, and reward them. Capped Federal funding is a step in the wrong direc-

tion. The base years for calculating the administrative cap are problematic. For example, last year, Utah added 51 caseworkers and trainers, but their funding would not be reflected in the baseline.

Subsidized guardianship provides for stable and permanent placements for children and APHSA believes that waiver demonstrations have proved it is time to amend Title IV–E to allow States to fund this option. Despite renewed emphasis on accountability and program improvement through the CFSR process, Title IV–E funds cannot be used to achieve many of the mutually agreed-on goals in our PIPs. Given the large Federal role in developing and approving PIPs, APHSA proposes States be permitted to use Title IV–E funds for any purpose approved under their PIP. We would agree to continued evaluation to determine whether they make a difference in performance and whether that should continue.

For example, in Utah's PIP, one of the primary areas for which Title IV–E will not be able to be expended is child well-being in in-home cases. We currently serve nearly twice as many families with in-home services as we do out of home. Title IV–E funds cannot be used for activities in those cases, like family involvement in case planning, worker visits, and providing physical and mental health care. Although we did well on other portions of the CFSR, other States are struggling to find resources on several safety outcomes, including services to protect children, prevent removal, and reduce risk of harm.

With respect to the Interstate Compact on the Placement of Children (ICPC), APHSA has embarked on a comprehensive reform and we commend Majority Leader DeLay on his leadership in this area. House Resolution. 4504 would impose a 60-day limit on the completion of home studies. States would be at risk of losing their Title IV–E funds for noncompliance. While we understand the goal of reducing the length of time to complete a home study, we have no data to suggest the 60-day timeframe will, in fact, expedite placements. We recommend adding a "reasonable cause" exception for failure to meet the 60-day limit, such as a delay in FBI background checks. Given that the ICPC is a direct agreement between the States, we also urge inclusion of language restricting the Secretary from regulating home study definitions. In conclusion, we look forward to working with the Subcommittee to devise a Federal financing construct that can help States meet the needs of children and families we serve. Mr. Chairman, we thank you for your leadership on this important issue and I would be happy to answer any questions when that time comes. Thank you.

[The prepared statement of Ms. Arnold-Williams follows:]

Statement of Robin Arnold-Williams, Ph.D., Executive Director, Utah Department of Human Services, Salt Lake City, Utah, on behalf of the American Public Human Services Association

Good morning, Mr. Chairman and members of the Sub-Committee. I am Robin Arnold-Williams, executive director of the Utah Department of Human Services. I am pleased to join you today to testify on behalf of the state of Utah and the American Public Human Services Association (APHSA), a nonprofit, bipartisan organization representing state and local human service professionals for more than 70 years. Thank you for the opportunity to testify on improving the financing of child welfare

in this country and the reform of the Interstate Compact on the Placement of Children.

Commitment to Accountability and Achieving Positive Outcomes

APHSA would like to commend the subcommittee for dedicating a significant amount of time to child welfare through the six hearings that have been held within the last year. States realize that the baseline results of the Child and Family Services Reviews (CFSRs) revealed that we have many challenges to overcome to achieve positive outcomes for children and families. Having said that, states are focused on the goals of achieving safety, permanency and well being for all children in our care. Over the past several years, we have achieved noteworthy increases in the number of adoptions and family reunifications.

APHSA and states have had a long-standing interest in moving the child welfare system from one that is process-driven to one that is outcomes-focused with success measured by positive outcomes for children. States are committed to quality services for children and families and rise to the challenge of being accountable for achieving outcomes.

In order to continue on the path of improving outcomes for all children and to attain positive results, the child welfare system must have the necessary capacity to achieve those goals, i.e., sufficient and appropriate financial and service resources and well-trained staff with manageable workloads to implement appropriate and best practice interventions that will yield positive results for children and families.

Child Welfare Financing Reform Needed to Support the Achievement of Positive Outcomes

De-Linking

Over the past several years, the demands on the child welfare system have increased significantly. State administrators have focused their efforts and resources on implementing the requirements of the Adoption and Safe Families Act through the federal CFSR process and developing program improvement plans (PIPs) in partnership with the federal government to achieve improved outcomes for children with respect to safety, permanency and well being. At the same time, fewer and fewer children served in the child welfare system are supported with federal funds, due to the "look back" provision of the welfare reform act that links Title IV–E eligibility to the former AFDC eligibility rules in effect as of July 16, 1996. In my own state of Utah, our Title IV–E penetration rate for foster care has dropped from 54% in FY 2002 to 49.8% today; our adoption subsidy penetration rate has fallen from 77% to 72% over that same two-year period.

The federal accountability measures under which states are reviewed and the subsequent PIP goals apply to every child in the child welfare system. However, federal financial participation for every child in the child welfare system does not currently exist. We commend the Chairman for proposing draft legislation that begins the dialogue on how best to reform federal child welfare financing. APHSA has consistently supported the idea of a full federal and state partnership for every child in the child welfare system.

Reduction in Federal Matching Rate to Expand Eligibility

The draft legislation proposes to reduce all state FMAP rates by 35% for foster care maintenance and by 15% for adoption assistance and allow all children to be covered under IV–E funding. Under this mandatory change, states would be dissimilarly affected. States that have worked hard to achieve a high IV–E penetration rate would be more negatively impacted by the adjustment in the federal match rate and may in fact face a situation of receiving less federal resources than under the current system. In light of the fiscal difficulties in the states, and the uncertainty related to the rising cost of child welfare, caseload dynamics and other factors, we urge the subcommittee to consider giving states the option to either retain current law or to opt into the new formula.

Guaranteed Foster Care Maintenance Payment Levels

The draft legislation would impose an annual cap on the amount of federal funds available for IV–E foster care maintenance payments based on Congressional Budget Office projections. We commend the Chairman for allowing the funding to increase over time and for allowing state reinvestment of any savings. However, we have several concerns. First, over the past few years, states have worked diligently to bring their foster care caseloads down. Locking in the low caseload numbers from these years as a baseline for assessing any savings would limit the amount of funds that would be available for reinvestment in the future. Second, we are concerned with the state baselines that would be derived from the national baseline. Due to

the differences among states, we believe each state should have a baseline that reflects their projected annual rate of growth over time. It is also important to note that the projected national baseline in the draft legislation is reflective of the IV–E eligible population alone. When states merge IV–E and non IV–E caseload trends and expenditures, the baseline may be dramatically adjusted upward. Third, we applaud the recognition that IV–E funding ought to be used for services to children and families as well as for maintenance payments. The ability to use savings resulting from declining foster care caseloads is very positive. However, crises, such as the increase in the use of methamphetamine in several states, have resulted in an increase in caseloads. States that are contending with such factors may not be able to take advantage of reinvesting any savings from a reduction in caseload. Again, we recommend making the guaranteed payment level proposal a state option and not a mandate.

Safe Children, Strong Families Programs

While we believe there are ways to address the de-linking and guaranteed payment level provision of the draft legislation, we must strongly oppose the Safe Children, Strong Families provision that would cap federal funding for caseworkers and the training that supports their work. Caseworkers are the crucial link to the services children and families need. States must rely heavily on direct casework to achieve goals set forth within PIPs, consent decrees and state legislative requirements. Child welfare professionals courageously work in one of the most challenging professions in this country. The jobs performed by caseworkers have become more complicated as the challenges faced by families in the child welfare system have become increasingly complex. Child welfare systems throughout the country struggle to recruit, retain, and reward these dedicated professionals. Caseworkers face many barriers and constraints as they work to achieve safety, permanency and well being for children.

According to a presentation by Children's Bureau staff at the June 2004 Biennial Child Welfare conference, preliminary findings from the CFSRs indicate that strong correlations exist between caseworker visits with families and timely reunification, placement stability, services to protect children at home, relative placements, and meeting educational, mental health, and physical health needs.

Under this proposal, the base years used for calculating fixed administrative funding are problematic. Fiscal years 2001–2003 may be the lowest years for expenditures in some states due to state budget crises. In addition, states that provide training which is not currently IV–E reimbursable to caseworkers with private agencies that serve the same children, states that have added new caseworkers in 2004 and those that may add workers in subsequent years will not have the resources included in this block grant. In light of future staffing needs, training and salary increases over time, states would have to choose between fewer trained caseworkers or funding for critical services. Eliminating the federal financial partnership in the recruitment and training of quality workers would be a step in the wrong direction.

Subsidized Guardianship

We appreciate the inclusion of the H.R. 4 language to expand child welfare waiver options for states. However, it is unclear why a state would need a waiver under the Guaranteed Foster Care Maintenance Payment provision. In addition, we urge the Committee to allow states to use IV–E funds for subsidized guardianship; it provides for a stable and permanent placement for many of the children in the child welfare system. It is time to amend the IV–E statute to allow states to fund this option.

Achieving Program Improvement Plan Goals

States must be able to access flexible funding streams to provide the services that are the foundation of child welfare practice. APHSA and states have been considering a proposal to fund the services needed to improve outcomes for children and families.

Despite the federal government's renewed emphasis on accountability andprogram improvement through the CFSR process, IV–E funds cannot be used to achieve many of our mutually agreed-upon goals in our PIPs. It is not enough to know what goals need to be achieved to help children and families in the child welfare system; the resources must also be available. For example, my state, Utah, has identified several areas in our PIP where we are going to be held to expectations by HHS for which we will not be able to access Title IV–E funds. One of the primary areas for which a federal dollar cannot be expended to achieve Utah's PIP goals is child well being as it pertains to in-home services cases. Specific expectations include assessing and meeting needs through services to children, parents and foster parents; fam-

ily involvement in case planning; worker visits to children and to parents; and providing services to meet the physical and mental health needs of children. Although Utah did well on other portions of the CFSR, we realize that other states are struggling to find resources on several indicators in the CFSR for which federal funds are not accessible. These indicators include the safety outcomes related to services to families to protect children in home and prevent removal and reduce risk of harm to the child as well as the systemic factors related to quality assurance, responsiveness to the community and foster and adoptive parent licensing, recruitment and retention.

The federal government requires the development of a PIP for the purpose of improving outcomes for all children in the foster care system and HHS must approve the contents of the state's PIP. Given the large federal role in developing the goals, APHSA proposes that states should be permitted to use IV–E funds for any purpose approved under the PIP. We could test over a period of time the extent to which these new investments improve performance under the CFSR. States would agree to continue to undertake evaluation based on the measures and methods specified in their PIP, as under current federal regulations.The research findings would be used to inform federal and state staff as to whether the IV–E dollars might be used to continue to fund certain initiatives under the PIP.

Reform of the Interstate Compact on the Placement of Children

The Interstate Compact on the Placement of Children plays a necessary role for ensuring that children placed across state lines receive appropriate care and supervision. However, it has not been sufficiently amended in its 44-year existence. APHSA, as the Secretariat of the Association of Administrators of the ICPC, and based on recommendations from its' ICPC reform task force, has embarked on a comprehensive reform of the ICPC. A drafting and development team comprised of a broad and diverse set of stakeholders representing state commissioners, state and local child welfare directors, ICPC administrators, the American Academy of Adoption Attorneys, court administrators, the American Bar Association, Juvenile and Family Court Judges, National Indian Child Welfare Association, Child Welfare League of America, and the National CASA Association. We begin the work of redrafting the compact next week and will complete the process by the end of this year.

APHSA appreciates Majority Leader DeLay's commitment to the reform of ICPC. H.R. 4504 would impose a 60-day time limit on the completion of home studies and penalize states with the loss of all their IV–E funding if they fail to meet this deadline. While we understand the goal of reducing the length of time taken to complete a home study, we have no data to suggest that the 60-day time limit will expedite permanent placements. We are also concerned that there could be practice implications if a promising placement was ignored, simply because a caseworker did not believe that a home study could be completed in time. Therefore, we recommend revising the proposed legislation to have a reasonable cause exception for failure to meet the 60-day limit. If, for example, all of the component parts of the home study are complete, but the state has not yet received the FBI background check information, then the state could continue the home study beyond the 60-day and not face a state plan disallowance. Also, we recommend that ACF dedicate research funding to study the impact of the 60-day time limit and the other barriers that may impede timely interstate placements. Finally, given that the Compact is a direct agreement between states, we urge the inclusion of language that would restrict the Secretary from overriding individual state definitions of a home study through regulation.

Conclusion

When children are at risk and come to the attention of the child welfare agency, the agency can provide services and supports to them and their families to mitigate their problems and prevent them from being removed from their families and communities. When children must come into care, the agency can address children and family needs expeditiously and enable a safe reunification or, where that is not possible, find an alternative permanent placement expeditiously, while assuring their well being in the interim. The child welfare system has the capacity to improve outcomes for children and families and the federal government and states must be equal partners in serving all children in all parts of the system. The child welfare financing system, developed 24 years ago, no longer supports states' efforts to achieve this vision. We need reform and look forward to working with the subcommittee to devise a federal financing construct that can help states meet the needs of the most vulnerable children and families we serve.

Mr. Chairman, thank you for your leadership on this important issue and I would be pleased to respond to any questions you may have.

Chairman HERGER. Thank you very much, Dr. Williams. Now to testify, Ms. Patricia Wilson.

STATEMENT OF PATRICIA WILSON, DIRECTOR, SOUTHERN REGIONAL OFFICE, CHILD WELFARE LEAGUE OF AMERICA

Ms. WILSON. Good afternoon, Mr. Chair, Members of the Subcommittee, and Congressman DeLay, CWLA appreciates this opportunity to offer testimony on behalf of our nearly 1,000 public and private nonprofit child-serving member agencies. We especially are appreciative of the attention that this Subcommittee has brought to this important issue of child welfare reform. Child welfare financing reform is important to the future of the 500,000-plus children in foster care, the over 100,000 children awaiting adoptive placement, the 257,000-plus families receiving adoption assistance, and the 1 million children receiving child protective services in their own home.

Our testimony this afternoon highlights our understanding of the draft legislation put forth by Congressman Herger and the Pew Commission report. Both Pew and the draft legislation would make all abused and neglected children in foster care and adoptive placements eligible for Federal support at a reduced reimbursement rate. We urge careful consideration, as too severe a reduction in the rate of the Federal share could create an increased and unacceptable burden on the States.

We strongly agree with the Pew recommendation to retain Title IV–E foster care maintenance as an entitlement for children in care. Maintenance, meaning food, clothing, shelter, and supervision, is extremely important and critical to the well-being of those children. The draft legislation caps the amount of Federal funds available for maintenance. We are quite concerned that with that proposal that all children become eligible and the Federal share of every dollar spent be reduced, the States are going to be also limited in the amount of Federal assistance they can receive.

The draft legislation makes a provision for potential relief for States experiencing a severe foster care crisis. This is based on what would be a phenomenal growth in numbers on an annual basis. It does not take into account the needs of the children already in care. Both Pew and the legislation allow for the transfer of unspent excess Federal funds to be moved from maintenance into the services block grant. Based on States' current struggle to adequately cover the care for the children, the likelihood of excess funds seems remote. Unused transferred foster care funds should not be relied on as a primary source of funding for prevention and other services. An opportunity to transfer must be constructed in a way that does not create a disincentive for providing the care that children in placement need.

One of the strongest recommendations of the Pew Commission was the inclusion of Federal support for subsidized guardianship and kinship placements. We support that. The draft legislation provides this only as a waiver option. We support the concept put forth by both the Pew Commission and the Subcommittee bill that would allow tribes and territories increased access to Title IV–E

funds. Both would create a new block grant for services entitled, "Safe Children, Strong Families." This would combine current Title IV–E administrative and training funds as well as the Title IV–E funds. These are not new funds. These funds are being used today to support direct contact and work with children and families.

Title IV–E administration pays for the face-to-face time that caseworkers spend with children in foster care, making case plans with them and for them, securing services for them, preparing for judicial hearings, and not to mention recruiting the foster parents and adoptive parents who serve them. Title IV–E training funds prepares the workforce as well as the foster and adoptive parents, while Title IV–B funds the services that enable children to remain in their own homes and to provide them with reunification services.

Pew recommends that a block grant be increased annually by the Consumer Price Index plus 2 percent. In the confines of the draft legislation, this annual increase would be—there would be an annual increase, but it would not be tied to a specific factor. The COLA has questions about potential impact of including Title IV–E training funds in a block grant that is designed to fund services. Training is so vital to our workforce, also extremely important to the quality of decisions that are made about our children. Combining it into a services block grant could force States to make a decision between funding a training program and direct service need.

We are pleased the Pew Commission recommended maintaining separate Federal funding for States' information systems. In summary, we believe that the basic safety net of foster care and adoption assistance should remain an uncapped entitlement; that all children in foster and adoptive placements, including those under the auspices of tribes and territories, subsidize guardianship and kinship placement should be eligible for Federal support.

We should look to the States' PIPs to inform us about what new investments are necessary to better care for our children. Any reform proposal must always be sure to address workforce issues, including practice standards for worker competence and caseload size. We urge the Subcommittee to carefully consider the impact of reducing the Federal matching rate for foster care and adoption assistance as well as the impact of moving the entitlements of Title IV–E administration and training into a block grant. We encourage you also to take the time to fully evaluate and hear from all those impacted by the pending proposals, States, private agencies, and advocacy groups. We thank you for this opportunity; CWLA offers our assistance and participation in this most important endeavor.

[The prepared statement of Ms. Wilson follows:]

Statement of Patricia Wilson, Director, Southern Regional Office, Child Welfare League of America

My name is Patricia Wilson. I am the Director of the Child Welfare League of America's (CWLA) Southern Regional Office. CWLA welcomes the opportunity to offer testimony on behalf of our nearly 1,000 public and private nonprofit child-serving member agencies nationwide as part of this hearing to examine child welfare reform.

I am going to speak to you today from a perspective that I have gained from 30 years of working in child welfare. I have been fortunate during my career to have worked as a:

- National consultant during which time I have had in-depth working relationships with a number of state child welfare programs and have been engaged in numerous projects involving the financing of states' child welfare systems;
- State child welfare administrator in the Kentucky Cabinet for Families and Children with responsibility for a broad range of federally funded child welfare programs;
- Child welfare program manager and supervisor at the county level; and,
- Caseworker, who investigated abuse and neglect complaints, provided services to children in need of protection as well as their families and managed foster care and adoption cases.

The Need for Reform

CWLA recognizes that the current child welfare system does not protect all children adequately. Over the past several months the need for reform of our child welfare system has gained some needed attention nationwide. In part, this attention is the result of efforts this Subcommittee has made through a series of hearings beginning last fall. We appreciate these efforts and the attention of the members of this Subcommittee, and in particular, the attention to this matter by Chairman Herger and the Ranking Member, Representative Cardin. Through their leadership in conducting a series of public hearings, Congress is beginning to gain insight into what is needed to ensure that children are protected. These hearings have also helped us all understand the enormous complexities involving systems change.

While everyone understands the need for children to be protected and to have a permanent home, it is more difficult to grasp the complexities of child welfare financing. Why is child welfare financing reform necessary? The answer lies in its importance to the future of the 542,000 children in foster care, the 126,000 children in foster care waiting for an adoptive placement, and the over one million children receiving child protective services. In our current system, states are left every day trying to cobble together a patchwork of funding streams limited either in the number of children who can be served or how they can be served. Children who enter into the child welfare system have already suffered the trauma associated with abuse or neglect. Their trauma should not be exacerbated by there being too few caseworkers to adequately prepare them for a permanency placement; underpaid foster parents or caregivers who are always stretching every dollar to try to provide them the basic necessities; too few mental health services to address their emotional or behavioral health needs; or, the general lack of resources to treat the substance abuse, domestic violence, or mental health issues of their parents which makes reunification that much more difficult.

CWLA appreciates the interest and work of other members of Congress and this Subcommittee. We were pleased to support legislation spearheaded last year by Representative Camp to reauthorize the Adoption Incentives Payments. We are also supportive of legislation introduced by Representative Cardin, the Child Protective Services Improvement Act (HR 1534) and legislation introduced by Representative Stark, the Child Protection Services Workforce Improvement Act (H.R. 2437). Both of these measures make a down payment towards the comprehensive reform that is needed.

CWLA hopes that the recommendations of the Pew Commission and the work of the Subcommittee will result in a serious national debate and consideration about the way in which we choose to carry out our collective responsibility for protecting and caring for the most vulnerable children and youth in our communities. To accomplish that goal and to implement effective legislation will require a dialogue that involves all the partners in this process. In addition to members of the Congress and congressional staff, this includes state, local, public and private agencies and officials, advocates and advocacy groups representing all parts of the child welfare system and those families and children most directly affected by our decisions.

The Pew Commission on Children in Foster Care

In May, the Pew Commission on Children in Foster Care, a panel of national experts, released a report that makes comprehensive recommendations about ways to improve the financing of child welfare services and to improve court performance in child welfare cases. CWLA appreciates the work of the Commission and their recommendations, and their willingness to engage CWLA and other partners in the child welfare system as they developed their recommendations. We also appreciate their continued efforts to focus the nation's attention on this matter.

The recommendations of the Commission include some broad proposals and principles that we believe are fundamental to reform and that can serve as a starting point for such an effort:

- The care of abused and neglected children needs to be a shared partnership between the federal government and states.
- Support offered through the Title IV–E program should be maintained and serve as the cornerstone for building additional supports.
- New federal resources—in addition to the basic safety net of federal support offered through the Title IV–E foster care program—must be provided to states and communities to enable them to make a greater investment in preventing child abuse and supporting families.
- The Federal government, along with the states, should provide support for all abused and neglected children, regardless of family income, including children who are members of Indian tribes and children living in the U.S. territories.
- The child welfare workforce needs better supports including manageable caseloads and training.
- Children living with their grandparents or other relatives as an alternative to foster care should be afforded federal support.
- The courts need to be a part of any comprehensive reform.

House Ways and Means Human Resources subcommittee Draft Legislation

Based on our initial review, the key components of the Subcommittee draft legislation include:

- The basic safety net of federal support offered through the Title IV–E program would be compromised by capping the amount of assistance available to a state to provide for the maintenance of children in foster care.
- All abused and neglected children in foster care and adoptive placements would be eligible for federal support, but at a reduced federal reimbursement rate.
- The rate for federal participation to support foster care placements would be lower than the rates to support adoptions.
- A new block grant for services, entitled Safe Children, Strong Families, would be created by combining Title IV–E Foster Care and Adoption Assistance administration and training funds with Title IV–B Child Welfare and Promoting Safe and Stable Families funds.

Reforming the financing system is an extremely complex task. Today's testimony focuses on our understanding of how both the Pew Commission report and the Subcommittee draft legislation address specific areas of utmost importance—eligibility, payments for the care of children, i.e., maintenance; payment for face-to-face contact and work with children and their families, i.e., the services block grant; training of the workforce; and, data collection.

Title IV–E Maintenance

CWLA strongly agrees with the recommendation contained in the Pew Commission report to retain the Title IV–E foster care maintenance payments as a basic safety net for children who need care.

In the Title IV–E Foster Care program, the cost of providing children in foster care the basic necessities—food, clothing, shelter, school supplies—and supervision is referred to as maintenance. In exchange for making all children eligible, both the draft legislation and the Pew report recommend reducing the percentage of the federal government's share of every dollar spent.

In contrast to the Pew Commission's recommendation that maintenance be kept as an entitlement, meaning the states and federal government would share the cost of providing care for all children, the draft legislation places a cap on the amount of federal funds available for maintenance. This is particularly troublesome as having now proposed that all children become eligible and that the federal share of every dollar spent be reduced, states are going to also be limited in the amount of federal assistance they can receive. Eliminating the guarantee of maintenance support could certainly impede the march toward permanency and safety for children.

While the draft legislation makes a provision for potential relief for states experiencing a severe foster care crisis, it is based only on what would be a phenomenal annual growth in numbers and does not take into account the needs of children in care. It is entirely possible for the number of children in care to remain static or grow minimally, yet the cost of caring for those children rise significantly. In such a case, if the state has claimed its maximum maintenance funding and the growth did not meet the definition of a severe crisis, the state would be denied relief.

Title IV–E Foster Care Eligibility

Both the draft legislation and the Pew report eliminate the requirement that a child's eligibility for foster care and adoption assistance benefits be linked to 1996 AFDC income standards. CWLA heartily supports making all children in foster care and adoption eligible as the first step in reform.

Both the Pew Commission and the Subcommittee draft legislation propose some ways to achieve that goal. The Pew Commission offers several options, some which involve new federal investments. The Subcommittee draft caps federal funding for foster care while reducing the federal foster care matching rate.

CWLA asks the Subcommittee to carefully consider any proposal that involves a too severe reduction in the rate of the federal share. This could create an increased and unacceptable burden for states that could make it difficult for them to serve children.

Kinship Placements and Guardianship

CWLA believes that one of the strongest recommendations of the Commission was the inclusion of federal support for subsidized guardianship and kinship placements. Subsidized guardianships, including placements with grandparents and other relatives, are an important permanency option for many children. Currently, the federal government does not provide specific funding to support that option. The draft legislation permits subsidized guardianship only as a waiver option for a state rather than automatically including it in maintenance. It is critical that subsidized guardianship and kinship programs be an option for all state and local child welfare systems if our goal is to increase the rate of permanency for these children.

Tribes and Territories

Both the Pew Commission and the Subcommittee bill include proposals that would allow tribes and territories increased access to Title IV–E funds. The best way to assist tribes in addressing their foster care and adoption needs is through direct access to these funds. CWLA supports legislation pending before this Subcommittee introduced by Representative Camp that would allow eligible tribes or consortia to have direct access to Title IV–E funds.

Transferability

Both the Pew Commission and the draft legislation recommend states be allowed to transfer "excess" federal foster care maintenance funds into the services block grant for reinvestment into other child welfare services. These "excess" funds would come from a state reducing its foster care expenditures below a certain baseline. Based on states' current struggle to adequately cover the cost of care for its children, the likelihood of excess funds seems remote. "Unused" transferred foster care funds should not be relied on as a primary source of new funding for prevention and other services. CWLA supports rewarding states for improving performance, however, any opportunity for transfer must be constructed in a way that does not provide a disincentive to provide the care that children in foster care need.

Block Grant for Services (Safe Children, Strong Families)

As this Subcommittee, the Pew Commission, CWLA and other advocates have highlighted, there is a tremendous need to devote more federal resources to prevention and early intervention efforts in child welfare. Both the draft legislation and the Pew report propose to initiate this effort by combining Title IV–E administration and training funds with Title IV–B Child Welfare Services and Title IV–B Promoting Safe and Stable Families Program funds into a block grant to be known as Safe Children, Strong Families.

The funds just listed are those that support direct contact and work with children and families. IV–E administration pays for the face-to-face time caseworkers spend with children in foster care, case planning for children, securing services for them, preparing and attending judicial hearings, and, recruiting foster parents, among other activities. IV–E training funds are used not only to prepare the workforce, but also to provide them ongoing training as well as training foster and adoptive parents. Title IV–B funds services to enable children to remain in their own homes or be reunified with families.

The Pew Commission recommends automatically increasing this annual block grant appropriation based on the consumer price index plus two percent. The draft legislation proposes annual increases, but does not tie those increases to a specific factor. While the draft legislation does include an authorization of an additional $525 million a year, we must caution that since a similar option was created in 2001 for the Title IV–B Promoting Safe and Stable Families program, the history is that these dollars have never been fully appropriated.

Training

CWLA has questions about the potential impact of including IV–E training funds in a block grant that is designed to fund services. We continue to view workforce issues, including training, as vital to addressing problems in the child welfare field. By including training funds in the block grant, states may have to choose what, if

any, portion of the allocation could be dedicated to training and staff development; thereby, forcing training needs to compete with direct service needs.

Workforce

CWLA commends the Pew Commission for its recognition of the necessity to directly address the need for support of our child welfare workforce. Pew recommends that the U.S. Department of Health and Human Services (HHS) convene a collaborative working group of state officials, professional organizations, and researchers to review existing standards from a variety of sources and recommend a national set of best practice standards for both worker competence and caseload size. States that meet and maintain those standards would receive an enhanced 1% federal match to their Safe Children and Strong Families Grant funds.

Data

CWLA endorses the Pew Commission's recommendation that funding for SACWIS (States Automated Child Welfare Information System) be continued as a separate federally supported activity. Measuring and tracking outcomes, maintaining useful client records, and collecting data about service need and use are all essential to determining how well we are doing in child welfare. Over the last decade, states have been able to receive discrete funding support for developing their automated data systems. Even though this process has been cumbersome and is still evolving, states are in a better position to answer questions about their efforts than they would be absent those systems.

In Summary

- CWLA believes that the basic safety net provided many children and adoptive families through Title IV–E foster care and adoption assistance should be maintained as an uncapped entitlement.
- CWLA believes all children in foster care and adoptive placements, including those children under the auspices of tribes and territories, should be eligible for federal support,

Today, only slightly more than half the children in foster care are IV–E eligible due to the link with outdated income standards. For those children not eligible, states are spending Social Services Block Grant dollars, state dollars and local funds to provide their care. All are funds that could be used to support vital prevention, support and follow-up services if they were not being used to support foster care.

- CWLA suggests that this Subcommittee carefully consider the impact of reducing the federal matching rate for foster care and adoption assistance. Given that expanding eligibility is a desired outcome, the Subcommittee should consider other alternatives such as the provision contained in H.R. 1534 offered by Representative Cardin that removes income eligibility for Title IV–E Foster Care and Adoption while allowing states to align the Title IV–E match rate with a state's Temporary Assistance to Needy Families (TANF) cash assistance matching rate. Senators DeWine and Rockefeller also have introduced legislation (S. 862) that begins to address this issue by eliminating the income eligibility assistance for adoption assistance without reducing the federal match rate.
- CWLA believes that federal support should be extended for subsidized guardianship and kinship placements in order to increase the rate of permanency for children.
- CWLA wholeheartedly supports the need for new investments for services. Providing necessary resources is one way that the federal government can better partner with the states to help achieve the goals of increased safety, permanency and well being for children. The magnitude of that need has been demonstrated in the PIPs that the states are beginning to implement. A recent GAO report found that the most common challenges affecting states' implementation are insufficient funding, insufficient numbers of staff and high caseloads. Our review of thirty-three PIPs found that twenty-seven states specifically referenced the need for mental health and substance abuse services. Two-thirds of the states describe needing to increase the availability of foster and adoptive parents. Not only does this mean more staff time to recruit these parents, it means additional training will be needed.
- CWLA has questions about the impact of including Title IV–E administration and training into a services block grant.

Administration

Title IV–E administration provides funding for activities directly related to achieving safety and permanency for children in foster care. Capping the amount

of federal funding a state can receive for that activity could make it more difficult to achieve those outcomes.

Training

Training resources, which are so vital to the quality of decisions made on behalf of children, should be assured.

Equitable Distribution of Funds

Should there be an effort to include administration and training into a services block grant, it would be difficult to develop a formula that fairly represents the varied ways in which states have claimed Title IV–E funds. Any formula for how much a state would get from a block grant that included these programs would be skewed since states' historical Title IV–E claims may vary widely depending on the availability of other funding streams. A block grant based on historical spending could create winners and losers among states.

For example, according to Congressional Research Service data for fiscal year 2000, two states received over 70 percent of their IV–E foster care funds from the administrative category. For the states of California, Colorado, Connecticut, Virginia and Washington, more than 50 percent of their total IV–E funding came from the administrative category. For Louisiana and Kentucky that amount was less than 35 percent while the amounts for Maryland, Michigan, New York, Pennsylvania were between 35 and 50 percent.

- CWLA believes that any discussion of financing reform should encompass the many other funding streams that support child welfare services. Although they help frame the discussion, neither the Pew Commission report nor the draft Subcommittee legislation go far enough in this regard. True child welfare financing reform will involve more than changes to Titles IV–E and IV–B. Many states look to the Social Services Block Grant, TANF, Medicaid and other funding streams to finance needed services. These programs should be safeguarded and improved in order to provide support for child welfare.

Conclusion

CWLA urges the Subcommittee to take the time to fully evaluate and hear from all those most impacted by the pending proposals. It will also be important to evaluate how these proposals address the problems that have surfaced in the recent hearings held by this Subcommittee including the lack of services, insufficient workforce supports, lack of adequate funding for prevention, improved data collection, increased accountability and PIP implementation. It will be important for states, private agencies, advocates and others to fully understand, analyze and become engaged toward building a consensus reform plan.

This Subcommittee is now armed with a tremendous amount of evidence, through the Child and Family Service Reviews, the PIPs submitted to HHS, and the testimony you have taken to date, to now take the meaningful steps toward reform that will provide for the safety, permanency, and well-being our most vulnerable children deserve. CWLA offers our assistance and participation in this important endeavor.

Chairman HERGER. Thank you very much, Ms. Wilson. Now to testify, Mr. Samuel Sipes.

STATEMENT OF SAMUEL M. SIPES, PRESIDENT AND CHIEF OPERATING OFFICER, LUTHERAN SOCIAL SERVICES OF THE SOUTH, INC., AUSTIN, TEXAS

Mr. SIPES. Good afternoon, Chairman Herger, Members of the Subcommittee, and Majority Leader DeLay. Thank you for inviting me to testify today. I am glad to be here today to address two critical issues, the movement of children across State lines to find appropriate and permanent homes, and the movement of dollars from Washington to States in order to fund child welfare services. First, I would like to speak about reforms needed to facilitate the timely placement of children into loving homes across State lines. Approximately 4 percent of foster children in the United States, nearly 20,000 children, are placed across State lines each year. The ICPC

was developed in the sixties to ensure that children placed in homes across State lines were protected by the receiving State. It took 30 years to get the basic provisions of the ICPC agreed to by all 50 States, and unfortunately, many of those provisions have begun to show their age.

Recent studies have shown that children placed across State lines end up waiting 1 year longer to find permanent homes than children placed in-State. Red tape resulting from the differences in home study requirements, State laws, and administrative policies are causing much of the delay. In fact, it wasn't until just 4 years ago that the ICPC was amended to allow information to be transmitted via fax and overnight mail. Very often, the waiting families are biological relatives of the child in question, and while they work their way through the red tape of the ICPC process, the child waits in child welfare.

The challenges created by interjurisdictional barriers to adoption across State lines are similar to those across national borders. The LSS performs international adoptions and maintains offices in several foreign countries. In Russia, for example, we have to constantly deal with the changing laws and regulations and remnants of Communist-era bureaucratic mindsets. However, our Russian adoption program can usually facilitate the placement of a child into a waiting Texas family in about 9 months. What does it say about the ICPC process when it is sometimes easier to work through the bureaucracy of the former Soviet Union and adopt a child out of a Russian orphanage than it is for a child's aunt and uncle to adopt him or her from a neighboring State? Advocates generally agree that the system is broken. Addressing the issues in Congress will avoid the decades-long process to reach agreement in all States and affected jurisdictions.

I commend House Majority Leader Tom DeLay for introducing the Orderly and Timely Interstate Placement of Foster Children Act of 2004. This Federal legislation will lower the barriers that currently prevent children from being placed in safe, loving families. These are important and timely reforms. Initiatives such as Adopt U.S. Kids along with the lowering of barriers to interstate placement of children will likely increase the number of children placed across State lines. The bill also reinforces the need for States to partner with private faith and community-based child placing agencies in order to accomplish the goal of timely placements of children.

Finally, I would like to commend Chairman Herger and the Subcommittee for your work in drafting for discussion the Child SAFE Act of 2004 dealing with Federal funding of child welfare programs. The current system places rigid restrictions on States that often prevent them from using Federal funds in creative ways to address the needs of children and families. The proposed legislation will give States more flexibility to fund other needed activities that currently fall through the cracks while at the same time preserving protections for children. It will allow flexibility for funds to be used for prevention programs, recruitment and training foster parents who will then dedicate their lives to caring for abused and neglected children, and a safety net for children who age out of the child welfare system.

In conclusion, we have a child welfare system that too often places policies and programs ahead of the urgent needs of children. Just ask any one of the 20,000 or so children every year who have to wait an extra year for a permanent home because the bureaucrats in one State are so tangled up in red tape that they can't come to an agreement with the bureaucrats in another State. The reforms outlined in these two pieces of legislation begin to put things back in proper perspective and to place the needs of children at the center of the equation. I would like to thank the Subcommittee for giving me the opportunity to testify and I would be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Sipes follows:]

Statement of Samuel Sipes, President and Chief Operating Officer, Lutheran Social Services of the South, Austin, Texas

Good afternoon Chairman Herger and members of the subcommittee. Thank you for inviting me to testify today. I am president and chief operating officer of Lutheran Social Services of the South[1], a non-profit, faith-based organization with a 123 year history of providing child welfare services. Lutheran Social Services is the largest provider of children's residential services in the state of Texas and we serve more than 25,000 children, elderly and poor throughout Texas and Louisiana each year. I am glad to be here today to address two critical issues; the movement of children across state lines to find appropriate and permanent homes, and the movement of dollars from Washington to states in order to fund child welfare services.

For the past 25 years, I have worked in a variety of child and family service settings and have seen firsthand the effect that a broken system has on foster children who were removed from abusive and neglectful environments for their own protection. It is a system that all too often subjects these children who have already suffered at the hands of adults to uncertainty, instability and lack of permanence.

Interstate Placement of Children

First, I'd like to speak to the Interstate Compact on the Placement of Children (ICPC) and reforms needed to facilitate the timely placement of children into loving homes across state lines. Approximately 4 percent of foster children in the United States, nearly 20,000 children are placed across state lines each year. The ICPC was developed in the 1960s to ensure that children placed in homes across state lines are protected by the receiving state. It took 30 years to get the basic provisions of the compact agreed to by all 50 states, the District of Columbia and the Virgin Islands and unfortunately, many of those provisions have begun to show their age. Recent studies have shown that children placed across state lines end up waiting one year longer to find permanent homes than children placed in-state.[2]

Red tape resulting from differences in home study requirements, state laws, and administrative policies are causing much of the delay. In fact, it wasn't until just four years ago that the ICPC was amended to allow information to be transmitted via fax and overnight mail. Interstate disputes over financial responsibility slow down the process and background checks that can be completed in days for people who want to purchase a handgun, can take months for people who want to adopt a child. Many of the provisions originally developed to protect and meet the needs of abused and neglected children have grown so rigid and outdated that they have become as much a part of the problem as the solution.

Everyone who has had experience with placing children across state lines can tell you countless stories of red tape and delays. One case I remember is a loving family that wanted to adopt a special needs child from another state that had the same medical condition as their own biological child. The placement of the child was delayed months because the receiving state had returned their file to the sending state because the receiving state required a particular form that was inadvertently omitted. Meanwhile, the child languished in an institution. Very often the waiting families are biological relatives of the child in question, and while they work their way through the red tape of the ICPC process, the child waits in foster care.

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[1] For more information on Lutheran Social Services of the South, see their website http://www.lsss.org

[2] These and other findings regarding interstate placement were published in a recent edition of *The Roundtable,* a newsletter from the National Resource Center for Special Needs Adoption http://www.nrcadoption.org/resource/roundtable/v17n2.pdf

The challenges created by inter jurisdictional barriers to adoption across state lines are similar to those across national borders. Lutheran Social Services performs international adoptions and maintains offices in several foreign countries. In Russia, for example we have to constantly deal with changing laws and regulations and remnants of communist-era bureaucratic mindsets. However, our Russian adoption program can usually facilitate the placement of a child into a waiting Texas family (a placement which is not subject to the ICPC) in about nine months. What does it say about the ICPC process, when it is easier to work through the bureaucracy of the former Soviet Union and adopt a child out of a Russian orphanage, than it is for a child's aunt and uncle to adopt him or her from a neighboring state?

I have heard numerous reports that some jurisdictions have become so frustrated with the ICPC process that they are making placements across state lines without ICPC coordination. While this may be expedient, it creates a potentially dangerous situation where a child is placed into an unmonitored and unsupported home.

Despite the best efforts of advocacy groups and dedicated people at every level of government, the process has gotten progressively worse. Congress recognized some of these issues in 2001 when it called for the establishment of a border agreement among the District of Columbia, Maryland and Virginia to improve interstate placements. Just this past year efforts to reform the ICPC have included:

- The American Public Human Services Association appointed a task force to introduce reforms;
- The National Council of Juvenile and Family Court Judges passed a resolution recognizing the need for reform;
- The American Academy of Adoption Attorneys passed a resolution acknowledging the need for reform;
- The Steering Committee on the Unmet Legal Needs of Children of the American Bar Association has called for reform; and
- The Children's Bureau convened a workgroup to develop recommendations for changes in the ICPC process.

Advocates generally agree that the system is broken. Addressing these issues in Congress will avoid the decades-long process to reach agreement in all states and affected jurisdictions.

Orderly and Timely Interstate Placement of Foster Children Act of 2004

I commend House Majority Leader Tom DeLay for introducing the "Orderly and Timely Interstate Placement of Foster Children Act of 2004." This federal legislation will lower the barriers that currently prevent children from being placed in safe, loving families and homes. The bill will:

- Protect the safety of children who are placed across state lines for foster care, adoption, or residential care;
- Ensure informed placement decisions, including a full exchange of information between sending and receiving states;
- Set and enforce specific timelines for permanent placements;
- Defend the rights of all parties involved: the biological, foster, and adoptive parents, and especially the children;
- And create federal incentives to help foster children find safe and permanent homes.

This legislation will resolve financial barriers, address confusion on which children are covered by the compact and link enforcement of the compact to money that states receive for foster children. These are important and timely reforms. Initiatives such as Adopt US Kids[3] along with the lowering of barriers to interstate placement of children will likely increase the number of children placed across state lines. The bill also reinforces the need for states to partner with private faith and community-based child placing agencies in order to accomplish the goal of timely placements of children.

Child Safety, Adoption, and Family Enhancement (Child SAFE) Act of 2004

Finally, I would like to commend Chairman Herger and the Subcommittee for your work in drafting for discussion the "Child SAFE Act of 2004" dealing with federal funding of child welfare programs.

The current system places rigid restrictions on states that often prevent them from using federal funds in creative ways to address the needs of children and families. In general, money is earmarked to fund specific services and is not available

[3] For more information about the Adopt US Kids initiative to facilitate interstate as well as intrastate placements of children see their website, www.adoptuskids.org

to fund other activities that might produce positive outcomes for children and families. Very little funding is available for proactive prevention programs or measures that allow authorities to step in and offer assistance at the first sign of potential trouble. All too often we wait for a child to be harmed and then we send the posse in to "rescue" the child. Once the child is placed in "the system" it may take years to sort out the family's problems and come up with solutions. Instead of investing a little on the front end to strengthen families and prevent abuse, all too often government only gets involved when things are at their worst. In essence, this is a deferred maintenance program gone bad.

The proposed legislation will give states more flexibility to fund other needed activities that currently fall through the cracks while at the same time preserving protections for children. It will allow flexibility for funds to be used for:

- Prevention programs rather than being tied to the number of children we failed to protect;
- Recruitment and training foster parents who will then dedicate their lives to caring for abused and neglected children;
- A safety net for children who age out of the child welfare system so they won't become trapped in the adult welfare system for the homeless, the mentally ill, and the unemployed.

The reforms in this bill would give states, along with their faith and community based partners, more opportunity to come up with creative and effective ways to interrupt the cycle of abuse, neglect and dependence that propels more than a half million of our most vulnerable citizens into the child welfare system.

Conclusion

We have a child welfare system that too often places policies and programs ahead of the urgent needs of children. Just ask any of the 20,000 or so children who every year has to wait an extra year for a permanent home because the bureaucrats in one state are so tangled up in red tape that they can't come to an agreement with the bureaucrats in another state.

The needs of children have become secondary to the system. However, that system only exists to serve the needs of children. The reforms outlined in these two pieces of legislation begin to put things back in proper perspective and to place the needs of children at the center of the equation.

I would like to thank the Subcommittee for giving me the opportunity to testify, and I would be happy to answer any questions that you might have.

Chairman HERGER. Thank you, Mr. Sipes. Now we will turn to questions. The gentleman from Kentucky, Mr. Lewis, to inquire.

Mr. LEWIS. Yes, Mr. Chairman. I would like to yield my time to Majority Leader DeLay.

Chairman HERGER. Without objection.

Mr. DELAY. I thank the gentleman from Kentucky, Mr. Lewis. I won't take long, Mr. Chairman. Unfortunately, I have a meeting at 2:00 p.m. Just very briefly, Mr. Sipes, we have received a tremendous support from foster parents on the right to be heard in court. Could you talk about the importance of this provision to foster parents and the children in their care?

Mr. SIPES. This is a huge issue in that foster parents are not universally afforded the opportunity to be present at proceedings affecting the children that they have been caring for. These are individuals who have opened up their homes and their hearts to these kids. Oftentimes, they are the people that know the children the best and certainly the ones that care about the children the most within the system, they love them. They are acting as their parents. All too often, we have heard stories from our own foster parents as well as people that foster for other agencies that they are informed after the fact that a legal proceeding has taken place and a decision has been made that, quite frankly, they have grave

concerns over and they just weren't afforded the opportunity to be heard. This is a huge issue to foster parents.

Mr. DELAY. Thank you. Mr. Frenzel, I appreciate the great work that the Pew Commission has done. I do believe that abused and neglected children will benefit from Pew's thoughtful examination of the problems. I don't agree with all your findings, but I think the Commission has worked very hard and produced a product that is really useful in the debate about funding child protection. I see that Pew is recommending $5 million for expansion of the Court-Appointed Special Advocates (CASA) program. My wife is a CASA, so I am very familiar with this program. Would this money go to the national CASA or who would it go to and what is it for?

Mr. FRENZEL. The anticipation is that the money would be given to individual CASA units, particularly in those areas where they either don't exist or where they need to be strengthened. I think the CASA people tell us across the board they don't want to be Federalized.

Mr. DELAY. Commendable.

Mr. FRENZEL. They have got enough other problems without having the Federal Government in their face, but many of them have been started, at least, with start-up funds such as we are suggesting, and that is our intention. We do not—we expect that this will result in the creation or the building of stronger CASA units in the field.

Mr. DELAY. I think that is wise. Dr. Arnold-Williams, your testimony seemed to take issue with H.R. 4504 on mandating that home studies be conducted, completed, and returned in 60 days. I understand the reasoning, if something unforeseen went wrong, like background checks. Maybe you could give us an idea of what is causing the problem with criminal background checks. Your testimony is silent on the $1,000 that a receiving State would receive should the paperwork be completed in 30 days. What is your organization's opinion on the incentive payment? Isn't it the case now that sending States can claim Federal dollars but receiving States, which are required to do the work, are not given any help in turning around the paperwork for the study, for home study?

Dr. ARNOLD-WILLIAMS. Yes, that is absolutely true and that is one of the issues, is the lack of financing for the receiving State which has to do the work to get that done. Just to speak maybe to the other reasons, Federal Bureau of Investigation (FBI) checks, I am not sure why they take too long. In our State, we chose not to request them on anyone unless they hadn't been in our State for at least 5 years for that reason. I should tell you that 77 percent of our ICPC requests are done within 30 days. We try to meet those time lines in my State and we take that very seriously.

With respect to the $1,000 incentive, obviously, we would like incentives there for States to be able to do that or some financing mechanism for the receiving State. I think there are concerns about the 30 days, again because of things like background checks, training requirements. We require 32 hours of training for foster parents in our State. We have very high standards. There is some concern about can you fit all of that in within 30 days. Part of it hinges on what is a home study. Getting the basic health and safety things in place, I think you can do that within 30 days. It is

some of the others, like background checks, training, some of those things that we would like to have some flexibility in meeting that standard.

Mr. DELAY. I understand that. Last, Mr. Chairman, for Mr. Sipes, H.R. 4504 encourages private sector support in conducting, completing, and returning these interstate home studies. Can you comment on the role that private agencies could play in helping children find permanency across State lines?

Mr. SIPES. Yes, sir, I could. I was a participant in a guidance work group that was put together by the Children's Bureau earlier this year to look at the ICPC process. There were a number of State ICPC coordinators present, and one of the issues that came up was that when they get a request for a home study, they have caseworkers in the field that are dealing with child protection issues, children that are in eminent danger, high caseloads, and quite frankly, oftentimes, those requests don't get elevated to a priority and that is one of the reasons for delays.

At the same time, in virtually all States, there are very strong private nonprofit child placing agencies, many of whom have the capacity to send people out. In fact, we have done that. We have partnerships with a number of States around the country. When they have a child that they are sending to Texas, they contact us and we do the home studies and we typically turn those around within 30 days at the longest, sometimes a couple of weeks, because our staff know. They are in the field and they know that time is of the essence in this particular matter. I really think that there is an untapped resource right now in the private sector that could really help achieve the time lines outlined in this legislation.

Mr. DELAY. Thank you, Mr. Chairman. I have other questions I will submit for the record, but I really appreciate the Committee's courtesy and thank you, panel, for your testimony and answers to the questions.

[The information was not received at the time of printing.]

Chairman HERGER. Thank you, and again, thank you very much for your strong, longtime involvement in this area that is so important to the lives of so many young people. Thank you very much, Mr. DeLay. With that, the gentleman from Michigan, Mr. Levin, to inquire.

Mr. LEVIN. Thank you, Mr. Chairman. Thank you, Mr. Cardin, for letting me go before you. Thank you, Mr. Chairman and everybody, for this hearing and all of the witnesses and all of you who are here who are not witnesses. We have been wrestling with this problem for a long time. It at least goes back as far as when I first joined the Subcommittee, which is now 17 years, and we have been trying to find better answers. Mr. Frenzel, let me start off by asking you as an old teammate and friend, if you had to name one major change, improvement that would be brought about if the Pew Commission recommendations were adopted, what would be that major change?

Mr. FRENZEL. Well, unfortunately, our commission made a report which is sort of a coherent whole. When I start picking things out and nominating them for stardom, I——

Mr. LEVIN. How about improved——

Mr. FRENZEL. We really, we want the whole package. I suppose the most important thing to me probably is the core financing business, where we take the totality of Federal funds, establish a place for the entitlement or the maintenance, and then we have the administrative and training funds in a grant that is escalated. In that whole evolution, of course, we de-link, much in the way that the Chairman's draft suggests it, and that is probably the core financing bit of our recommendation.

Mr. LEVIN. Great, let me ask you and everybody else, as I understand the draft bill, and it is just that, in terms of the funding core, what it would do at least in part would be to provide a cap. It would expand eligibility, and it would reduce the foster care payments for each of the eligible. I think I understand that. Each of you quickly, because I only have 5 minutes, what is the potential impact of that structure along with the provision that Mr. Frenzel has mentioned in terms of putting other funds into an entitlement with greater flexibility? If you expand eligibility but reduce the payment per person and you cap the overall expenditures, what is likely to result? Maybe somebody else wants to go first. Ms. Wilson, do you want to respond?

Ms. WILSON. I would be glad to. One of the concerns about just what you described is that States are left to care for the children they have in care, and when we have expanded eligibility, which is something that is needed, and we have reduced Federal share along with a cap on the amount a State can receive, that certainly leaves States at a disadvantage if costs rise, if the number of children rise.

Children, the number of children in care can remain static or just show a minimal increase, yet a State can have significant increases in the cost of providing for those children. I think one of the things we have to be most cautious of is not doing something that creates a disincentive to take care of the children that are in care and that need to be in care and to cover the services that they require.

Dr. ARNOLD-WILLIAMS. Maybe I would just add to that that you have to think about this in the context of your overall State budget. For instance, this fiscal year in my State, Title IV–E financing is only 20 percent of the $130 million budget I have for child welfare; it interplays with all of your funds there. We are a State that has reduced our foster care caseload. Since 1999, the number of children I serve in a given year in foster care has been decreased by 19 percent. We have done that by investing in up-front services. We believe the concept works in terms of taking the resources you have, reduce foster care by using up-front resources.

That is why we argue for an individual baseline, so that—rather than tied to the national baseline, so that you can actually not penalize States like ours that have already made some investments and actually look at specific factors in your State. We believe it can be done because we have done it by infusing additional Social Services block grant or general funds or other funds into that. Again, it is an entire financing mix within your child welfare budget.

Chairman HERGER. I thank the gentleman.

Mr. LEVIN. Mr. Chairman, can Mr. Frenzel answer briefly?

Mr. FRENZEL. The same number of children are involved. The only difference is the States have to take care of them without Federal money. The same amount of money goes to the same States, so we try to keep things even. The biggest gain here is that the States don't have to mess around figuring out who qualifies for Federal money and who doesn't with this Mickey Mouse 1996 law that adds a huge administrative burden to the States. Rationalizing through a de-link, the biggest advantage is it is going to save the States a lot of administrative money.

Chairman HERGER. I thank the gentleman. We do have three votes coming up and we will try to wrap up our questioning. The gentlelady from Connecticut to inquire.

Mrs. JOHNSON. I think in view of the fact that neither the Chairman nor the Ranking Member have had a chance to question, I am going to limit myself to just a couple of statements because they demand much too much time. First of all, I am very impressed that by freezing welfare and now going through a 50-percent caseload cut, we have increased the money available for day care, for services, more than this Congress ever, under Republicans or Democrats or whatever, have increased it.

You look at the conditions of participation grants. Now, I personally was very sorry to see them go, but what they did for 5 years—they were 5-year grants—they allowed my local police department to completely turn itself into a community-based system by giving the money to provide the officers to go out in the community and giving the whole police department time to reorganize its administrative load and who answers the phone and things like that. I think we need money to front load, to help you change, and maybe we shouldn't exercise a cap right away. I do think reducing your payments for foster care is really—that concerns me a lot.

I am more interested in transitional assistance with a cap to follow, a cap will give you a guarantee that I think has some merit. I think the fact that you will get rewarded if the States, everybody needs to put money back in so that there is some escalation. I am discouraged that there is such a consistent rejection of the cap issue. If you had adopted this cap concept in the year I first proposed it, in 1989 or something, you would have tons more money than you have now.

I urge you to look at what is the real issue here, which is getting in place the community-based services so that you can cut the foster care. I think the subsidized guardianship is extremely important. We just have to get over this issue that children would be better out of their larger family than in their larger family, and so on. I think this financing issue is a big issue. I feel your feeling that fears of the past more than you are looking at the opportunities of the future.

The second thing—this is harder—we are not assessing these children when they come into foster care the way we need to. We have got to figure out what is that assessment. Now, not a whole psychological assessment, but there are ways of looking at what is the developmental state of this child? Is this child 5 years behind their developmental state or are they doing all right developmentally? Are they having special reactions to the trauma of being taken out of their homes? I have talked to people who are leaders

in this, nationwide trainers and so on and so forth. There is a simple assessment, but if you did it, you would enhance the opportunity for this child to do well, whether in reunification or in placement, in a way that we are not now. I just put those two ideas out there. Those are two ideas that I want to see this develop, and I congratulate the Chairman and the Ranking Member for their dedication to working together, because we have got to do something. When we have a hearing like we had recently where everybody failed after 12 years, that is just simply unacceptable. Thank you very much, Mr. Chairman.

Chairman HERGER. I thank the gentlelady. The gentleman, the Ranking Member from Maryland, Mr. Cardin to inquire.

Mr. CARDIN. Thank you, Mr. Chairman. Let me just throw out a couple of questions. I don't mean to burden you by written responses, but I would like to get responses and at the hearing today, obviously, we are not going to have the time, but I think it is important for our work. I have serious problems, as I expressed earlier, about capping the entitlement. There are who claim that by capping the entitlement, we remove a perverse incentive that encourages States to put people in out-of-home placement. I don't understand that because States save money if they don't have to do out-of-home placement and it seems to me that that is not true, but I would like to get your views as to whether there is a perverse incentive under the current system.

Secondly, as we have pointed out, the Pew Commission is recommending capping the entitlement status currently for administration and training, putting it into a broader block grant with some additional resources. Particularly to Ms. Wilson, but also to Dr. Arnold-Williams, I would like to know whether you think that is a good compromise with maintaining the entitlement in the administrative side that the Pew Foundation does. Would that be an adequate protection to the resources going to local governments in the event that there was a significant increase in caseload? I just wanted to know whether you think you are adequately protected.

The third question would be, if we do cap the administrative maintenance payments, as suggested by the Chairman's draft, is there a contingency fund arrangement that could be developed that would adequately protect the States in the event of a caseload increase that you can conceive? I know the Chairman has a provision in his bill, but I would prefer to get Ms. Wilson and Dr. Arnold-Williams, and perhaps even the Pew Commission's thoughts as to whether there are alternatives that could deal with it.

I have a question whether you can develop an alternative. I strongly believe that the entitlement is important for the maintenance program and have concern over capping, quite frankly, the administrative and training dollars. I have a concern about that. I look at what happened, again, the late eighties with the crack cocaine babies and wonder whether there is anything we could put in Federal law that could protect the States if that were to occur.

Mr. Chairman, they are questions that I have. I don't think we have adequate time to get responses because of the pending votes on the floor of the House, but if our witnesses could provide that information, certainly I think it would be helpful for the full Committee.

Chairman HERGER. I thank the gentleman from Maryland. If our witnesses could provide us with that information, I would appreciate it. As a matter of fact, I would like to also request—I have a question of you, Mr. Frenzel. The States 'agencies' testimony says that they, quote, "strongly oppose the Safe Children, Strong Families provisions that would cap Federal funding for caseworkers and training," which is what the gentleman from Maryland was referring to, even though that amount would grow every year. Could you explain, perhaps in a letter to us, why the Pew Commission thought it was important to include these funds in the Safe Children, Strong Families grant and why capping it at a high and rising level makes sense, and maybe just briefly——

Mr. FRENZEL. I would be glad to do that, Mr. Chairman.

Chairman HERGER. I don't know if you would like to, just very quickly if you——

Mr. FRENZEL. Sure.

Chairman HERGER. Then extend that.

Mr. FRENZEL. We believe that whatever our euphemism is, Strong Families—anyway, nice people grant really provides the flexibility that States and local operating units need. Some of them will be up to snuff in training and will be investing enough in training. Some of them won't be doing enough training. Some of them will want to put that money into other child welfare measures. It may be preventative in nature. It may save us a lot of money over the long haul. We thought it was very important to make a big pot of that money flexible so that the States could do the things they were telling us they knew how to do very well. I suppose there are a lot of administrators who would take the safe course and not want to lead off of first base, but I think that there are some out there who would like the flexibility and can perform well given it. I will make this more coherent and comprehensible in a letter, Mr. Chairman.

Chairman HERGER. I appreciate that. Mr. Sipes, would you like to respond to that?

Mr. SIPES. I can do that in a letter, as well, if you would like.

Chairman HERGER. Would you like to briefly respond now?

Mr. SIPES. Actually, let me do it in writing. I would like to really sit down and give you a more complete——

Mr. CARDIN. Mr. Chairman, I assume the record will remain open for the responses to our questions?

Chairman HERGER. Absolutely. Without objection. Again, we do have votes coming up. I would like to thank each of our distinguished panel members for taking the time to appear today to help us review these child welfare reform proposals. I appreciate your comments on these proposals as well as the draft legislation. As I indicated earlier, it is my intention to work with other Members to incorporate helpful suggestions and introduce this legislation shortly.

However, as we all know, it is important that we do everything possible to agree on one common principle. We must do more to protect these children. We also should keep in mind that the budgetary climate in the future is likely to look much different, making it more difficult to find additional resources the longer we wait. I encourage our witnesses and other interested parties to submit

comments and engage with us throughout this process. I would hope that we could take this opportunity to reach common ground on the best ways to improve how to protect children. With that, this hearing stands adjourned.

[Whereupon, at 2:12 p.m., the hearing was adjourned.]

[Questions submitted by Chairman Herger and Representative Cardin to Hon. Frenzel, Dr. Arnold-Williams, Ms. Wilson, and Mr. Sipes, and their responses follow:]

Questions from Chairman Wally Herger to the Honorable William Frenzel

Question: The State agencies' testimony says that they "strongly oppose the Safe Children, Strong Families provision that would cap Federal funding for caseworkers and training" even though that amount would grow every year. Can you explain why the Pew Commission thought it was important to include these funds in the Safe Children, Strong Families grant, and why capping it makes sense?

Answer: In the course of our deliberations, the Pew Commission heard repeatedly from state officials, child welfare professionals, and advocates that children would benefit if states—and specifically caseworkers—could use a greater proportion of Federal funds more flexibly to tailor their casework to meet the needs of the individual children and families they serve. The current Federal financing structure makes this very difficult, since caseworkers can only use a small portion of Federal dollars (Title IV–B) flexibly.

The Commission was also concerned that, because "admin" dollars are tied to foster care caseloads, as caseloads decline, Federal funds for casework would also diminish. The indexed Safe Children, Strong Families grant that we propose, with additional funds in its first year, is intended to protect and grow funds for casework and other services to children and families.

Many states and advocates have expressed concern that flexibility might come at a what they consider an unacceptable cost—a cap on the total amount of Federal money available to states that may prove inadequate to meet children's needs. The Safe Children, Strong Families Grant proposed by the Pew Commission tries to address states' need for flexibility, while also providing additional resources, and reliable funding in future years. Specifically, it would:

- give states greater flexibility in how they can use nearly half of Federal child welfare funds (about $3.1 billion in FY 2004);
- provide additional resources in the first year for states to increase their capacity to meet a wide array of needs; and
- ensure that the grant grows in future years so that states have a reliable, mandatory source of Federal dollars to meet children's needs in a timely and appropriate way.

The grant extends the flexibility of Title IV–B to the administration and training components of IV–E. This new flexibility would allow states to use a significant share of their Federal child welfare funding for any child welfare purposes currently allowed under IV–B, except for foster care maintenance payments. It would also give states broad flexibility to use their funds to train any personnel who are responsible for administering child welfare services. Thus, training funds could be used to provide training for public and private child welfare employees and court personnel, guardians ad litem, or other court-appointed advocates.

Question: The Pew Commission report includes the following statement: "We also believe that the primary focus of *new* Federal spending should be on helping States develop the capacity to reduce an over-reliance on foster care use—rather than on foster care itself." What led the Commission to conclude that States "over-rely" on foster care? What you're basically saying is that States are putting some children into foster care who with the proper supports and services do not need to not be in foster care, correct?

Answer: At the beginning of our work, the Pew Commission sought input from a wide and diverse array of experts and stakeholders ranging from former foster youth and foster parents to academics and statisticians, from lawyers and judges to frontline caseworkers and agency administrators. To gather this input, we conducted focus groups, met with various organizations and put out a public "call for input" on our website. We also examined the data available through the Adoption and Foster Care Reporting System (AFCARS), the National Survey of Child and Adolescent Well-Being, the National Foster Care Data Archive and other sources.

The Commission recognized that children must first and foremost be safe. Foster care provides this basic protection to children who cannot live safely in their own homes, and it should therefore always be available when there is no other way to keep a child safe. For this reason, the Pew Commission recommended keeping foster care maintenance as an open-ended entitlement.

But we also heard time and time again that some children are in foster care who could be safely cared for in their own homes if the proper services and supports were available. The data also clearly indicated that many children were spending multiple years in foster care, often in many different foster homes, group homes, or institutions because states lack the financial capacity to provide services and supports necessary to secure for them safe, permanent families. The current Federal financing structure—which conditions states' access to the great majority of Federal dollars on the use of foster care and provides only relatively small amounts for other services—is a major contributor to this over-reliance on foster care.

The Commission concluded that continuing the current open-ended safety net of foster care maintenance, with new dollars and incentives for other services and supports to vulnerable children, was the approach most likely to lead to reduced utilization of foster care while ensuring foster care remained an option when it is needed.

Question: What incentives does the Federal government provide today to move kids from foster care, or prevent their placement in foster care in the first place?

Answer: Currently, the only Federal financial incentive to move children from foster care safely to permanent families is the Adoption Incentive bonuses ushered in as part of the Adoption and Safe Families Act in 1997 and reauthorized this year. This program rewards states for increasing adoptions of children from foster care above specific baselines. There are no comparable incentives to prevent the placement of children into foster care in the first place or to move them into other permanent settings, including returning home to their parents.

The Adoption Incentive program clearly demonstrates what can happen when the Federal government aligns financial incentives with desired outcomes— "child welfare systems and communities can [and do] deliver."[1] The success of the Adoption Incentive program was a significant factor in the Commission's decision to recommend several strategies for incentivizing the desired outcomes, including the reinvestment of saved foster care dollars, making subsidized guardianship available as a permanency option, creating a broader permanency incentive, and creating a workforce incentive.

Question: Has there been any reaction to your report from the Senate? Have you been meeting with the Senate? Do you have any sense that the other body is looking to act?

Answer: The Commission kept interested members of both the Senate and House informed of our work. We believe there is strong interest in the Senate, but we are not privy to the specific plans of individual members or Committees.

Question: In Ms. Williams' testimony, she urges us to consider making the changes proposed an option for the States. That is, if a State felt the current system better met their needs, they could keep the status quo. In your report on page 19, you say "the Pew Commission decided from the beginning that it was not interested in 'tweaking' the system." Do you think giving States the option to change these programs is the way for us to proceed?

Answer: The Pew Commission considered a wide range of approaches to reforming Federal child welfare financing to better meet the needs of children who have experienced abuse or neglect. Because the fundamental problems and limitations in the current financing system applied to virtually every state, we recommended a comprehensive national approach to reforming Federal financing.

At the same time, we were very cognizant of differences across states that might well lead different states to employ different policy responses. For that reason, our proposal seeks to give states much greater flexibility in how they can use Federal dollars, the option of subsidized guardianship as an additional route to permanency, and an expanded child welfare waiver program.

Question: Please comment about why the Pew Commission felt it important to broaden eligibility for Federal payments, and also to pay for that broadened eligibility by lowering the Federal rate. I note Ms. Wilson expressed concern about "any proposal that involves a too severe reduction in the rate of the Federal share." Could you address that concern and how the Pew proposal—and the draft bill—handles this?

[1] Fostering Results, *Nation's Child Welfare System Doubles Number of Adoptions from Foster Care*, October 2003, Child and Family Research Center, University of Illinois, Chicago, IL.

Answer: The Pew Commission's recommendation to "de-link" Federal payments from any income eligibility standard reflects the Commission's principle that every child who experiences abuse or neglect—not just every poor child—deserves the protection of both the Federal and state governments. The current "look back" to the 1996 AFDC income standard is unfair to children who need the protection of foster care; it is administratively burdensome and costly to states; and it results over time in a diminishing pool of children for whom states can claim Federal reimbursement.

The Commission further concluded that, in a time of record federal deficits, new Federal investments should be directed to preventing the need to put children in foster care and to helping children leave foster care as soon as they safely can. For this reason, the Commission recommended a de-link approach that is cost neutral to both the Federal government and the states, paired with a recommendation of new funding for the Safe Children, Strong Families Grant, subsidized guardianship, and new incentives for workforce improvements and permanence.

There are a variety of ways to de-link in a cost-neutral way. The Commission report offers one such way. Under our suggested approach to de-linking, states would receive the same amount of Federal funding under a de-link as they would under the old system. Thus, each state will have the same amount of combined Federal and state dollars to care for the same number of children; the only difference is that both the Federal and state government will share in the cost of care for each child.

To remain cost-neutral, the mathematical effect is a reduction in Federal reimbursement rates of about 35 percent. However, because we also wanted to avoid creating fiscal winners and losers among the states through a delink, we recommended that every state receive exactly what it would have received under the current system—no less, no more. The practical effect of our proposal is therefore that states receive the same amount of money they would have received under the linked system, while allowing states to realize significant savings in administrative costs related to eligibility determinations.

Questions from Representative Benjamin L. Cardin to the Honorable William Frenzel

Question: During your testimony, you specifically expressed concerns about capping Federal foster care maintenance payments.

- **Are you concerned that a cap reduces the ability of the foster care system to respond to spikes in the caseload for reasons beyond a State's control?**
- **Do you believe a contingency fund can adequately address this concern? If so, how would you design it?**
- **Furthermore, are you worried that a cap may reduce the Federal government's financial commitment to vulnerable children over time? In other words, even if the cap is designed to grow, does it present a bigger target for future budget cuts than an open-ended entitlement?**

Answer: The Commission stated strongly its conviction that every child who experiences abuse or neglect deserves the protection of both the federal and state governments. Keeping foster care maintenance open-ended ensures such protection in the face of unexpected increases in the need for foster care stemming from circumstances beyond a State's control. A quick look at the percentages by which foster care use rose during the "crack epidemic" of the nineties demonstrates both the unpredictable nature of crises that threaten children's safety, as well as the great variability across states in factors that cause foster care use to increase.

At the same time, the Commission wanted to reduce foster care use whenever safely possible. We concluded that incentives and an additional route to permanence (subsidized guardianship) are a more effective way to induce states to lessen their reliance on foster care than capping the amount of Federal dollars available.

We had concerns about both the adequacy of the TANF contingency fund as well as whether it could be accessed by states in a timely enough manner to help them respond to a child welfare crisis. One possible alternative to the Chairman's proposed cap and contingency fund approach was discussed in our report:

Some observers of the child welfare system are concerned that incentives alone will not be sufficient to drive policy changes in some states. If this proves to be the case after the incentives have been in place for a reasonable period of time, Congress may wish to consider a penalty in the form of a lower reimbursement rate for the marginal foster care expenditures that exceed projections. Such a penalty would not be based on expenditures for any individual child—for example, based on the individual's length of time in care—but rather on the state's aggregate foster care use. The

*decision to apply such a penalty would take into consideration whether factors beyond the control of child welfare policy makers—such as a sudden upsurge in drug use—were driving the increase in foster care use. (*Fostering the Future, *p. 26.)*

As the question suggests, concerns about the possible vulnerability to future budget cuts of a capped foster care program were among several of the reasons that the Commission recommended a combination of keeping IV–E foster care maintenance open-ended while putting IV–E Administration and Training in a capped grant that grows according to a formula. We believed this was a reasonable compromise, providing states with a large, flexible and reliable pot of money for casework, services to children and training, while also providing the "safety net" of Federal reimbursement for a portion of the cost of maintaining a child in foster care.

Question: There is a broad consensus that more resources are needed for prevention and family support services to reduce the need for foster care. However, some have gone even further to suggest that the current child welfare financing system creates a perverse financial incentive to keep children in out-of-home care (because open-ended Federal matching payments are available for foster care).

- **Do you agree with this sentiment?**
- **Doesn't every State actually save money when a child leaves foster care because they are required to pay for at least part of that care?**
- **More importantly, do you believe individual caseworkers are making placement decisions for children based on whether that child is eligible for Federal maintenance payments?**

Answer: The Pew Commission members did, indeed, see the current federal financing structure as creating "perverse incentives" that favor foster care over other services. While it is true that states do pay for a portion of foster care, and thus can save money when a child leaves care, it is also true that states have an obligation to keep vulnerable children safe. When the vast majority of Federal dollars are directed to out-of-home care, and state matching dollars are also targeted in this direction, the result is to limit the options available to a state for ensuring the safety and well-being of vulnerable children.

Individual caseworkers make decisions based on keeping children safe within the context of the resources available and accessible in their community. Thus, an individual caseworker is unlikely to be thinking about a child's eligibility for Federal foster care maintenance payments. Nevertheless this payment structure drives the allocation of resources when funds for services are limited, as they are in the current financing structure, and this can indirectly influence casework decisions.

Additionally, it is important to recognize that dependency courts bear the ultimate responsibility and authority for decisionmaking related to each child's individual case. Judges, too, need to focus on the needs of the child and the available community resources, and not be limited by a child's Federal eligibility status. This is one of several reasons that the Commissions' court and financing recommendations are integrally linked.

Question: The General Accounting Office (GAO) reports that high turnover rates among caseworkers, inadequate training, low salaries, and large caseloads all undermine the capacity of a State to respond to children and families in crisis.

- **In its current form, do you believe the Chairman's draft proposal does enough to improve the quality of the child welfare workforce?**
- **If not, what additional steps would you suggest?**

Answer: Chairman Herger's draft legislation would enable states to use the Safe Children, Strong Families Grant to provide training to a wide range of professionals in the child welfare workforce, should they choose to do so. The Commission's recommendations would do the same.

In addition, the Commission recommends incentive payments to states that make improvements in their child welfare workforce. For states that meet and maintain certain workforce targets, the Federal government would provide a 1-percentage point increase in the match rate for the Safe Children, Strong Families Grant. The enhanced match rate would provide an incentive for states to continue to make investments in two critical areas: (1) improving the competence of the overall workforce and (2) lowering caseloads. The Commission recommends that HHS convene a collaborative working group of state officials, professional organizations and researchers to review existing standards and recommend national standards for both worker competence and caseload size.

It is our sincere hope that these important incentives, together with the other significant changes we have recommended including subsidized guardianship and con-

tinuing the open-ended entitlement for foster care maintenance, will find their way into the Chairman's bill.

Questions from Chairman Wally Herger to Dr. Robin Arnold-Williams

Question: On p. 2 of your testimony, you say "States that have worked hard to achieve a high IV–E penetration rate would be more negatively impacted by the adjustment in the Federal match rate and may in fact face a situation of receiving less Federal resources than under the current system."

- **This statement suggests that States are spending their time determining how to maximize Federal dollars as opposed to protecting children and providing services. Haven't States been asking for years for the Federal government to stop forcing them to determine eligibility based on outdated income requirements? Wouldn't "de-linking" as proposed by Pew and the draft bill free more caseworker time and resources to monitor children and ensure they are being properly cared for? Isn't that the point of all this—better protecting children?**

Answer: APHSA and states have consistently supported an extension of the federal government's commitment for foster care and adoption to all children in out-of-home care, not just those from AFDC-eligible families. Although an administrative burden is inherent in having to establish eligibility, the more important issue is that an equitable state and Federal commitment would acknowledge that children come to the attention of the child welfare system due to the circumstances of abuse and/or neglect regardless of the income of their parents. Additionally, states are required to achieve the same positive outcomes for all children, provide the same federally mandated protections, and are at risk of losses of Federal funding, whether or not the Federal government has participated financially in that child's case. Given these factors, it is only reasonable that Federal funds be provided for the care of all children in foster care.

Question: At several points in your testimony you suggest that States would prefer a number of the changes suggested in our draft legislation, if only they were options for States, instead of a package deal together. Isn't that what the Administration has been recommending? What was the States' response to that?

Answer: As APHSA understands the Administration's flexible funding proposal, it would be a state option. Some states have expressed concerns with the provision in the foster care option that would require states to stay in the option for five years. In light of the fiscal difficulties in the states, and the uncertainty related to the rising cost of child welfare, caseload dynamics and other factors, states should be able to opt out of the plan given that the protection of children is the paramount concern. However, it is important to note that APHSA has not taken a formal position on the Administration's proposal to date pending specific legislation.

State child welfare systems are at various stages of reform and their state fiscal situations vary. Some states have experienced dramatic declines in IV–E eligibility claims in recent years, some have achieved reductions in foster care caseloads, some have seen increases, and some have operated waiver demonstrations. In addition, states differ in the resources used to support their child welfare systems—some have used TANF, SSBG, Medicaid, and a host of state and local resources. Therefore, states will need to engage in a complex calculation of whether to embrace any child welfare financing reform proposal or continue to operate under the entitlement structure.

Question: What incentives does the Federal government provide today to move kids from foster care, or prevent their placement in foster care in the first place? Under the Pew proposal and the draft bill, if States succeed in keeping kids out of foster care, they could reinvest these funds in more services to families. Do you believe that States will not benefit from these types of incentives?

Answer: The federal government currently provides few incentives to move children from foster care (adoption incentive bonuses, waiver demonstration projects for subsidized guardianship) and relatively few prevention dollars. State and local dollars are currently the primary source for services to prevent removal, provide in-home services and to move children to permanency once they enter foster care. States have supported the idea of having the option to redirect federal revenue for maintenance payments into other child welfare services whenever foster care is reduced. However, any legislation that does not provide for additional up front funding to help states reduce foster care caseloads enough to realize savings will not

help achieve this reinvestment strategy. Additionally, states that have made this up front investment already should not be penalized financially for having done so. These states would reflect lower foster care expenditures during the years covered in the current baseline formula in H.R. 4856 and therefore, a lower baseline amount. States are noting the increasing needs of the children that are in foster care, therefore, the rising costs of care for these children should also be taken into account.

There is also concern that combining service dollars with administrative and training dollars may result in less funds available for services. States that begin with a lower than current administrative and training amount due to the baseline formula, and factors such as routine and renegotiated salary increases, legal agreements to increase the number of staff and legislative requirements on child welfare staffing will require that states first use these grant funds to attend to those pressing factors which would decrease the amount available for funding services. The current structure of the Safe Children, Strong Families would leave states in the same bind of having fewer than needed federal resources for prevention and transition to permanency.

Question: In the APHSA document *Crossroads: New Directions in Social Policy,* APHSA embraces two fundamental goals for child welfare financing reform. First, there should be Federal financial participation in support of all children in the child welfare system. And second, there should be increased flexibility in the use of Title IV–E funds. The draft bill accomplishes both of these goals. Given that, why would States want the option to continue to operate the current child welfare program?

Answer: As outlined in *Crossroads: New Directions in Social Policy*, APHSA does support Federal financial participation for all children in the child welfare system and increased flexibility in the use of Title IV–E funds. Additionally, *Crossroads* highlights APHSA's support for the maintenance of the open-ended entitlement under Title IV–E and categorical eligibility under Medicaid for all children in foster care, both of which are currently not provisions in H.R. 4856.

States are in very different places with respect to child welfare financing and a cap on funding may affect them differentially. In some instances, current law may be preferable. In preliminary analysis of the funding reforms proposed under H.R. 4856, a state that currently has a 75% penetration rate and a 50% FMAP rate for a population of 5000 children in foster care would receive a 5% reduction in Federal match than if they were to continue to access Federal funds under the current entitlement structure. States need additional resources to meet the demands of the child welfare system and should not lose federal funding in order to eliminate the eligibility link to AFDC.

No. of Children in Foster Care	No. of Children eligible for IV–E with a 75% penetration rate	50% FMAP match for foster care maintenance payments for AFDC eligible children	32.5% match rate for all children in foster care	Percentage Difference between matching at 50% for 1875 children versus 32.5% for 1625 children
5000	3750	1875	1625	–5.0%

Questions from Representative Benjamin L. Cardin to Dr. Robin Arnold-Williams

Question: During your testimony, you specifically expressed concerns about capping Federal foster care maintenance payments.

- **Are you concerned that a cap reduces the ability of the foster care system to respond to spikes in the caseload for reasons beyond a State's control?**
- **Do you believe a contingency fund can adequately address this concern? If so, how would you design it?**
- **Furthermore, are you worried that a cap may reduce the Federal government's financial commitment to vulnerable children over time? In other words, even if the cap is designed to grow, does it present a bigger target for future budget cuts than an open-ended entitlement?**

Answer: Any projections made on the foster care caseload trends and expenditures must include both IV–E and non IV–E children. Our reading of H.R. 4856 indicates that the projected national baseline for the cap is reflective of the IV–E eligible population alone. This would be of concern given that when states merge IV–E and non

IV–E caseload trends and expenditures, the baseline may be dramatically adjusted upward. A cap on the amount of Federal funds would limit the ability of some states to access Federal funding for children currently in their child welfare system if the financial ceiling was surpassed, regardless of any spikes that may occur due to unforeseen circumstances.

Given that the safety and care of every child in foster care is of greatest concern to both states and the Federal government, a contingency fund should not be necessary. The federal commitment should continue to support any increase in caseloads experienced by states. APHSA has consistently supported an open-ended entitlement under Title IV–E to ensure the protections needed by all children in the child welfare system. States do have some concerns that any capping of these critical funds may be susceptible to future budget cuts.

Question: There is a broad consensus that more resources are needed for prevention and family support services to reduce the need for foster care. However, some have gone even further to suggest that the current child welfare financing system creates a perverse financial incentive to keep children in out-of-home care (because open-ended Federal matching payments are available for foster care).

- **Do you agree with this sentiment?**
- **Doesn't every State actually save money when a child leaves foster care because they are required to pay for at least part of that care?**
- **More importantly, do you believe individual caseworkers are making placement decisions for children based on whether that child is eligible for Federal maintenance payments?**

Answer: Timeframes in ASFA and in state public policy as well as the overall mission of child welfare overrule any perceived incentive to keep kids in foster care. Federal IV–E funding covers only a portion of foster care costs and the state bears the bigger share of the overall costs. Therefore, states do realize some cost savings when children are moved onto permanency.

Question: The General Accounting Office (GAO) reports that high turnover rates among caseworkers, inadequate training, low salaries, and large caseloads all undermine the capacity of a State to respond to children and families in crisis.

- **In its current form, do you believe the Chairman's draft proposal does enough to improve the quality of the child welfare workforce?**
- **If not, what additional steps would you suggest?**

Answer: APHSA has serious concerns with the provisions in H.R. 4856 to limit the amount of Federal support available for caseworkers and the training needed to support their work. Given the structure of the Safe Children, Strong Families grant as outlined in the bill, the need for resources to ensure a quality workforce may negatively affect the amount of funding available for the needed services to children and families. Additional steps should include federal financial participation for private agency casework staff. In some states, private agency staff account for a large portion of professionals providing services for children in foster care. These professionals require the same administrative and training supports in order to effectively serve the same population of children that their counterparts in state positions serve.

Questions from Chairman Wally Herger to Ms. Patricia Wilson

Question: How many children are in foster care today, compared with 1980? Is the Child Welfare League of America committed to helping States reduce the number of children in foster care? What specific efforts are you pursuing toward that goal?

Answer: In 1980, there were 302,000, children in foster care. That actually represented a decline from 10 years earlier when 326,000 were in foster care. As you know, there were some dramatic caseload increases in the 19eighties due to the impact and spread of the crack cocaine epidemic. In the three most recent years, however, the trend has been declining. In 1999, 567,000 children were in foster care. The 2000, 542,939 children were in foster care, and in 2001 the number of children in foster care declined even further to 540,563.

CWLA has many ongoing efforts aimed at reducing the number of children in foster care. We assist our nearly 1,000 member agencies across the country in addressing the issue of foster care, as well as all other child welfare services.

Through its training, technical assistance, and development and dissemination of practice tools to member agencies who provide child welfare services, CWLA supports efforts to help states reduce the foster care population. CWLA also engages in strategic coalitions to aid in the reduction of the number of children and youth in foster care. These efforts include but are not limited to:

Community Support and Family Stabilization

To prevent placement into the child welfare system, CWLA works with communities in advocating for:

- Increased funding for family preservation and family support.
- Funding for comprehensive family substance abuse treatment.
- Securing additional services for families receiving public assistance.
- The creation of the Parenting-Rich Community Initiative so parents have the resources they need to support optimal development of their children.
- The extension of grants to support innovations in state child protective services and community-based preventive services.
- Improved mental health services to children and families.

In addition to working with communities, CWLA has provided:

- Educational sessions for homeless families in collaboration with member agencies in various cities.
- Trained professionals to develop local partnerships between child welfare agencies and public housing authorities.

Care of Children in Child Welfare

While children are placed in the child welfare system, CWLA advocates for:

- Collaboration of national organizations, individuals, youth, families and other stakeholders to address the mental health and substance abuse needs of children and families involved in the child welfare system.
- Funding of comprehensive family substance abuse treatment.
- The continued bonuses to states that increase the number of children adopted from foster care, with an emphasis on older children.
- The increase of adoptions from the foster care system, through collaboration with the AdopUSKids campaign.
- The identification of promising program models that focus on permanency.
- Funding Federal grants for demonstration projects that eliminate the barriers to adoption facing children with special needs.

Permanency Options for Children and Youth

CWLA seeks permanency options for children and youth involved in the child welfare system by:

- Developing kinship care resources, such as the development and dissemination of a resource booklet covering the complicated financial issues facing kinship care givers.
- Placing practice emphasis on youth in the foster care system. Addressing permanency for older children and youth in care.
- Convening meetings of the National Foster Youth Advisory Council to support youth leadership among youth in the child welfare system.

Reunification and Post Placement Services

CWLA advocates for increased funding to prevent re-entry into the foster care system.

- CWLA worked with the New York City Housing authority to develop and maintain employment, youth development, housing, child care services, and other community supports for families.
- CWLA trained professionals to develop local partnerships between child welfare agencies and public housing authorities.CWLA formed partnerships with member agencies to provide information to communities that serve children and families.
- CWLA advocates and supports funding for services to families who have adopted children from the foster care system or are kinship care givers of children from the child welfare system. Funding to sustain and support these families is critical.

Workforce Issues

CWLA has addressed the workforce issues in the child welfare system by:

- Presenting teleconferences to members on the workforce issues.

- Advancing research on the issue of workforce.
- Offers practical recruitment and retention strategies for public and nonprofit agencies.
- Advocating for new Federal funding for states to help relieve a shortfall in many state budgets.
- Publishing and disseminating program and practice resources for professionals in the field.

Overrepresentation

CWLA is addressing the overrepresentation of children of color in the child welfare system by:

- Creating CWLA'S Statement on Children of Color in the Child Welfare System, which provided a set of proposed action steps.
- Providing technical assistance to agencies on cultural competence of their workforce.
- Works in partnership with other coalitions to develop an action agenda addressing the disproportionate representation of children of color in the system.

Standards of Practice

Throughout the years, CWLA has established standards of practice, including caseload standards, in the following areas:

- *Adoption Services*
- *Child Day Care Services*
- *Family Foster Care Services*
- *Health Care Services for Children in Out-of-Home Care*
- *In-Home Aide Services for Children and Their Families*
- *Kinship Care Services*
- *Management and Governance of Child Welfare Organizations*
- *Residential Services*
- *Services for Adolescent Pregnancy Prevention, Pregnant Adolescents, and Young Parents*
- *Services for Abused or Neglected Children and Their Families*
- *Services to Strengthen and Preserve Families with Children*
- *Transition, Independent Living, and Self Sufficiency Services*

Question: You contend that "the basic safety net of Federal support offered through the Title IV–E program would be compromised by capping the amount of assistance available to States" as proposed in our draft legislation. For the record, how does the current system-—which provides no incentives to move children from foster care more quickly because of unlimited funding—better protect these children? All the States have failed their child welfare reviews, which shows they are not adequately protecting children. Why would allowing States to collect additional Federal money for each added child do anything to encourage States to avoid more foster care placements?

Answer: CWLA shares with you the goal to reduce the number of children who are abused and neglected and thereby also reducing the need for foster care.

Merely capping Federal funding for foster care, however, will not achieve that goal. We believe that the best way to reduce the need for foster care is to adequately fund prevention and other supportive and family strengthening services and to address the key components of the child welfare system, such as workforce competencies, training, and caseloads.

Title IV–E foster care assistance, as currently structured, does not offer states an incentive to place more children in out-of-home care. We offer several observations that underscore this point:

- Due to the current income eligibility restrictions, many children in foster care currently receive no Federal assistance and are supported by state funds only.

The number of children in out-of-home care between 1999 through 2001 has decreased by a total of approximately 24,000 children, while children in foster care covered by Federal funding under the Title IV–E program declined by approximately 38,000. That is a decline of 4.3% in overall placements compared to a 12.5% decline in federally subsidized placements. That reveals a cost shift that has reduced Federal support for foster care and has resulted in an increase in foster care costs to state and local governments.

- Title IV–E Federal foster care funds represent less than half the federal funds being used for foster care. For example, a review of states' use of the Federal

funds they receive from the Social Services Block Grant (SSBG) over the past several years demonstrates that states continue to use SSBG funds for foster care. States make this choice despite the ability to use the same funds for prevention and other supportive services. Approximately 37 states spent more than $270 million annually in SSBG funding over the past few years to pay for foster care. A recent GAO report also found that despite Federal restrictions, some states were also using their Title IV–B Child Welfare Services funds for foster care. As current eligibility standards become more outdated and eroded by inflation, the pressure to use more flexible funding sources for such basic services as foster care maintenance and adoption assistance payments will place greater pressure not to use flexible funds for prevention or other services, but for out-of-home care.

- Avoiding foster care placements saves the states funds, as well as the Federal government, since Federal funds provided to states for Federal foster care assistance through Title IV–E must be matched by a commitment of state funds. For California, Maryland and New York, that share is fifty percent.

The issues that need to be tackled in order to reduce the need for foster care are complex. They include adequate child welfare staffing and caseload sizes, training and the need for on-going training, access to services such as mental health and substance abuse—both in at home and out-of-home settings, prevention and intervention, and a number of other elements that make up the entire child welfare system.

The Child and Family Services Review process has highlighted many of these issues. A review of 33 state Program Improvement Plans (PIP) submitted to HHS show that states are facing a number of common challenges. Of the 33 PIPs reviewed, 13 states specifically addressed the need to reduce caseload sizes for their workers. Thirty of the 33 addressed the need to improve training. Other states cited turnover rates as an issue to be addressed and over half of the PIPS reviewed cited management issues as a need for improvement.

All of the PIPS reviewed addressed the need to improve the availability of services in some way, including mental health services, substance abuse treatment, general health care issues, and system reforms. Nineteen states include the need to better address the needs of those children who are “aging out” of the foster care system. These are some of the issues that need to be addressed to reach the goal of reducing the number of children in foster care.

Question: Your testimony does not mention that our draft legislation is paid for, including through offsets included in the House-passed welfare reform bill, which has failed to move in the Senate. Do you have any comments on that? Are any of the other bills you express support for in your testimony paid for?

Answer: CWLA appreciates the urgency to address the mounting Federal deficit of more than $400 billion. Congress certainly faces a challenging time in which to set its priorities and make budget decisions.

We believe that it would not be fair to hold investments for children hostage to future deficit reduction plans. Over the course of next several months Congress may consider the extension of tax deductions that will total $30 to $400 billion, a reauthorization of a transportation bill, the creation of a fund to address the phase-out of tobacco farming, needed increases in education funding, our growing defense needs, the cost of military action overseas and many other important proposals. Congress may decide to offset these costs or to approve them without a specified source of funding. We would expect that Congress also recognize that the needs of abused and neglected children should also be a top priority.

The legislation we support in our testimony does not include offsets as currently written. They do, however, address some of the critical elements we have raised, including the need to assist states in implementing their PIPs, the need for a national strategy on workforce, correction of the current eligibility under Title IV–E, and enhanced prevention and support services through a fully funded Promoting Safe and Stable Families program. Again, we highlight the fact that ultimately Congress must set and act on national priorities. We believe that addressing the needs of children should be one of those top priorities.

Questions from Benjamin L. Cardin to Ms. Patricia Wilson

Question: During your testimony, you specifically expressed concerns about capping Federal foster care maintenance payments.

- **Are you concerned that a cap reduces the ability of the foster care system to respond to spikes in the caseload for reasons beyond a State's control?**
- **Do you believe a contingency fund can adequately address this concern? If so, how would you design it?**
- **Furthermore, are you worried that a cap may reduce the Federal government's financial commitment to vulnerable children over time? In other words, even if the cap is designed to grow, does it present a bigger target for future budget cuts than an open-ended entitlement?**

Answer:

- CWLA has serious concerns about the impact of a cap on Title IV–E for foster care maintenance funds. We share the goal of the Subcommittee to reduce the number of children in foster care, but believe that this goal will not be achieved by simply limiting Federal foster care assistance. As we responded in question two, what is needed to reduce foster care caseloads is adequately funding for prevention and other supportive and family strengthening services and addressing the systems issues such as workforce competencies, training, and caseloads.
- CWLA believes that the proposed contingency fund will not adequately address an unanticipated need. Many have highlighted the dramatic increase in foster care caseloads during the late eighties and early nineties as a result of the crack-cocaine epidemic. While we hope a similar experience such as the spread of the methamphetamine would not have a similar impact, it would be unwise to leave the nation unprepared.

  As proposed in the Chairman's bill, states would have the option to draw from the existing Contingency Fund for State Welfare Programs. This emergency fund was created to address TANF cash assistance caseload increases. To qualify for this additional funding, a state must have spent all of its Federal foster care funds and meet the definition of "severe foster care crisis." There are two ways to meet the "crisis" definition: (1) a state must have experienced a statewide average of 15% increase in its foster care caseload from the previous year *and* national foster care caseloads must have increased 10%; or (2) a state's foster care caseload increased by 20%. To determine caseload increases, the state must compare the most recent 6-month period to the corresponding 6-month period in the previous year.

  This formula does not address the need for increased Federal foster care assistance if the increase is limited to a specific urban area or single state. It also leaves out any consideration of increased costs in care as opposed to increased numbers of children in care.

  In addition, a contingency fund that is designed to address the needs of the TANF population may create some unappealing choices for state human service programs. Any contingency fund would have to be designed to respond to the needs of the child and the number of children in need of protection. To adequately protect these children this fund could not have an artificial cap and could not be dependent on an annual appropriation.
- CWLA is concerned about the stability of funding over time for Federal block grants. It is unclear if Congress would sustain even a level amount of funding for foster care over time. The history of one of the largest and most flexible block grants—SSBG—is not encouraging. SSBG was converted from an entitlement fund to a block grant to the states and funding for SSBG has not kept pace. SSBG funding was $2.8 billion in 1995, reduced several times from 1996 through 2000 and is currently funded at $1.7 billion. Congress reduced funding for SSBG to offset other priorities, including overall deficit reduction and to provide increased funding for transportation.

Question: There is a broad consensus that more resources are needed for prevention and family support services to reduce the need for foster care. However, some have gone even further to suggest that the current child welfare financing system creates a perverse financial incentive to keep children in out-of-home care (because open-ended Federal matching payments are available for foster care).

- **Do you agree with this sentiment?**
- **Doesn't every State actually save money when a child leaves foster care because they are required to pay for at least part of that care?**
- **More importantly, do any of you believe individual caseworkers are making placement decisions for children based on whether that child is eligible for Federal maintenance payments?**

Answer: This is an important question because it deals with a strongly held belief by some that funding sources drives the decision to remove children from their homes.

As we pointed out in question two, in the last 3 years the overall number of children in out-of-home care subsidized by Federal Title IV–E foster care funds has decreased by a higher percentage than the overall reduction in out-of-home placements. A simple conclusion would suggest that out-of-home placements funded through state dollars or flexible Federal dollars would go down at a faster rate than Federal Title V–E funded children. This is not what happened and it hasn't happened because the decision to remove a child is much more complex and effected by multiple factors.

Question: The General Accounting Office (GAO) reports that high turnover rates among caseworkers, inadequate training, low salaries, and large caseloads all undermine the capacity of a State to respond to children and families in crisis.

- **In its current form, do you believe the Chairman's draft proposal does enough to improve the quality of the child welfare workforce?**
- **If not, what additional steps would you suggest?**

Answer: CWLA believes that national leadership and support is needed to truly address the current crisis in the child welfare workforce. Better supports for the workforce need to be a critical component of any comprehensive child welfare reform measure.

The Chairman's bill would cap Title IV–E training funds and place those funds into a block grant to states to be used for administration, training, and services. These funds are used to prepare social workers for the job of working with the courts; working with other social service providers; creating treatment plans for children and families; and achieving permanency for children, ranging from reunification to guardianship to adoption.

In the Chairman's proposal, no funding for training would be guaranteed. While including these funds in a block grant would give states more flexibility with the use of the funds, it also means that states would be faced with pitting the training needs of staff with the need to provide services to children and families. This is a choice that no state should have to make.

CWLA feels that proposals included in H.R. 1534 and H.R. 2473, that provide funding for a comprehensive strategy with outcomes and measures tied to workforce development are a better solution. These bills also provide loan forgiveness for workers and expand access to training funds as part of this national strategy.

Last fall, the Subcommittee focused its hearings on the state of New Jersey and the conditions in its child welfare system, which had been highlighted in the national media. New Jersey has since adopted a comprehensive reform plan. A major portion of that plan deals with workforce improvements. New Jersey's experience offers an important national perspective. As stated in New Jersey's reform proposal, "Child welfare casework may not be rocket science or brain surgery—in some cases it may be harder."

New Jersey's plan indicates the need for adequate staffing. Over the next 2 years New Jersey intends to hire an additional 416 child protection and permanency workers, 48 casework supervisors, 136 adolescent specialists, and 191 new resource family support workers. Through the end of last year New Jersey had already added an additional 253 workers bringing the workforce total to nearly 2,000 workers. In order for New Jersey to implement its full plan, the state legislature has just approved a funding increase of $125 million for fiscal year 2005. That is in addition to its current budget of $520 million. The Governor has also proposed $180 million more in 2006. These proposals stand in contrast to the level of new Federal investments included in the Chairman's legislation.

Question: What is the Child Welfare League of America's position on consolidating certain funding steams, including open-ended funds for administration, into a new capped grant that includes additional resources compared to CBO's baseline (as proposed by both the Pew Commission and the Herger Draft)?

Answer: CWLA has serious concerns about the impact of including Title IV–E administration into a block grant. Title IV–E administration provides funding for activities directly related to achieving safety and permanency for children in foster care. Capping the amount of Federal funding a state can receive for that activity could make it more difficult to achieve those outcomes. Any reform proposal that moves forward, must ensure that funding that supports social work staff and is used for case management are guaranteed.

Question from Chairman Wally Herger to Mr. Samuel Sipes

Question: What do you believe is the single biggest factor today that prevents States from better protecting kids in care? Do you believe the current child welfare system provides the proper distribution of resources, in terms of services and out-of-home placements, to protect children and strengthen families? What incentives does the Federal government provide today to move kids from foster care, or prevent placement in foster care in the first place? Right now when the foster care caseload falls, it could mean fewer Federal dollars for States. We know the caseload has been falling since 1999. However, the draft bill proposes a guaranteed and rising level of funding for foster care for the next 10 years. If States succeed in keeping kids out of foster care, they could reinvest these funds in more services to families. Do you believe that States, and more importantly children, will benefit from these types of incentives?

Answer: Money, by itself, will not solve the problem. The money has to be spent on the right thing. Because Federal funding is mostly provided to States for out-of-home care, States mostly offer out-of-home care. I believe that there is inadequate emphasis placed on prevention programs and services to reduce the likelihood that children will need to be placed into foster care. While I do not believe that Federal funding provides an incentive for States to inappropriately remove children from their homes, it does not provide an adequate financial incentive for States to prevent abuse and neglect. Assuming that adequate funding is available, the flexibility to shift resources in order to provide effective services to at-risk families, should ultimately strengthen families and reduce foster care placements.

[Submissions for the record follow:]

Statement of Carmen Delgado Votaw, Alliance for Children and Families

Alliance for Children and Families' Recommendations for Child Welfare Financing Reform

There is a growing consensus among national advocacy groups, child welfare providers, as well as many state officials and policymakers that the current mechanism for funding the nation's child welfare system needs revision, and must be revamped.µ Child welfare funding has eroded and funding for children in the foster care system who often have severe physical and psychological needs has been woefully inadequate for years.µ It is imperative that any proposed changes meet the needs of children currently in the foster care system while assuring that adequate resources are available for prevention and early intervention services that decrease the number of out-of-home placements over time. The Alliance for Children and Families agrees with the Subcommittee that this issue merits consideration and ample reflection before proposals for change are put into motion.

As the only national organization solely representing the interests of private nonprofit organizations that deliver front-line services to children and families, the Alliance for Children and Families has a unique role in child welfare reform. The core values and recommendations of our members, outlined in this testimony, have been informed by years of providing human services to nearly 8 million people each year in more than 6,700 communities across America.

Alliance Observation and Recommendations

Create a Continuum of Care

Children and families being served by the child welfare system benefit more fully when they can receive comprehensive services. A true continuum of care should be established by coordinating intersecting funding streams. Funds from major federal programs affecting low-income and vulnerable families such as TANF, Medicaid, the Social Services Block Grant, and CAPTA should share accountability for the wellbeing of children and support States in achieving Adoption and Safe Family Act (ASFA) outcomes and performance improvement plans as required under the Children and Family Services Reviews (CFSR). For instance, it is time that Medicaid and the child welfare system work together in a concerted way to assure that the unique physical and behavioral health needs of children in the child welfare system are met.

The federal agencies that administer these respective funding streams should share accountability for ASFA outcomes. Agencies would be required to submit a yearly report detailing how these funding streams are being used and coordinated to produce seamless systems of care for children, and positively affect ASFA outcomes and national standards.

To ensure accountability, state plans for all pertinent funding streams should be responsible for child welfare outcomes. These plans should demonstrate to the Federal Government how these funding streams are being leveraged to affect measurable results for children served in the child welfare system through policy, practice and innovation.

Finally, the CFSR process should be revised to include review of these other interrelated funding streams, their coordination and positive impact on State child welfare performance.

Assuring Quality Services to All Children

Any reform to the child welfare system should ensure that all children in need of protection and support are eligible for federally funded, State administered services, regardless of family income. By eliminating the 1996 AFDC "lookback" provision of Title IV–E, states would be relieved of the onerous administrative burden of determining eligibility for every child in their care.

It should be noted by Congress that since 1996 there has been a quiet erosion of state/federal partnership due to states being made to use outdated 1996 criteria for determining IV–E eligibility. Any proposal considered by Congress should include a clear fiscal analysis of the impact on states and steps to remedy the situation to the maximum extent possible. The human services field has had a negative experience with block grants to date, highlighted by the example of deep cuts to the Social Services Block Grant over time, despite increased need for effective community services to benefit children and families. Any funding mechanism of the child welfare system must be consistent, reliable and able to modify and increase funding levels to states based on risk and needs of children and their families. Current legislative proposals consider a block grant strategy that places a cap on available child welfare funding to states. The Alliance is hesitant to support any form of block grant program that does not employ a clear formula that recognizes demographics, the economy, inflation, and other risk factors within the states.

The network of public child welfare agencies and private organizations holding contracts for the provision of child welfare services must be funded adequately to possess the internal capacities for continuous quality assurance and improvement. For too long, changes to the child welfare system have been externally driven by audits, high profile cases and lawsuits. The federal government must build consensus with states and child welfare providers and recognized national accreditation bodies to define minimum standards of practice, a consistent definition of child safety, and appropriate caseload and supervisory ratios.

To provide support for youth aging out of the foster care system, the Chafee Independent Living Program should continue to base funding allocations on the number of children by age in out-of-home care. Clear measurable outcomes should be sustained for children transitioning from foster care to independence or individuals between the ages of 18–21 who have left foster care but still require supports and services. Additionally, 1.5% of the total Chafee allocation should continue to be committed to important research and evaluation efforts.

An important way to facilitate the current match program that reinforces states in expanding the capacity and sophistication of their State Automated Child Welfare Information System (SACWIS) systems should be upheld. By maintaining incentives to make improvements that support practice and track system outcomes, states are able to make strides towards meeting rigorous CFSR standards.

Permanency for Every Child

The Alliance supports maintaining IV–E Adoption Assistance as an entitlement with the current match requirement, but advocates broadening the scope of the financial assistance to include subsidized guardianship when both reunification and adoption have been ruled out. The Alliance suggests changing the program title to "Permanency Assistance" to reflect inclusion of subsidized guardianship.

Currently, Adoption Assistance is based on IV–E eligibility. Under our recommendation, there would no longer be an eligibility threshold for children placed in out-of-home care, therefore no income/asset tests should be administered in determining eligibility for "Permanency Assistance".

To provide incentives and encourage innovation in meeting permanency outcomes unlimited cost-neutral waivers should be available to states. Once waivers have demonstrated that they are achieving success and cost-neutrality, States should be permitted to implement these programs without waivers.

Additionally, the current Adoption Incentive bonus program should be eliminated to create access to a new pool of bonus dollars for states that show substantial improvement on all indicators from year to year as evidenced in their Program Improvement Plans in measures of safety, permanence and well-being of children. All

bonus dollars received by states must be spent within the state's child welfare program with at least half of the bonus dollars being reinvested in prevention or early intervention services to decrease out-of-home care placements.

Quality Workforce At Risk

The deteriorating state of the child welfare workforce can no longer be ignored, and in fact is at a crisis point needing both federal and state responses. Adequate education and training, continued competence, quality of supervision, pay and health benefits of critical front-line staff must be addressed. To address these issues, the Alliance recommends that a sufficient percentage of total child welfare allocations to states be made available, under a matched incentive program, to States, tribal governments, private agencies under child welfare contracts, and educational and research institutions.This program would be used to fund innovation in workforce development, including training and professional development and research and evaluation, agency accreditation, and court improvement projects.

To further stimulate interest in human service issues and attract quality individuals to the child welfare workforce, all schools of higher learning, public and private, should have access to these funds for masters programs in fields related to child welfare (currently only available to publicly funded schools of social work). Students eligible for this funding should be required to commit to working at least two years in the child welfare system—either in a public or private agency under contract for child welfare services. A requirement for these funds should be that all programs have a fully developed child welfare curriculum.

In addition, training for staff of private child welfare agencies under contract to provide child welfare services should be eligible for Title IV–E reimbursement at the same 75 percent matching rate as that for personnel employed by state or local public agencies.

Other programs that could be utilized to support staff working in the child welfare system include preferred status for federal homeownership programs, education loan forgiveness programs, or expansion of affordable health benefits to those individuals who work for non-profit service organizations.

To improve court proceedings involving children, families and caseworkers, the Alliance recommends that all state and local courts have access to these funds for the following:

- Assuring the compliance of children's courts with ASFA, state/federal laws and standards
- Assuring sufficient capacity to meet caseload demands
- Supporting efficiency of court operations
- Increasing competencies of judges, court personnel, district attorneys, corporation counsels, guardians ad litem, and CASA volunteers.

Critical Need for Quality Information, Data, and Evaluation

The federal Adoption and Foster Care Analysis and Reporting System (AFCARS) is outdated. It is necessary to improve the AFCARS system to assure its ability to track change over time relative to each state's performance and to include data elements that would determine the likelihood of adoption, reentry, reunification, and recurrence among the foster care population. With changes to AFCARS, some modifications to state/county SACWIS systems could be needed. States should be required to assure that nonprofit agencies contracted for child welfare services have access and use of state SACWIS systems.

Conclusion

As a nonprofit membership association representing child and family serving organizations, the Alliance for Children and Families is finding increasingly that our agencies' contracts with state and local agencies do not provide adequate reimbursements for the expectations they carry.

The Alliance for Children and Families would welcome the opportunity to share the voices of America's nonprofit human service providers with the Subcommittee as it shapes legislation that redesigns the nation's child welfare system. It is our hope that the Subcommittee can be persuaded to delay introduction of any legislation until there is more opportunity to explore the state by state impact of provisions that may cap funds for foster care, administration, training, and services.

We share with you our resolve in assuring that all children and families in need of protection and support are served with quality services that achieve quality outcomes.

Statement of J. Holderbaum, Child Protection Reform, Minneapolis, Minnesota

The new proposed bill does not do enough to address the ongoing problems in our system of child protection.

Hotline—The child abuse hotline must be eliminated. In the year 2002 alone, reports were filed affecting 4.5 million children. After screening and investigating, less than 1 million children were found to be in need of services. Clearly, the hotline is not an effective tool to prevent child abuse, but serves only to clutter up an already overburdened system with reports fueled by overzealousness, hysteria and malice.

Mandated reporting—This process has degenerated into a fear-driven system. Mandated reporters are not reporting responsibly. They are reporting because they are afraid that if they don't, they will risk losing their licenses. Their reports are used as evidence against innocent families because they are licensed professionals. Mandated reporting should be done responsibly and, if it is not, these reporters should be sanctioned. No family should be traumatized by a false report. Families and mandated reporters should not be adversaries. These are our doctors, nurses, teachers, police officers. We have created an atmosphere of hostility between families and these professionals which will not serve our country positively in the years to come.

Immunity—No immunity from prosecution should be given to anyone working within child protection. This only serves to promote deception and even perjury in civil court. If someone lies in court, violating the law and their oath, they absolutely should be punished to set an example to deter others from doing the same. Presently, deception and perjury are common practice in all of our family and dependency courts nationwide because of immunity from prosecution and many innocent families are suffering because of it.

Federal Funding Stream—The criminality of taking children for the money must come to an immediate end. Children do not exist to fill state funding quotas. Child Protective Services caseworkers, supervisors, commissioners, law guardians, prosecutors, court-appointed attorneys, judges, psycho-therapists, counselors, contracted agencies such as foster homes, group homes, institutions all benefit from taking children away from their families. When a family was not in need of services to begin with and has been forced into services regardless, it constitutes fraud. Defrauding the federal government should not be overlooked as it has been since CAPTA began. This very serious fraud runs into millions of dollars annually, money which should be reserved for those children genuinely in need of services.

Definition of Child Abuse—What is child abuse and neglect? Clarify the definition of abuse and neglect on a federal level. Stop the discrimination of families with "at risk" definitions which have no foundation. Among those at risk are the poor, minorities, single parents, large families, religious families, home-schooling families and families with disabled children. These families are no more at risk than the rest of the population. Child abuse knows no boundaries, yet these are the families who are targeted repeatedly. Why, because they are low-income. They have become a part of the statistics because they were unable to defend themselves in court and had to agree to services under the threat of losing their children. The overwhelming majority of children taken into protective custody are poor children. WE MUST STOP DISCRIMINATING AGAINST THE POOR. This is inhumane. We can help the poor without taking away their children. Children are also being taken from their parents and suffering terribly for reasons as trivial as having a bruise that resulted from playing or an accidental fall, living in a messy house or not having a refrigerator full of food. The list of trivial reasons for removing a child is endless and has nothing to do with abuse or neglect. Guidelines need to be clarified. Children should only be taken into protective custody when they are at imminent risk of harm, not speculative harm, or possible future harm, but real immediate danger. Guessing and speculating have no place in this most important system of protecting children. This is not a game we are playing with families. Children do not recover from the trauma of separation, it leaves a lifelong emotional scar.

Richard Wexler, National Coalition for Child Protection Reform, states:

"In general, this appears to be a good bill. Changing financial incentives is actually more important in achieving reform than any narrowing of definitions of child maltreatment. No matter how much you try, the definition always will leave room for a caseworker to remove a child if s/he wants to.

On the matter of financial incentives, eliminating the link to AFDC for foster child eligibility is not a problem because the bill compensates by lowering the amount of reimbursement states receives for each child.

The one big problem with the bill is this: FOSTER CARE ADMINISTRATION AND TRAINING MONEY IS NOW PUT IN THE SAME POT WITH PREVENTION MONEY AND STATES WOULD BE FREE TO USE THIS MONEY ON ALL OF THESE THINGS. WHENEVER MONEY FOR ANYTHING INVOLVING FOSTER CARE IS PUT IN THE SAME POT AS PREVENTION, PREVENTION LOSES BECAUSE THE FOSTER–CARE INTERESTS ARE SO GOOD AT GRABBING THE MONEY FOR THEMSELVES.

I RECOMMEND ADDING A PROVISION TO THE BILL WHICH SAYS THAT, IN CREATING THIS NEW POT OF MONEY, THE FOSTER CARE FUNDS CAN BE USED FOR PREVENTION, BUT THE ***PREVENTION FUNDS CAN'T BE USED FOR FOSTER CARE ADMINISTRATION AND TRAINING."***

Please consider adding this provision to your bill. Please also consider addressing the criminality of those who work within the system of child protection. Until these issues are dealt with responsibly, innocent families will continue to suffer and children who are genuinely in need of protection will not receive the protection they need.

Finally, please understand that unfortunately, there are always going to be children who never make it onto CPS radar. There will always be homicides in our world. These tragedies should not send us running into the homes of every family to investigate, but should serve to remind us that as a civilization we have far to go in becoming educated, enriched, tolerant and compassionate. This has always been a hard lesson, but one that we should continue to teach to all our fellow men, women and children.

Thank you for your consideration.

Statement of Miriam Aroni Krinsky, Children's Law Center of Los Angeles, Monterey Park, California

A. ***Introduction***

There are more than half a million children in foster care nationally, almost double the number from the 1980s. Some children remain under child welfare jurisdiction for only a few months while their parents get their lives back on track; thousands of others, however, cannot safely be returned home and "grow up" in foster care

As this committee has noted, the Federal Government sends $7 billion annually to the States to ensure that all of America's children are protected from abuse and neglect. Unfortunately, that financial investment in children and families often doesn't do enough to change for the better the young lives we undertake to protect and nurture. Because the largest source of federal child abuse prevention and treatment funds can only be accessed once a child is removed from the home and brought into foster care, child welfare has little or no resources to provide in-home or other preventive services that could keep more families intact. Instead, social workers are forced to either wait until a situation becomes serious enough to warrant removal, place children in foster care at great expense both to the child and the community, or do nothing and risk reading about any resulting tragedy on the front page.

Once the State does intervene, life for too many youth in foster care is characterized by movement from placement to placement, disruption of schooling, and the severing of ties with all that is familiar to the child, often including siblings and extended family. It is thus not surprising that foster youth find it difficult to keep up—75% of children in foster care are working below grade level in school, almost half do not complete high school, and as few as 15% attend college. Nor is it surprising that these troubled youth become troubled adults; within two to four years after young people emancipate from foster care, 51% are unemployed, 40% are on public assistance, 25% become homeless, and one in five are incarcerated.

Searching for solutions and new approaches in no easy task. The Children's Law Center of Los Angeles ("CLC") has committed itself to be part of that endeavor. CLC is a nonprofit, public interest law corporation created over a decade ago and funded by the Los Angeles County Superior Court to serve as appointed counsel for abused and neglected youth in one of the largest child welfare systems in the nation. We serve as the "voice" in the foster care system for the vast majority (over 80%) of the 30,000 children under the jurisdiction of the Los Angeles County dependency court.

CLC's dedicated and passionate185-person staff represent children who are at risk of abuse or neglect in juvenile dependency proceedings and advocate for the critical services and support these children so desperately need. As court appointed counsel

for the most vulnerable children in our community, we experience on a daily basis the tremendous challenges children and families involved with the child welfare system encounter. On a broader level, CLC strives to identify areas where systemic reforms are needed and to work to bring about those more far-reaching changes. Given our organization's status as the largest representative of foster youth in California, if not the nation, we are uniquely positioned to help propel innovation and change on a local, state, and national level.

There are a variety of areas where a new approach to our nation's longstanding and less than successful way of doing business could enhance our collective ability to address the needs of abused and neglected youth in foster care. Given the mandate for reform resulting from every State's failure to achieve expected standards set forth in the recently completed federal child welfare system reviews, the time is ripe for change. The most critical areas in need of attention are discussed below.

B. ***The Need for New Approaches***

1. Flexible and Adequate Federal Funding and Reform of the "Front Door" of the System

Current restrictions on federal funding streams favor entry of children into foster care rather than the development of supportive prevention and diversion programs. In particular, under the Title IV–E federal child welfare financing system there are inadequate resources devoted to programs and services aimed at maintaining children at risk, when appropriate, in the home. Indeed, there is a disincentive to serve children within their home under existing federal funding eligibility requirements that tie monetary allocations to the placement of children in out of home care and the length of time a child spends in care. Consequently, there are relatively few programs or child welfare services —either long term or on an emergency basis—that a social worker can access to provide immediate stabilization and maintenance of a child at risk within his or her family of origin, even when it might be safe and in the child's best interest, with outside support, to keep the family intact.

Under the current funding structure, the lack of resources available to children who would be best served within their existing family results in early warning signs being effectively ignored. At the time of a family's initial contact with child welfare, the risk may not be serious enough to warrant the drastic step of removing the child from his or her family home. The lack of funding for in-home services or ongoing visitations by the social worker, coupled with long wait lists at community based agencies, ultimately places the child and family at greater risk for future abuse.

Child welfare officials should have the resources and ability to offer the kind of social services that could give troubled but still functioning families a fighting chance to stay together. Not until a child is seriously hurt, placed in grave danger, or the family's desperation otherwise becomes apparent, does the child welfare system respond. And at that point the response becomes in and of itself another in the long list of traumas that children are subjected to as they journey through the child welfare system. Once a child is removed from their family and placed in foster care, multiple placements, instability, school failures and significant mental heath challenges become the norm.

Federal child welfare funding can and should be restructured in a manner that would enable local jurisdictions to fully fund child welfare services, whenever and wherever those services are needed. Specifically, as recommended in the recent report of the Pew Commission on Children in Foster Care *(FOSTERING THE FUTURE: Safety, Permanence and Well-Being for Children in Foster Care,* May 18, 2004),new approaches should be developed to releasethe current federal funding straitjacket and allow for use of the largest source of federal child welfare funds in a manner that better attends to the needs of children and families, without jeopardizing child safety.

A more flexible federal funding stream would allow for the creation of effective and comprehensive methods of diverting families from the foster care system, while also stimulating greater innovation aimed at supporting families. By allowing child welfare agencies to implement services aimed at serving families before tragedy strikes, the federal government will ultimately realize the ability to serve more families with greater success. Increased flexibility in the use of resources would allow counties and states to develop and access a wide variety of community resources to respond to the safety and permanency needs of all children and families in the most timely, effective, efficient and least intrusive manner. Such a restructuring of financing for child welfare services would enable counties to develop a more effective and fact-driven differential response at the front end of the foster care system, based on a rational assessment of both risk to the child and family strengths. This approach would also enable the more intensive court supervised interventions to be focused on children and families with the greatest need.

The Pew Commission recommended not simply greater flexibility in the use of federal dollars, but also that we allow states to "reinvest" federal dollars that would have been expended on foster care into other child welfare services, if those approaches safely reduce the use of foster care. States should be allowed to use federal funds proactively for services to keep children out of foster care or to leave foster care safely. The Commission also recommended that the federal government expand and streamline the child welfare waiver program, devote resources to training, evaluation, and sharing of best practices, and provide bonuses to states that make workforce improvements and increase permanence for children in foster care. All of these approaches warrant serious consideration.

2. Promoting Relative Placements

When a child at risk cannot be safely maintained with a parent, it is preferable to place the child with a relative. While children placed with relatives should be no less protected than children placed in licensed foster homes, current regulations relating to approval of relative placements are unduly restrictive, can result in the placement of youth with costly private providers in lieu of relatives, and do not allow for a case-by-case analysis with flexibility to consider each child's best interest.

It is well settled that foster children who are placed with relatives experience greater stability than foster youth placed in the care of strangers. According to an Urban Institute report, foster children raised by kin have been shown to have fewer behavioral and academic difficulties and better physical and mental healthoutcomes than children cared for by caregivers with whom they have no prior relationship. "[C]hildren in kinship foster care are significantly less likely than children in non-kin foster care to experience multiple placements." (Green, *The Evolution of Kinship Care Policy and Practice* (2004) 14(1) The Future of Children 131, 143.) Children in relative care also maintain greater community connections, are placed with their siblings at higher levels than children with non-relatives, and "maintain family continuity" though greater contact with birth families. (*Ibid.*) It is critical that artificial barriers to relative caretakers not be erected. Losing relative placements because of a failure to jump a procedural hurdle serves no one's interest, especially not a child in need of a stable and caring caretaker.

Federal law has created barriers to placement with relatives that do more harm than good. Specifically, the requirement that states use the same set of standards for relative approval as they do for foster care licensing of strangers has made placement with appropriate relatives difficult or impossible in many cases.

Allowing for a less rigid and more individualized approach to assessment of a relative's suitability to care for a child will reduce the number of children in foster care, promote maintenance of children within their extended family, and further both the physical and emotional well-being of an already traumatized child. When a child must be removed from the care of a parent, placement with a relative rather than a stranger allows the child to cope with an already emotionally fraught situation in a familiar and comfortable setting. Moreover, relative placements often enable sibling groups to remain intact, thereby providing a critical anchor for displaced children.

The Pew Commission also proposed reform of current laws to promote permanence through legal guardianships when a close attachment exists between a child and a potential guardian. As the Commission recognized, establishing and supporting such guardianships can create a route for youth out of foster care and into safe, permanent families. While federal funds and incentives encourage families to adopt, inadequate support exists for guardianships. This is a critical impediment for relatives who may be reluctant to usurp a family member's parental role, but who nonetheless are prepared to provide a permanent, safe home for their abused and neglected family members. As the Commission explained, "When guardians are also relatives, guardianship can promote healthy ties to a child's extended family, home community, and culture."

In sum, new approaches on a federal, state and local level are needed to craft improved mechanisms for keeping youth with relatives and supporting relative placements, whenever possible.

3. Adequate Support of the Dependency Judicial System

Priority must be given to initiatives designed to support and enhance the functioning of the dependency judicial system. Qualified hearing officers are an essential component of that system. We need to adequately fund the third branch of government and support the recruitment and retention of the highest caliber bench officers.

Dependency court hearing officers can and should play a meaningful role in ensuring that children are not languishing in foster care, that case specific services are provided in a timely fashion, that families are reunited as quickly as possible, and that measurable outcomes and indicators of child well-being (such as academic performance) are tracked. Without this focused tracking of and attention to outcomes, there will never be either an acceptable standard of accountability or the types of outcomes these youth deserve.

Moreover, given the complex nature of the many issues children and families face, collaborative multidisciplinary training must be provided to hearing officers in conjunction with lawyers, social workers and other parts of the system. Yet, the recently released Fostering Results survey (VIEW FROM THE BENCH: Obstacles to Safety and Permanency for Children in Foster Care) of over 2,200 judges who hear dependency cases found that barely half (49%) of all judges received any specialized training in child welfare issues prior to hearing child abuse or neglect cases. A dependency court judge must have mastery of a complicated set of federal and state laws, an awareness of available community resources, as well the ability to identify and rule on issues ranging from appropriate use of psychotropic medications to whether a child's sibling relationship should be severed in order to facilitate an adoption. Both substantive study areas and child welfare practice should be included in curriculum development.

Finally, bench officers must be armed with outcome-focused data tracking that enables the court to manage their cases and meaningfully track the progress of children through the system. Communication networks that enable stakeholders and data systems to "talk" to each other need to be explored and developed.

4. Adequate and Effective Legal Representation for Every Child

While recent changes to CAPTA requiring that each child be represented by either an attorney or a Guardian Ad Litem ("GAL") represent an important first step toward giving children a voice in court, these provisions fail to ensure that all foster children have an effective and capable voice in the legal process. Without adequate legal representation, the child is not on an equal footing with the other parties in a dependency case. The child welfare agency and parents—including the alleged perpetrator—are generally represented by attorneys. Yet in many states the child, if represented at all, is represented by a lay GAL. A GAL may or may not have special expertise or training in issues related to abuse and neglect. As a non-lawyer, the GAL has little ability to use the process of the court to the child's advantage. The end result is that the child is relegated to second-class status. The agency, the non-offending parent, and the abuser have a legal voice in court, while the child in some states has no voice at all and in others has only limited access to the legal process and protections. In short, children brought into the dependency system should receive the benefit of effective legal counsel.

The goal of assuring effective legal counsel for children cannot be achieved without minimum training, competency standards, and reasonable caseloads. Appointed counsel in dependency cases should be expected to have a working knowledge not only of the relevant law, but also of related areas including child development, cultural competency, health, mental health and education laws. Without mandates as to training and reasonable caseload standards, the dedicated and passionate attorneys who choose this work will continue to swim upstream against an ever stronger current.

No matter how well trained, counsel who are forced to take on hundreds of cases, either due to overly burdensome staffing levels or because the rate paid per case is too low to afford an acceptable standard of living, cannot perform optimally or even effectively. Maximum caseload standards must be set by each jurisdiction within a framework which takes into consideration the geographic size of the area served, the type and quantity of support staff, and whether the attorney is a sole practitioner or works within an organization or agency. Federal funding should be used to reward and support jurisdictions that seek to put in place standards relating to reasonable caseloads, training, and minimum qualifications for dependency counsel

5. Attracting and Retaining Quality Lawyers

If we wish to attract the best and the brightest to what many believe is the most important work done in our legal and judicial system, attorneys who choose this professional discipline must receive reasonable and adequate compensation; they must be valued and supported. Serving as legal counsel for abused and neglected children is without a doubt rewarding and fulfilling, but it is also emotionally, intellectually and physically draining, and at times completely overwhelming. Creating standards for compensation—including salaried payments for lawyers in this prac-

tice area rather than the inherently problematic approach of payment per case—should be encouraged. Unless and until attorneys are fairly compensated, this specialized practice will continue to be viewed as less important and less worthy than other areas of law.

Mechanisms including loan forgiveness for attracting and maintaining committed attorneys should be developed and encouraged. The benefit to be derived from such programs span many layers. Nonprofit organizations and county agencies will be far better able to attract the most qualified new lawyer. Moreover, there will be a greater willingness and motivation to devote the necessary time and resources to training when here is a greater likelihood of longevity of newly hired staff. It is critical that any loan forgiveness initiative include not just new attorneys entering this practice area, but also existing attorneys who have developed irreplaceable relationships with their clients and whose expertise over time should be supported and needs to be retained. The cost of hash turnover can be measured not only in dollars and cents, but in human costs as well. For an abused or neglected child, building trusting relationships is no simple task. Often the child's lawyer is the only stable and consistent person in his or her life, the only person the child can confide in, and the one person he or she trusts. With each abandonment and each severed relationship the child finds it that much more difficult to trust again, to move beyond his or her victimization, and to develop healthy relationships in the future—whether it be with a caregiver, family member, or his or her own child someday.

Cost saving measures that result in poorly compensated counsel and excessive caseloads will result in greater expense over time through poor quality representation, decreased efficiency, high turnover, and poor outcomes for children.

6. Reinforcing and Empowering The Child's Voice in the System

Dependency court systems across the Country need to redouble their efforts to ensure that the youth whose lives we seek to protect have the opportunity to attend and be part of court proceedings in their own cases. In too many jurisdictions, children are not made aware of or encouraged to attend court proceedings and all parties (including the bench officer) are stripped of the ability to hear from the youth whose interests are at the core of the decision making.

For many youth, being present at their dependency case proceedings enables them to understand and come to terms with decisions that will impact the rest of their life. Inconvenience, a desire to keep cases moving, and/or the view that we need to "protect" children from hearing about the very events that they lived through, should not stand in the way of involving youth of a requisite age—when they desire to be present—in these court hearings. Even the most skilled judges and attorneys with the best intentions cannot and should not be making life changing decisions and recommendations about a child they have never met or a family they know only as a case number. Youth should be afforded the respect and be granted the dignity of expressing their own views in regard to decisions that will alter their lives in the most significant and lasting ways imaginable.

Children have keen insight and deep understanding of their own families and their own challenges. Their view of the future is essential to the development of meaningful, effective and functional case planning. As the Pew Commission recognized, "children, parents, and caregivers all benefit when they have the opportunity to actively participate in court proceedings, as does the quality of decisions when judges hear from key parties." For all these reasons, federal law should not only recognize, but also encourage, the presence of children at their own hearings.

Similarly, advocates for children—whether they be CASAs, Guardians Ad Litem or court appointed counsel—must meet with their young clients face to face and must do so with enough frequency to ensure that the advocate has current independent knowledge of the child's living situation, educational and mental health status, general well-being, and wishes and desires regarding the issues before the court at any given hearing.

Federal funding should be tied to these requirements and should be provided at a level sufficient to support the time and expense associated with the building and reinforcement of these approaches.

7. Supporting the Child Welfare Workforce

Social workers cannot possibly be effective when they carry caseloads as high as two and three times the recommended standard. Without adequate time to assess a family, plan for the child's safety, and most importantly develop trusting relationships, even the most experienced and skilled social worker cannot ensure child safety.

A significant reduction in social worker caseloads is a critical component of any reform of the child welfare system. Caseload reduction can be accomplished, in part,

through the implementation of the flexible funding recommendations discussed above. Consider the Illinois experience: using federally granted Title IV–E waiver authority Illinois dramatically reduced the number of children in the foster care system from 51,000 to 19,000 over five years. Social worker caseloads consequently fell from an average of 45 to 60 cases to 14 to18 cases, enabling those on the front lines to focus on children and families most in need.

Caseload size, as well as caseworker education, all directly impact outcomes for children in care. The Pew Commission noted significant variation across the country in the level of training, education, and experience of caseworkers and supervisors. A concerted effort must be made to address these concerns.

8. Greater Support for the Educational Needs of Foster Youth

The educational progress and attainment of children in foster care is a crucial factor in ensuring that no child is denied the opportunity to reach his or her full potential. Attention paid to child safety must go beyond concern for and attention to the child's physical well being. Once we intervene to protect a child from abuse or neglect, we assume a duty to parent the whole child. Educational attainment is one of the essential responsibilities of parenting, but too often is overlooked or taken for granted during a child's time in care. While a quality education is a key component of every child's successful transition to adulthood, a sound educational foundation is especially crucial for children who spend long periods of their childhood in foster care.

A few States—including California—have begun to address some of the barriers and challenges inhibiting educational attainment for foster youth. Without the support of the Federal Government, however, the steps taken by isolated States will be inadequate and foster children throughout the country will continue to fall further and further behind.

For children experiencing placement changes, either due to the initial removal from their parents' care or due to disruptions in foster placement, federal law must reinforce the need to maintain school stability. Specifically, the law should enable these youth to continue in, and be transported to, their school of origin during the critical time in their life when they most need a stable school environment. The law should also provide for immediate enrollment of foster children in school when a change in school cannot be prevented, thereby avoiding the all too common occurrence of foster youth being out of school for days or even weeks at a time. These guarantees will provide long overdue opportunities for academic success for children in foster care.

Moreover, without enhanced accountability and tracking of school attainment by all parts of the foster care system there will be no ability to respond to changing educational needs of children in care. Improved mechanisms for collaboration and information sharing among all governmental bodies responsible for attending to these issues are critical. Unless we commit ourselves collectively to these new strategies and approaches, the unacceptable record of poor educational performance for the youth we undertake to parent will remain unchanged and the cycle of abuse, neglect and despair will perpetuate.

9. Addressing the Mental Health Needs of Foster Children and Their Families

Not surprisingly, children in out-of-home placements disproportionately suffer from mental health disorders. Experts estimate that 30 to 85 percent of youngsters in out-of-home care suffer significant emotional disturbance and report that adolescents living with foster parents or in group homes have a four times higher rate of serious psychiatric disorders than youth living with their own families. (Ellen Battistelli, Child Welfare League of America, Factsheet: The Health of Children in Out-of-Home Care (May 17, 2001).)

The mental health needs of foster children are often overlooked until the child exhibits extreme and harmful behavior. Even then, the lack of coordination between the child welfare, mental health and school systems results in fragmented and disjointed provision of services. Children are not properly assessed, no one provider is given the clear responsibility of monitoring the mental health needs of these children, and when mental health services are finally made available, they are often either inadequate or too late to be of meaningful benefit to the child.

Until all foster children receive prompt assessment and individualized mental health services from the outset, we will continue to see children who are either overlooked by the child welfare system or who leave the dependency system more damaged than when they entered care. Constant placement disruptions, placements with well meaning but ill-equipped caregivers, and insufficient mental health services all exacerbate the problems and challenges faced by these already fragile children. With each failed placement and each delay in receiving treatment, the child

requires a higher and more restrictive level of care. The resulting cost in both resources and human lives will continue to grow exponentially until *all* of the involved agencies develop meaningful ways to work together to address the mental health needs of children in foster care.

The current piecemeal approach to providing mental health services to children and their familiesis not working and must be reassessed. Many children would never have to be placed in foster care if the parents had access to supportive services from the outset. For those children who must be placed in foster care or with extended family, effective mental health treatment must include planning for the treatment needs of the parents as well as the child. It is uncommon, at best, to find a family where only the child or only the parent requires treatment. Certainly in those cases where reunification is possible the mental health needs of the family must be a priority, and any treatment plan should include not only crisis intervention, but also transition planning and aftercare as well.

10. Addressing the Needs of Teens Emancipating from Foster Care

While the goal of permanency for every child remains high on any priority list, it is imperative that the child welfare system not forget the thousands of older teens who remain in out of home care and will likely remain in the foster care system through emancipation. There are several areas where new approaches and better services should be considered if these youth are to have a fighting chance for a stable and successful adult future.

Recent findings regarding adolescent brain development highlight the importance of paying attention to and recognizing the unique needs of adolescents. Without proper stimulation, experiential learning, direction, and guidance, these teens will experience far greater challenges in negotiating the adult world, exercising sound judgment, and planning for their future. The research makes clear that even the best-prepared teen is not ready to be completely self sufficient at age 18. Yet, throughout the country, foster children automatically exit from care on their 18th birthday or the day after high school graduation ill-equipped for successful emancipation. These youth often have no one to share Thanksgiving dinner with and no one to help them prepare for their first job interview or secure their first apartment. They commonly emancipate from foster care without any significant connection to a responsible adult, have no home, no one to provide them with desperately needed guidance, and no place to return to when they falter. It is no wonder that so many emancipated foster youth are either homeless or incarcerated within two years of exiting the system.

Moreover, services provided to dependent teens who are pregnant or become parents are woefully inadequate. There are too few placements available for these young parents and their children and the existing placements often do little to provide the guidance and support that any new parent needs. Similarly, targeted emancipation services for teen parents are virtually non-existent. Teens parents who were themselves abused and neglected present not only a great challenge to our child welfare agencies, but also a great opportunity. If we can work in partnership with them rather than merely waiting for them to fail, we can ensure that the next generation won't need our services and create a brighter future for these young families. Child welfare must rethink the business as usual approach taken when a child is born to a mother who is herself a dependent. Innovative approaches designed to reach the young parent in a language she can hear, and assigning to this caseload social workers adept at working with the unique needs of these clients, are essential components of any effort to improve outcomes for teen parents and their children.

C. *Conclusion*

Thank you for affording me the opportunity on behalf of the Children's Law Center and the thousands of young clients we represent to offer my perspectives in regard to ways our nation can better serve our neediest and most vulnerable children. These are the children of our community and our future. They deserve our very best efforts.

Statement of Marcia Robinson Lowry, Children's Rights, New York, New York

On behalf of Children's Rights, I am pleased to provide this written statement to the Subcommittee on Human Resources of the Committee on Ways and Means. I wish to thank Chairman Herger and the members of their Subcommittee for their

leadership in critically examining recent proposals to reform child welfare financing and to move children more expeditiously into safe, permanent homes.

Children's Rights is a national non-profit organization working in partnership with advocates, experts, policy analysts and government officials to address the needs of children dependent on child welfare systems for protection and care. Our goals are to make sure vulnerable children affected by child welfare systems are safe from abuse and neglect, receive the care and services they need, return quickly and safely to their families whenever possible, and if necessary, move swiftly through the adoption process to permanent, loving families. Children's Rights partners with experts and government officials, including the Pew Commission on Children in Foster Care, to create concrete solutions to reform child protection, foster care and adoption services, upon which the lives of these children depend. Children's Rights develops realistic solutions and, where necessary, uses the power of the courts to make sure the rights of these children are recognized and that reform takes place. A case in point is our federal litigation against the New Jersey child welfare system—the very system that infamously failed to protect 7-year old Faheem Williams in Newark and the starving Jackson brothers in Collingswood, New Jersey. Our settlement of that case last year mandates a sweeping reform of New Jersey's failing child welfare system, and it has resulted in a substantial increase in the state's investment in its child welfare system—more than $300 million over the next two years.

My comments will focus on three imperatives for keeping children safe and finding children permanent families as quickly as possible. *First, maintaining a federal open funding entitlement is critical if children are to retain their right to judicially enforce the mandates of federal child welfare laws. Second, imposing additional minimum federal standards, such as on caseloads, job qualifications for caseworkers and supervisors, training, and accountability, is necessary to assure the basic functioning of child welfare systems. Third, additional federal resources must be made available to support states to meet their responsibilities to provide adequate levels of care and protection.* As we saw in New Jersey, reform of failing systems is impossible without the money to back it up.

It is vital that traumatized and fragile children in foster care retain access to the courts for the protection of their rights to safety, well-being and permanency. Sadly, recent history has shown states to be poor surrogate parents, often responsible for further damaging the children in their care. Florida lost Rilya Wilson, Washington, D.C. at one point required a federal receivership, and New Jersey allowed four starved and stunted boys to be adopted and remain for years with their duly certified foster parents. Every State has been failing the recent federal audits. Children in foster care do not vote, much less lobby on behalf of their interests, and the courts are often the only institutions capable of providing these children a degree of protection from the under-funded and mismanaged systems in which they find themselves. If governmental custodians are insulated against even the possibility of lawsuits seeking to compel them to meet statutory standards, they are likely to dedicate even less attention and fewer resources to meeting the needs of the children they have taken into state foster care custody. Under those circumstances, the intent of federal law will be thwarted and large amounts of federal money will be wasted.

Child Welfare Financing

As the Subcommittee is well aware, the Pew Commission on Children in Foster Care recently released its recommendations for the redesign and strengthening of the current structure of federal child welfare financing. In its report, the Pew Commission advanced a series of interrelated recommendations concerning both Titles IV–B and IV–E of the Social Security Act, with one of the critical recommendations being the retention of the current open-ended entitlement of Title IV–E for both foster care maintenance payments and adoption assistance. The Pew Commission recognized that it is essential that states continue to be able to claim federal reimbursement on behalf of every eligible child that the state places in a foster home or qualified institutional setting. In connection with children's eligibility for Title IV–E federal assistance, the Pew Commission also recommended that Title IV–E be amended and that federal funding be made available for every child who needs the protection of foster care regardless of family income (thereby eliminating the current requirement that a child's family meet the 1996 income eligibility standards for the now defunct Aid to Families with Dependent Children program). These recommendations recognize that states are obligated to provide protection to every child who is abused and neglected, regardless of family income, and that children are best protected when they have the protection of both the federal and state government.

The retention of the open-ended entitlement is critical for another reason: it ensures that children in foster care have the benefit of essential legal protections. Children in foster care have had success in obtaining judicial enforcement of Titles IV–B and IV–E requirements imposed on the states as requirements for accepting federal child welfare funds. Eliminating the open entitlement, however, would also almost certainly eliminate that judicial right. Short of the outright addition of an explicit statutory right of action allowing foster children to sue to enforce the federal statutory terms, which we support, we recommend continued use of an uncapped foster care entitlement program with the addition of mandatory standards for the benefit of individual children. Without recourse to the courts, abused and neglected children cannot rely on the statutory promises of federal protection.

Private Rights of Action Under Titles IV–B and IV–E

Just because Congress has enacted a law does not necessarily mean that a citizen, or even an individual for whose benefit the law was passed, can go to court and sue for being deprived of the benefits of that law. There are two ways to determine whether such a lawsuit can be brought for the violation of federal law: 1) the law contains an explicit "private right of action" stating that an individual can bring a lawsuit for violation of the statute; or 2) the right to bring such a lawsuit can be implied through the application of certain tests that the U.S. Supreme Court has been revisiting with relative frequency over the last ten years.

Currently, the only child welfare statute for which Congress has explicitly granted aggrieved parties the right to go to court for violations is the Interethnic Adoption provisions of 1996, amending the Multi-Ethnic Placement Act (MEPA), codified at 42 U.S.C. § 671(a)(18) (prohibiting the delay or denial of foster and adoptive placements for children based on their race or ethnicity or that of their prospective home).[1] The Civil Rights Act of 1871, as amended and currently codified at 42 U.S.C. § 1983, however, provides a right of action against anyone who, under color of law, deprives a person "of *rights,* privileges, or immunities secured by the Constitution and laws." Most (but not all) courts have recognized an "implied right of action" under section 1983 to judicially enforce provisions of Titles IV–B and IV–E where the statute sufficiently evidences Congressional intent to create a federal "right" under the statute.

For such a statutory right to be implied and enforceable under section 1983, the Supreme Court has established a three-part test commonly referred to as the Wilder/Blessing test. First, Congress must have intended the invoked statutory provision to benefit the plaintiff. Second, the statute must unambiguously impose a binding obligation in mandatory terms. Third, the statutory provision cannot be so vague and amorphous that its enforcement would strain judicial competence. See *Wilder v. Va. Hosp. Ass'n.,* 496 U.S. 498, 509–511 (1990); *Blessing v. Freestone,* 520 U.S. 329, 340–341 (1997). Recently, the Supreme Court clarified that Congress must have unambiguously intended to create a federal "right," not just a benefit. The first prong of the test thus requires that the text of the statute be phrased in terms of the person or class of persons benefited, and that such "rights-creating language" must be individually focused and not system-wide or "aggregate." *Gonzaga University v.* Doe, 536 U.S. 273, 282–284, 287–288 (2002). For example, the Family Educational Rights and Privacy Act's statutory language mandating that no federal funds be made available to any "educational agency or institution" that has a prohibited "policy or practice" of permitting the release of educational records, does not create a private right of action for individual violations of FERPA. *Gonzaga,* 536 U.S. at 287–288, 290 ("FERPA's nondisclosure provisions contain no rights-creating language, they have an aggregate, not individual, focus, and they serve primarily to direct the Secretary of Education's distribution of public funds to educational institutions."). By contrast, language in the Medicaid Act mandating "reasonable and adequate [reimbursement] rates" to health care providers from participating states, explicitly creates a monetary entitlement upon the providers that is judicially enforceable. See *Wilder v. Virginia Hospital Ass'n,* 496 U.S. 498, 522–523 (1990).

The Adoption Assistance and Child Welfare Act of 1980 (AACWA), as amended by the Adoption and Safe Families Act of 1997 (ASFA), codified in Titles IV–B and IV–E, requires a state accepting federal funds under the statute to administer a state plan that meets federal requirements. See 42 U.S.C. §§ 620, et seq. & 670, et seq. In exchange for meeting these requirements, states are then entitled to federal funding at specified reimbursement levels. Many federal courts have recognized that Title IV–B and IV–E provisions that require specific state actions on behalf of foster

[1] See 42 U.S.C. § 674(d)(3)(A) ("Any individual who is aggrieved by a violation of § 671(a)(18) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.").

children create a judicially enforceable right to the mandated services for those foster children.[2] For example:

- Kenny A. v. Perdue, 218 F.R.D. 277, 290–293 (N.D.Ga. 2003), recognized that §§ 671(a)(10), (16) & (22), 675(1)(B) (D) & (E), 675(5)(D) & (E), and 622(b)(10)(B)(i-iii) create enforceable rights to placement in foster homes and institutions that conform to national professional standards; to case plans with mandated elements and implementation of those case plans; to case reviews; to services that protect foster children's health and safety; to services that facilitate return home or a permanent placement; to independent living services for foster children 16 years old and up; to adoption planning and services if the goal is adoption; to have health and education records reviewed, updated, and supplied to caretakers at the time of placement; to have a timely petition to terminate parental rights (TPR) filed; to receive services in a child welfare system that has an information system adequate to permit the state to make fully informed decisions concerning each foster child's best interests; and to services to facilitate the child's permanency plan.
- Jeanine B. v. McCallum, 2001 WL 748062 (E.D. Wis. June 19, 2001), held that § 675(5)(E) creates an enforceable right to have the state initiate a proceeding to terminate parental rights (TPR) for children who have been in foster care custody for 15 of the most recent 22 months, unless certain documented exceptions apply.
- Brian A. v. Sundquist, 149 F. Supp.2d 941, 945–949 (M.D. Tenn. 2000), held that §§ 671(a)(10) & (16), 675(1), 675(5) and 622(b)(10)(B)(i) & (ii) create enforceable rights to timely case plans containing mandated elements; case plan reviews; and a statewide information system to track every child's status and plan.
- Marisol A. v. Giuliani, 929 F. Supp. 662, 682–683 (S.D.N.Y. 1996), aff'd, 126 F.3d 372 (2d Cir. 1997), held that §§ 622(b)(9) and 671(a)(10) & (16) create enforceable rights to the recruitment of foster and adoptive families that reflect the racial and ethnic diversity of children needing homes; the implementation of licensing standards for foster homes and residential facilities; and to case plans and case reviews.

Central to the recognition of an enforceable federal right has been Title IV–B and IV–E's language throughout "focus[ing] on the needs of individual foster children, rather than having a systemwide or aggregate focus." Kenny A., 218 F.R.D. at 292. For example:

- 42 U.S.C. § 622(b)(10)(B)(i) requires an information system to track data on "every child" in foster care;
- § 622(b)(10)(B)(ii) requires a case review system for "each child receiving foster care;"
- § 622(b)(10)(B)(iii) requires a service program designed "to help children" either return to their family or be placed in a permanent home;
- § 671(a)(16) requires a case plan "for each child" in foster care, and a case review system "for each such child;"
- § 671(a)(22) requires the implementation of standards to ensure that "children in foster care" are provided services that protect the safety and health "of the children;"
- § 675(1) defines the mandatory "case plan" to include required "child specific" information regarding each "child;"
- § 675(5) defines the mandatory "case review system" to assure that "each child" has a case plan, is safe, and is in the most appropriate setting.

Additional evidence can be found in the enacting language of the Adoption and Safe Families Act, at § 103(c), 11 Stat. at 2119, which mandates the schedule for

[2] When the Supreme Court ruled in 1992 that the AACWA provision at 42 U.S.C. § 671(a)(15) (requiring states to make "reasonable efforts" to prevent children from being removed from their homes and to facilitate returning children once removed) was too undefined to be enforceable, it also suggested that spending statutes such as Title IV–E are entirely unenforceable because they only require that the state prepare and file a plan and that the inclusion of mandatory provisions within such a plan does not create any entitlement to actual implementation of those plan provisions. *Suter v. Artist M.,* 503 U.S. 347, 360–362 (1992). As a direct response to the *Suter* decision, Congress amended the Social Security Act, explicitly stating its intent that a provision of the Act "is not to be deemed [judicially] unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan" and "overturning any such grounds applied in *Suter.*" 42 U.S.C. § 1320a-2. The *Suter* decision has thus been limited to its narrow holding that § 671(a)(15) is unenforceable because the provision is too vague.

states coming into compliance with 42 U.S.C. § 675(5)(E)'s TPR requirement "with respect to the child" entering foster care or already in foster care. Such "rights-creating language" confirms Congress' intent to create a federal right to such child welfare services.[3]

Those provisions of Titles IV–B and IV–E that require specific actions for the explicit benefit of foster children have thus been found to be judicially enforceable pursuant to § 1983 and the Wilder/Blessing test by many of the federal courts to decide this issue. Not only is the text of the statute in terms clearly intended to benefit individual statutorily-defined children, it is also mandatory and specific as to the required actions on their behalf.

The Open Entitlement

The financing structure is further evidence that Congress intended to confer an individual entitlement on foster children as opposed to focusing in the aggregate on the performance of state child welfare systems. The financing structure of Title IV–E "imposes a binding obligation by explicitly tying the creation of certain features of a state plan to federal funding." *Marisol A.,* 929 F. Supp. at 663; see, e.g., 42 U.S.C. § 671(a) ("In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—provides . . .") (emphasis added). For example, states are eligible for IV–E foster care maintenance payment reimbursements only for eligible children in care for whom the state has secured the statutorily required judicial determination (regarding removal from their home) and placement in a licensed foster home or residential facility. *See* 42 U.S.C. §§ 672(a)(1) & (3) and 674(a)(1) (defining "qualifying children" for whom federal funding is available for foster care maintenance payments). Moreover, the explicit purpose of federal payment for foster care is to "enabl[e] each State to provide, in appropriate cases, foster care and transitional independent living programs *for children. . . .*" 42 U.S.C. § 670 (emphasis added). The elimination of the open entitlement funding structure based on mandatory provisions for "each child" qualifying for federal reimbursements would be an invitation to the courts to deny the statute's enforceability.

Specifically, a capped entitlement would not be an individually focused entitlement for private right of action purposes and would most likely foreclose the recognition of such a right. Under a capped entitlement, states that did not comply with Title IV–E requirements as to "each child" could still qualify for the maximum allowable federal reimbursement. Without a direct link between compliance with Title IV–E as to ALL the "qualifying children" who are statutorily defined and federal reimbursements as to those children, the Title IV–E requirements would probably be found to "serve primarily to direct the Secretary of [Health and Human Services]' distribution of public funds to [state child welfare programs]." *Gonzaga,* 536 U.S. at 287–288, 290. Instead of creating individual rights, the statute would reflect more the systemwide or "aggregate" focus that led the Supreme Court to find FERPA judicially unenforceable in the recent Gonzaga case. Id.

The elimination of the current clear quid pro quo that specific actions must be taken by the state on behalf of individual children or federal reimbursements for those children can be forfeited would be evidence of Congressional intent to focus on aggregate child welfare purposes instead of on the needs of individual foster children. As a result, any given provision would no longer be enforceable as a statutory right if the entitlement were to be capped. Without individually-focused mandatory language meant to benefit a discrete class of children, no private right of action would be found on their behalf pursuant to the Wilder/Blessing test as clarified by Gonzaga, even if those rights had been recognized previously.

Protecting Private Rights of Action

As discussed earlier, it is critically important to ensure a private right of action to safeguard the rights of abused and neglected children to bring a lawsuit, if necessary, when a state is receiving large amounts of federal money but not complying with federal law enacted for the protection of these children. In the recent federal audits conducted by the U.S. Department of Health and Human Services (HHS), every state failed to meet federal standards—which were not even co-extensive with

[3] Because some federal courts have not found such language sufficient to create an implied right to sue, we view any legislative move to cut back on mandatory rights-creating language from Titles IV–B and IV–E as an invitation to the courts to eliminate their enforceability. *See, e.g., 31 Foster Children v.* Bush, 329 F.3d 1255, 1268–1274 (11th Cir.), *cert. denied,* 124 S. Ct. 483 (2003) (42 U.S.C. §§ 675(5)(B) & (E) do not provide enforceable rights under § 1983 to have health and education records reviewed, updated, and supplied to caretakers at the time of placement, or to have the state initiate a proceeding to terminate parental rights for children who have been in foster care custody for 15 of the most recent 22 months).

federal law. Even were HHS to decide to impose sanctions for such failures, it is limited to withholding federal money from a state—not a measure tailored to help children. On the other hand, lawsuits brought by these children have resulted in an increase in state funds, reductions in caseloads, the creation of training programs, an increase in services, and better and more effective management practices.

The most straight-forward way to protect foster children's private right of action regardless of any change to the financing structure is to add an explicit right of action to Titles IV–B and IV–E. Congress declined to do that when it passed the "Suter fix" in 1994. *See* footnote 2. However, with the widespread recognition of the failures of many states to protect children in need of child welfare services, the time is right to revisit this issue.

Short of an explicit right to sue, what has allowed the continued recognition of private rights of action (that Congress has protected in the past against judicial elimination, see footnote 2) are the child-focused state plan requirements and the open entitlement structure tying those individual requirements to federal funding. Any legislative change eliminating open entitlements will almost certainly be viewed as eliminating private rights of action as to these state plan requirements. To preserve private rights of action for foster children, Titles IV–B and IV–E provisions must continue to be focused on mandatory benefits for individual children that are specifically defined and enumerated, and directly tied to open-ended federal funding entitlements.

Minimum Federal Standards

As Congress considers how to best fund child welfare systems that protect children and assure them a permanent home, attention should also be given as to how to strengthen minimum standards and accountability within these federally-funded systems. Congress has yet to impose minimum standards in such areas as caseloads, job qualifications for child welfare workers and supervisors, training, and accountability. Such requirements should be established with statutory text focusing on their direct impact on the safety and well-being of individual children so as to create judicially enforceable rights to these additional requirements. They should also be funded under an entitlement structure to further support the judicial recognition of such rights.

The benefit of such standards is obvious when viewed in the context of a failing child welfare system such as New Jersey's. Before reform, New Jersey's Division of Youth and Family Services could hire young caseworkers without any educational or employment background in social services, and then assign them caseloads of 80 to 100 children (over five times professionally acceptable levels). Before Children's Rights lawsuit, New Jersey also abolished the agency's Training Academy and its Quality Assurance Unit, resulting in minimal ongoing training and no system checks on basic case practice levels, including the timeliness and frequency of worker visits with children, and the provision of necessary medical and mental health services to children in the agency's care. As we documented through extensive discovery in New Jersey, this resulted in one out of 10 abused and neglected children being further harmed while under the care and supervision of the agency. The agency repeatedly failed to protect such children from multiple instances of abuse and neglect, and shuffled them through temporary foster care placements for years, all the while remaining eligible for federal Title IV–B and E funding.

Resources

Sufficient resources must also be made available for states to be able to comply with existing and any additional federal requirements. Increasing child welfare funding by $200 million nationally, as has been proposed in at least one of the child welfare financing proposals which currently is being considered, is not sufficient to meet the great need. In New Jersey alone, the State has committed an additional $125 million for the first year of its reform plan as required by our settlement, and an additional $180 million for year two. The settlement and reform plan calls for limiting caseloads, training caseworkers, increasing caseworker visits and ensuring timely investigations and assessments, reducing children's moves from home to home, and when children cannot be safely reunited with their birth families, finding children permanent families through adoption without delay.

Without a substantial additional investment in such systems, coupled with enforceable minimum standards and requirements, the promises of the federal child welfare laws for effective protection of abused and neglected children and promotion of their well-being and permanence will continue to be an unfulfilled goal. These children deserve a child welfare system that is adequately funded and that is required to make good on its promises.

Conclusion

For the past 30 years I have represented abused and neglected children who should have been protected by our country's child welfare systems, but were not. I know all too well how harmful these systems can be to children without adequate funding and oversight. Our experience in New Jersey is but one example.

Capping Title IV–B and E funding would be a mistake. Not only would it limit federal funding when more, not less, federal support is necessary to fulfill the federal promises of child safety, well-being, and permanence, but it will vitiate these very children's ability to judicially enforce existing federal requirements. Instead of weakening federal child welfare laws, we should be strengthening them. Congress should require compliance with additional minimum standards for critical system functions such as adequate staffing, training and oversight. Only then, will maltreated children have a chance to be protected by a well-trained caseworker who has time to properly investigate their case and assure that they are properly cared for in a loving home. We owe our most vulnerable citizens at least this.

Statement of Frank J. Mecca, County Welfare Directors Association of California, Sacramento, California

Thank you for the opportunity to submit testimony for the record regarding child welfare reform proposals being considered by the Subcommittee on Human Resources. The County Welfare Directors Association of California (CWDA) has long advocated for changes to the federal child welfare financing structure in order to better serve abused and neglected children and their families. We appreciate your support for changes that will help states and counties achieve better results for these children and move them more quickly into safe, permanent homes. We agree with the chairman and the committee that federal funding reforms must be enacted if states and counties are to achieve the improvements that we all seek. This testimony sets forth our recommended changes at the federal level along with cautions regarding some of the reform proposals we have seen in recent months and in the chairman's draft bill, the Child Safety, Adoption, and Family Enhancement Act (Child SAFE Act).

As you know, each of California's 58 counties operates a child welfare program, with oversight from the state and federal governments. In recent years, public scrutiny of child welfare has increased significantly, both at the state and federal levels and also from the courts, the media, and foster children and their families. This increased attention has led to a multitude of ideas for reforming the system, and California is no exception. Counties are partnering with the state and with their communities in a number of ways to enhance the services provided to children and families. Without reform at the federal level, however, these efforts will be much more difficult to implement and to achieve the desired results.

Why Federal Reforms Are Needed

The mismatch between the required services to achieve desired outcomes for abused and neglected children and the adequacy of federal funds to achieve those outcomes has never been more pronounced. The Child and Family Services Reviews (CSFR) measure states against a set of national standards for child safety, permanence, and well-being. States, counties, and advocates for children welcomed this new focus on outcomes rather than process, prevention and intervention rather than foster care placement, and improving our services to children and families across many facets of their lives.

While the measures of success for children have shifted toward models that encourage preserving the child's family and seeking other permanent alternatives to foster care, the federal funding rules have not been adapted to facilitate achievement of these primary goals. Instead, federal Title IV–E financing continues to focus on out-of-home foster care placement rather than the provision of prevention and reunification services to children and families. Further, IV–E dollars are limited primarily to income-eligible children. Ironically, use of federal Title IV–E funds is not allowable for most of the services and supports that the Child and Family Services Reviews seek to increase. As a result, states and counties must use their limited Title IV–B funds and patch together funding from other inadequate sources. This fragmented system means that thousands of families are unable to receive the services they need, and children remain in foster care far longer than they should—far longer than we want them to.

Specific Reform Recommendations

A number of reforms can be enacted at the federal level to ensure that timely, appropriate, and quality services are received by every child and family involved in the child welfare system. Such reforms should ensure that states and counties will be better able to improve their performance on the key federal outcome measures, by giving states more flexibility in use of Title IV–E funds and by maintaining at least the current level of federal support for the child welfare programs. We believe that curtailing funding for any of the child welfare programs—by capping funds or creating block grants or subjecting current entitlements to annual appropriations—is counter-productive to the shared goals of improving the child welfare and foster care system.

CWDA urges your consideration of the following recommendations:

1. Maintain entitlement funding for Title IV–E, including administrative activities, services, and training.
2. Provide flexibility to use Title IV–E funds for a broader array of services, not just foster care placement.
3. Provide an option for states to increase access to Title IV–B funds by paying a higher state match for dollars above the basic IV–B allocation.
4. Bring Title IV–E eligibility rules into the new century by de-linking from the old AFDC program.
5. Provide federal funding for guardianships to enhance permanency options for children.

We discuss each of these recommendations in greater detail below.

1. Maintain Entitlement Funding for Title IV–E

CWDA strongly urges that the IV–E entitlements be maintained. Foster care maintenance, administration, training, and automation funds should be kept as uncapped funding streams. Some reform proposals we have seen would place new restrictions on the growth of certain portions of Title IV–E, ranging from services to administration and training. Without strong assurances that funding will grow as needed rather than diminish over time, CWDA cannot endorse any proposal to cap or restrict funding for any aspect of the child welfare program, administration included.

We support the continuation of separate entitlement funding for the States Automated Child Welfare Information Systems (SACWIS), and appreciate that Representative Herger's draft bill does keep SACWIS funding open ended. Measuring the improved outcomes over time will continue to be an important element in reforming the child welfare system.

At a time when all states, including California, are entering into plans with the federal government to improve their child welfare outcomes, funding must be available to implement these plans. However, our mutual goals cannot be realized unless Title IV–E—in its entirety—is continued as a stable, dependable funding source. Eliminating the guaranteed federal funding for services and social work activities would make states reluctant to invest in the very programs that the Child and Family Services Reviews encourage them to create and expand, and that child welfare experts say are needed to prevent abuse and neglect, intervene appropriately in families where abuse and neglect are occurring, and achieve timely, permanent solutions for children.

CWDA's concerns about funding caps, block grants, or other limits on growth of funds is based on the following factors, which we urge the committee to consider in developing legislation to help states and counties improve the child welfare system:

Administration is the Cornerstone of Services to Children

Capping the Title IV–E administration entitlement is a short-sighted approach to the issue of improving outcomes for children and families. "Administration" is not an expendable set of office supplies; rather, it is the basic building block of services to children and families—the social workers. Federal, state and county (in California) administrative funds pay for the social work staff who respond to abuse and neglect reports, make recommendations to the court system, put together case plans for children and families, find foster parents or relative caregivers, ensure that individuals can access needed services, and work with parents and children to restore the family or develop a permanency option. Contact between trained social workers and the families and children involved in the child welfare system is the key element that all else in our system follows. If these most basic services and the primary staff resources were reduced through a cap or other limits on funding growth, the children we are charged with protecting would be in harm's way.

First, the social workers that states hire using Title IV–E administrative funds are the cornerstone of our child welfare system; if they continue to be overworked to the point of breaking, outcomes for children and families will suffer. Second, California counties are experiencing workload and funding shortages that would only be exacerbated by a cap on funding growth. Finally, many states are already under court order to enhance the services they provide to children and families and to reduce staff workload. It is conceivable that other states will be placed in similar situations in the future, which would be extremely difficult to predict in the funding growth formulas contemplated in the recent reform proposals.

While the word "administration" may connote expendable items like photocopiers and desks, in the case of the child welfare program, the primary element funded by the administration stream is the staff of social workers, who are the very essence of services to children and families. Case management—which includes comprehensive family and child assessments; family involvement in case planning; regular visits with children and families; referral, coordination, and monitoring of service delivery; trips to court to discuss the progress of each individual case; and other activities—is a critical part of how states fund the social work activities that are the backbone of child welfare. The federal outcomes being measured in the Child and Family Services Review depend in large part on the ability of social workers to meet with children and families, accurately assess their strengths and needs, and ensure that they receive necessary services to achieve safety, permanence, and well-being.

We note the inconsistency of organizations that oppose a cap on the placement services entitlement, yet recommend a cap in administrative funding, as the Pew Commission report does. In our view, to support reduction of administrative funds signals a patent misunderstanding of how the child welfare program operates, and how fundamentally intertwined the two funding streams are.

Caseload Growth and Funding Needs Are Not Predictable

In social services programs in which costs are linked to caseloads, growth in demand can be unpredictable and difficult to contain. In the 1980s, child welfare caseloads grew rapidly and unexpectedly due to a sharp rise in the use of crack. We are now experiencing increased service demand for children impacted by methamphetamine abuse. Caseloads also fluctuate with the public's perception of child safety needs, which swing between greater out-of-home placement and more family maintenance services. While we believe that increased prevention activities will help to reduce demand for foster care placement, we do not know how long it will take to reap the benefits of increased spending on upfront prevention. As your subcommittee heard from the state of Ohio at last year's hearing on the Bush Administration's child welfare proposal, even a five-year time horizon appears too short to realize the full benefits of greater flexibility in the use of federal funds.

While your bill would allow states to access the $2 billion Temporary Assistance to Needy Families program contingency fund under certain circumstances, the criteria that must be met in order to access the fund are so narrow that a state may not be able to receive funding even when it is dire need. An individual state would need to experience a caseload growth of at least 15 percent—in California, this would require an increase of well over 10,000 children in foster care—at the same time that the nation as a whole experience a 10 percent growth rate.

Further, caseload growth is not the only driver of increased funding needs. Court action may also drive funding needs in the future for many states. Though it has not yet occurred in California, many other states have been compelled by the courts to increase their staffing levels and expenditures for child welfare, after they were found to be severely inadequate. Given this precedent, other states are certainly at risk of similar action in the absence of increased funding for staff and services. We fear that it would be nearly impossible to predict future court action, thus making it extremely difficult to build this type of increase into any formula for growth in programs that do not already have such court orders.

Workforce Improvement Needs Must Be Met

Training funds should not be capped or included in a block grant to states. These funds are used to prepare social workers for the rigorous jobs of responding to abuse and neglect reports; working with the courts and other social service providers to create treatment plans for children and families; and achieving permanent solutions for children, ranging from reunification to guardianship to adoption. Including training funds in a block grant would ultimately force states to choose between services to children and training of staff—a choice that states should not have to make.

California, like other states, is experiencing a severe workload crisis. We face a shortage of trained social workers, inadequate funding to hire enough workers, and increasing caseloads for those workers who are on board. A comprehensive study of

child welfare workload in California counties released in 2000 confirmed what many had long believed: Our child welfare workers carry caseloads that are twice the recommended levels, making it difficult, if not impossible, for them to provide services beyond the basic protections to children and families.[1] Since that time, expectations and requirements have increased along with heightened public scrutiny of the system, while funding and staffing levels have fallen further behind. Quality social work is the stepping stone to good results for children and families. Now is not the time to limit federal funding for child welfare services in any way, especially in the administration of the program.

For all of these reasons, it is essential for the federal government to maintain its commitment to funding the most basic and vital support for children and families in our system, the social work staff who provide day-to-day services and case management.

2. Provide Flexibility to Use Title IV–E for Broader Services, Not Just Foster Care Placement

Past efforts to increase and improve services for children and families have been hampered by the ongoing lack of flexibility in the federal child welfare financing structure. Services to children and families in the child welfare system are funded through a patchwork of program dollars from numerous sources; the substance abuse, mental health, education, and medical care systems are major contributors. Counties couple these resources with funding received through federal Title IV–B, an allocation that is much smaller but more flexible than Title IV–E. Title IV–B funding can be used for a wide range of activities to protect and reunify families, but it is an insufficient allocation that most California counties exhaust in the first three months of each fiscal year. Counties are then left scrambling to piece together needed services for the remainder of the year.

The limited funding for preventive services and family supports continues despite the federal focus on outcomes that require the provision of these very services. The Child and Family Services Reviews are measuring states' ability to provide safe, permanent homes for children; provide preventative services to avoid the recurrence of maltreatment; provide proper physical and mental health services for foster children; and ensure appropriate educational services for children in their care. Title IV–E funds cannot be used for the vast majority of the services and supports that are necessary in order for states to perform well on these outcome measures.

Enabling states and counties to use Title IV–E funds in a more flexible manner would definitely lead to system improvements. If we could use Title IV–E funding to pay for mental health services and substance abuse treatment, for example, we could ensure faster access to these oft-needed services. It is estimated that parental substance abuse is a factor in two-thirds of the cases with children in foster care.[2] Similarly, as many as 85 percent of children in foster care have significant mental health problems. The incidence of emotional, behavioral, and developmental problems among foster children is three to six times greater than among non-foster children.[3] However, there are not enough programs and services to ensure timely access to services for children and their parents. When children and parents wait for mental health services or substance abuse treatment, their conditions worsen and become even more difficult to treat, making reunification less likely.

3. Increase Access to Title IV–B Funds

Increasing access to the more flexible Title IV–B funds would assist counties and states in providing the types of services allowable under the existing rules for this funding source. As an example, the Title IV–B allocation could be expanded for individual states by a maximum percentage each year, for a prescribed number of years. States opting into the increased mandatory allocations would agree to raise their matching rate from the current 25 percent to 50 percent for the additional federal funding. The result would be an expansion of the investments of both the state and the federal government in providing prevention, reunification and family support services. Each state would describe in its federally approved Child Welfare Services Plan how the additional IV–B funds would be spent. Participating states would be able to flexibly spend the additional funds to address their most pressing needs for family-based services.

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[1] California Department of Social Services (April 2000). *SB 2030 Child Welfare Services Workload Study: Final Report.* Sacramento, California.

[2] U.S. Department of Health and Human Services (April 1999). *Blending perspectives and building common ground: A report to Congress on substance abuse and child protection.* Washington, DC. Retrieved from http://aspe.hhs.gov/hsp/subabuse99/subabuse.htm

[3] Marsenich, L. (2002). *Evidence-based practices in mental health services for foster youth.* Sacramento, CA: California Institute for Mental Health.

From the federal perspective, an expanded IV–B program would dramatically increase the leverage and impact of each additional federal dollar expended on family and adoption support services, with states matching the federal allocation dollar for dollar, rather than providing one state/local dollar for each three federal dollars. From the state and local perspectives, public child welfare agencies would have increased flexibility to expand the delivery of family-centered services, as long as they are willing to make a substantial additional investment of non-federal funds. For California in particular, the IV–B expansion would play a critical role in supporting its ongoing child welfare system reform initiatives and facilitate implementation of the state's Program Improvement Plan (PIP). Within California and across the country, the IV–B expansion would be a win-win for state, local, and federal governments dedicated to improving outcomes for children and families.

4. Bring Title IV–E Eligibility Rules into the New Century

Currently, states receive federal financial participation only for children who are removed from income-eligible homes, a calculation that uses arcane and outdated eligibility rules from a program that no longer exists. The cost of care and services for children whose parents are poor yet don't meet the outdated criteria are the sole responsibility of the states and, in California, the counties. Yet we are federally required to provide the same services to these children and meet the same outcomes, without any federal assistance. It is widely believed that the receipt of federal funds should not be subject to a means test, and that the federal government should share in the cost of care for every child regardless of their parents' income. We recommend eliminating the AFDC look-back requirement, which wastes precious resources on the processing of unnecessary paperwork, so that our limited funding and social worker time can be focused on direct services to children and families.

To determine which children are eligible for federal Title IV–E funding, county staff must evaluate every child who enters foster care, using rules from the former Aid to Families with Dependent Children (AFDC) program that was discontinued in 1996. Because the foster care income eligibility rules have not been updated in almost a decade, the number of eligible California children has dropped over the past several years. Between 1999 and 2002, the number of foster children receiving Title IV–E funds in California dropped by 24.9 percent, and the proportion of the foster care caseload that was IV–E eligible was reduced by 7.85 percent.[4] This decline is expected to continue if nothing is changed, with the state and counties paying 100 percent of the costs for ineligible children. Other states are in a similar situation.

Federal funding should be available to children in need of protection regardless of their parents' income. The federal government should share in *all* of the services that states and counties are required to provide to abused and neglected children, not just children from the poorest families. If counties could use Title IV–E funding without "looking back" to outdated eligibility rules we would save administrative costs and direct those funds toward a broader group of families.

Proposals to eliminate the AFDC look-back in exchange for a lower federal matching rate have some merit, but their state-by-state impact must be fully analyzed. For example, each state has a different percentage of children eligible for Title IV–E, due to demographic factors that vary by state. Therefore, Congress should consider calculating the FMAP reduction for each state that opts in, rather than enacting one reduction for the entire nation. Additionally, we believe that the FMAP should not be reduced for administrative services under any circumstances. Given the significant financial crisis facing California and many other states, reducing the FMAP for administrative services would have the effect of eliminating social worker positions, rather than allowing those positions to be redirected into direct services for children and families. Depleting our underfunded and overtaxed workforce would surely weaken our efforts to improve outcomes in achieving required safety, permanence, and well-being for children.

5. Provide Federal Funding for Guardianships to Enhance Permanency Options

CWDA recommends that children for whom guardianship is the permanency plan retain Title IV–E eligibility, with maintenance subsidy payable to the guardian.

Many foster parents, both relatives and non-relatives, are hesitant to adopt because it requires the birth parent's rights to be terminated. To encourage relatives to enter into permanent guardianships for children as an alternative to adoption, the California Legislature created the Kinship Guardianship Assistance Payment Program, Kin-GAP, in 1998. Through Kin-GAP, juvenile dependency can be dis-

[4] U.S. House of Representatives, Committee on Ways and Means, *2004 Green Book.*

missed with legal guardianship granted to the relative, and the government no longer needs to intervene in the family's normal life. Participants receive monthly subsidies equal to the amount they would have received as foster parents, with a sliding scale based on regional costs and the age of the child.

Kin-GAP has successfully achieved permanence for thousands of California children who would have otherwise remained in foster care. When a family enters Kin-GAP, however, they become ineligible for federal funding under Title IV–E. This is inconsistent with the federal Adoption and Safe Families Act of 1997 (ASFA), which contained a number of provisions aimed at promoting adoption and permanent placement for children removed from their homes due to abuse or neglect. Because the federal TANF block grant has not received inflationary adjustments, the overall purchasing power of these dollars has been substantially eroded, and states like California will be re-evaluating their use of TANF funds for programs like Kin-GAP, potentially jeopardizing their continued success. Kin-GAP also cannot assist with non-relatives who assume guardianship of children, because of TANF funding rules.

While ASFA and its implementing regulations made substantial changes in state and local practices, the Act did not go far enough in recognizing that permanent placement with a relative is the most desirable outcome for many children, and that legal guardianship is a legitimate—and often preferred—means of achieving this permanency.

The subcommittee draft released at the hearing would permit subsidized guardianship as a waiver option for states. Our recommended solution, to allow children placed into guardianships to retain IV–E funding eligibility, is consistent with the recommendations of other organizations, and we urge you to include federal Title IV–E maintenance funding for guardianships in the committee legislation.

Conclusion

In summary, the County Welfare Directors Association of California urges Congress to maintain the uncapped funding of services provided to families and children through Title IV–E. In particular, we support the preservation of administrative activities as an uncapped entitlement. This funding stream is the basic building block of our child welfare system, as it funds the social workers who meet with children and families on a day-to-day basis, coordinate services among a patchwork of systems, and work with the courts to ensure that children find permanent homes in a timely manner. Training activities, automation, and foster care maintenance funds should also be kept as uncapped entitlement funding streams.

In order to meet the outcomes for children and families that we all desire to achieve, the use of existing service dollars should be made more flexible. This can be accomplished by opening the existing Title IV–E funds to broader uses and making the allowable uses of Title IV–E conform to the types of services and supports that states must fund in order to achieve the Child and Family Services Reviews outcomes for children and families. Another approach to provide flexibility is to increase funding provided through Title IV–B, the more flexible but more limited funding stream currently utilized for a range of needed services for families and children. On an optional basis, states could provide a higher matching rate, such as 50 percent instead of the current 25 percent state/75 percent federal matching rate, and, in turn, receive incremental funding increases.

We continue to encourage Congress to end the practice of paying federal funds only for those children who are removed from poor households, by de-linking eligibility. Regrettably, children from all walks of life and all income brackets are abused and neglected every day. The federal requirements for protecting and serving these children do not change as the household's income grows. Nor should the federal government's responsibility to pay its share of the services provided be limited to only the poor families in the child welfare system.

Finally, we strongly advocate for federal financing of guardianships, as we have seen the success of California's ground-breaking Kin-GAP program. As it is financed with increasingly scarce TANF dollars, the program's continued existence may be in jeopardy in future years. Congress should enact legislation to include funding for guardianships in the Title IV–E maintenance funding stream, and allow children placed into guardianships to retain IV–E eligibility.

Thank you again for the opportunity to weigh in on these important issues. The discussion of financing structures may seem arcane at times, but thoughtful and well-structured reforms are vital to children and families. States and counties need your help to improve the safety, permanence, and well-being of those we serve on a daily basis. We appreciate your continued attention to these matters and hope to work with you to structure a reform package that we can support.

Statement of Paula Duranceau, Benton City, Washington

I would like to see some major changes in the Child Welfare system of the United States! The system is destroying Families across America. We need to see accountability for corrupt caseworkers, commissioners, attorney generals, Gal=s Judges, etc. . . .

These people "build a case" based on LIES, and deception!!

We have been fighting for custody of our two nieces and nephew who are stuck in the "system" We have spent over $53,000 fighting since October of 2003. We had a VERY strong case and everything pointed to us getting our nieces and nephew, yet the state chose to give them to a foster family where the children have NOT done well!! My husband and I are licensed foster parents with a STATE approved pre-adopt home study that we had done to adopt these children. We proved we are willing, ready and capable of caring for these children of who we are VERY attached to. What more does it take???

Please take serious action, as our children and families are being destroyed daily by the system.

Thank you.

Statement of Cynthia Huckelberry, Redlands, California, and Sushanna Khamis, Yucaipa, California

OVERVIEW OF NEGATIVE IMPACT RELATED TO THE CURRENT CHILD PROTECTIVE SERVICE PROGRAM/REVISED:

Child Protective Services was designed to protect children and aid families that are in need of assistance in order to maintain the family unit. Unfortunately, today we are finding that C.P.S is targeting specific families with limited set budgets, where child removal is commonly practiced for personal financial gain. The lack of compassion exhibited by C.P.S caseworkers towards the impoverished children that they serve, further devalues their lives in the eyes of these caseworkers. Thus indicating, that a lack of understanding and caring related to the circumstances of these financially challenged families, creates further dissention, prejudicing these C.P.S workers from the very people they serve.

Within this document, the information provided will serve as an insight into the true source of the problems that plagues C.P.S today. Also, it will provide possible solutions that may be utilized to best serve a new restructured Child Protective Service Agency.

HOW C.P.S LEGALLY REMOVES CHILDREN FROM PARENTAL CUSTODY

C.P.S systematically removes children from their families, whom do not meet the criteria for removal, through vague and ambiguous interpretation of their own codes and policy and procedures. They are able to operate in this manner by selecting specific target groups.

The target groups that C.P.S has tagged are the poor, disabled, elderly, and the undereducated. Parents/guardians unfamiliar with the law, with limited or no financial means to secure impartial unbiased legal representation, blindly trust the courts. Therefore Child Protective Service is able to manipulate the court system to secure foster care or adoption status of these children for profit.

Example: Each child placed in foster care has an annual value of $30,000

More monies are available, up to $150,000 dollars per child, for those that meet the special needs criteria. After 24 months—during the concurrent foster care /adoption process, placement becomes final, where upon an $8,000 dollar bonus is dispersed to the county from the State. This bonus money is then divided amongst individuals that enabled the adoption process to be completed. This is not necessarily a positive solution for these children, but a personal financial gain to workers. Thus, this leads us to believe that some of the decisions made by C.P.S officials serve only as a means to enhance their personal budgets.

Upon removal, C.P.S creates a plan for reunification that is designed to promote the family's failure. These case plans do not allow the families the time needed to comply nor do they have the financial resources needed to meet the court assigned criteria. Unbeknownst to the families, the courts, lawyers, and C.P.S workers falsely interject foster care criteria when family criteria should be utilized. Workers may also place long-term program demands on the parents that purposely overrun the 24-month time period.

This then allows the state to complete the adoption process to outside individuals.

In other cases, failure to protect—WIC 300b was cited to obtain removal of the children, when the custodial parents acted protectively, in accordance to the law, after a crime was committed against one of their children. Currently all children from these cases remain in "protective custody" under the authority of C.P.S.

FAMILY COURT CUSTODY REMOVAL—PARENT ALIENATION SYNDROME

Let it be known, that Family Court officials regularly remove custody of children from one parent to another (usually mother to father), citing parent alienation syndrome. C.P.S agrees to serve as the tool to enable custody transfer, a corrupt process observed by the FBI. Where, in truth, caseworkers are never allowed to testify in family court under the cloak of C.P.S authority, due to possible misuse or conflict of interest related to the right to privacy laws. FBI Agent/Lawyer Brenda Atkinson—San Francisco can verify this information by calling her at (415) 553–7400.

Child Protective Service also submits false documentation so as to provide a supportive basis necessary to substantiate their decisions. Thus the truth is purposely obstructed altered or omitted to justify case plans.

In many cases, C.P.S has failed to investigate additional outside reports from various professionals and agencies such as children's physicians, police agencies, school system, etc.

WHY DOES CPS SYSTEMATICALLY REMOVE CHILDREN FROM THEIR FAMILIES AND PLACE THEM IN FOSTER CARE?

Since Clinton enacted the adoption and Safe Families act in 1997, this has lead to widespread corruption within the child Protective Services Agency and outlying neighboring agencies. By systematically removing children from predominantly poor families, C.P.S is able to secure foster care/ adoption status for these children with little or no parental encumbrance.

Thus C.P.S victimizes those families that have no means available, to properly investigate C.P.S corrupt activities directed at their family.

Since Federal and state matching funds generate the budget for C.P.S, the single means utilized to elevate the budget is to increase foster care and adoption caseloads.

Bonus incentives for adoptions are currently $8,000 per child. $4,000 is given to the foster parents and another $4,000 is placed in a general fund, to reward workers for completing their job duties. Workers in this county, state that they do not personally financially benefit from this fund. Thus it leads us to believe, that other neighboring agencies are benefiting form this fund, in return for deceptive practices that support C.P.S decisions.

BABY TRAFFICKING

False Allegations of drug abuse have been logged against mothers and their newborn infants as a means to place these infants into protective custody. The hospital staff has allowed C.P.S to remove infants (a hospital violation) prior to verification of blood and urine drug screen tests. C.P.S is mandated to secure verification of drug allegations via blood and urine results, prior to removing the newborn infant from the hospital. All cases known to us resulted negative for the mother and the newborn, but these infants were never returned, and were adopted outside of kinship.

In the past year, the FBI has arrested and imprisoned C.P.S workers who were actively involved in baby trafficking for profit. These C.P.S workers knowingly abducted infants from the hospital where they in turn networked them into legal adoption agencies. Augustus Fennerty, FBI director for Crimes against Children (Washington D.C) can verify this information. (202) 324–3000

CHILD SEX TRADE INDUSTRY

Southern California FBI District has videotape recorded CPS workers placing foster care children onto planes via LAX, destination Europe for child sex trade industry. This can be verified through Ted Gunderson, (retired) FBI Director Southern California (310) 477–6565.

SEXUAL VICTIMIZATION IN FOSTER CARE

For the families in relation to our group in San BernardinoCounty, it has come to our attention while comparing similarities, that approximately half the children in foster care have been molested.

These children were not sexually abused by their parents, but by the foster fathers or others in the foster home. It was also noted that these foster homes are still operating in the same capacity prior to complaints, without any investigation

into these allegations. C.P.S officials were made aware of these accusations by the children, but failed to follow through with a criminal investigation.

In conclusion, Child Protective Service is nothing more than an "oasis" for child molesters, to make a profit, while at the same time committing a crime, only to be protected by a malignant system that delivers a never ending supply of victims

SYSTEMATIC FRAUDULENT MANEUVERS UTILIZED TO ENHANCE C.P.S BUDGET

- C.P.S manufactures multiple nonexistent /fictitious abuse case scenarios to offset true statistical abuse case information.
- C.P.S concurrently processes these children from foster care to adoption, in order to obtain perverse monetary incentives in the form of bonuses.
- C.P.S provides a market to neighboring agencies and the courts (commissioners, psychologists, monitors, court mandated behavioral class instructors, court appointed legal counsel), in order for them to financially benefit from the foster care/adoption system.
- C.P.S victimizes innocent impoverished families, draws them into a corrupt system to utilize their children as pawns for commerce.

MALICIOUS OPERATIVE TECHNIQUES

- C.P.S is utilized by family court officials, as an adverse tool to extricate children from one parent to the other, with reference to "parent alienation syndrome".
- Where, in truth, caseworkers are never allowed to testify in family court under the cloak of C.P.S authority, due to possible misuse or conflict of interest related to the right to privacy laws.
- C.P.S utilizes coercive measures to persuade parents to submit to statements of prior alleged abuse, when these actions were nonexistent. In other words, forcing desperate parents to "plea bargain" to a C.P.S fabricated crime, for the return of their children from foster care.
- C.P.S fabricates portions of investigations, where such duties have never been physically performed, to purposely mislead or direct a case.
- C.P.S knowingly abandons children into foster care, conscious of the fact that some foster care parents and or individuals in the home physically and sexually abuse the children in their protective custody.
- C.P.S intentionally fails to prosecute parents accused of child abuse, since in the majority of cases, no initial crime has been committed.
- C.P.S represents themselves in positive personas, by omitting, altering, and falsifying documents, so as to mislead the public and or government of their true actions as listed above. Thereby publicly grandstanding, displaying an inaccurate social martyrdom for the well being of children.
- C.P.S ignores crimes committed in foster care, such as the atrocious acts of unexplained deaths.
- C.P.S fails to question these individuals for their abusive conduct, whereby, if it were not a foster care parent, these individuals would be prosecuted to the fullest extent of the law.

SHOULD CHILD PROTECTIVE SERVICE BE RESTRUCTURED?

The police should determine if a child has a true need for protection from his parents, since child abuse is a criminal offence. Thus, C.P.S should be incorporated with Crimes against Children Units that are currently located within police, sheriffs and FBI agencies.

The merging of the two would reduce the amount of false allegations reported, since complaints made to a police unit is a criminal offence. Also, the police have the training and resources needed to conduct a thorough investigation. This allows them to determine that if a crime has been committed that warrants the need for foster care.

A parent/guardian under the suspicion of the crime "Child Abuse" would meet the criteria for removal. This would activate the foster care system. Only then would the foster care system be utilized as a response to a possible or suspected crime.

Thus in turn, this would eliminate the unnecessary utilization of the foster care system that has been grossly misused in the past. Unwarranted victimization of children and their families would be greatly reduced and soaring costs would be contained. This would minimize the number of future cases that fall through the cracks and get lost in the system.

WHAT ROLE SHOULD THE SOCIAL WORKERS PLAY IN THE NEW CHILD PROTECTIVE SERVICE?

- All caseworkers must have a bachelor's degree in social work from an accredited college.

- All states must create bachelor level licensing for social workers.
- All workers must have a current license to work within any state or county in the United States with reciprocity.
- All social workers must have a preceptor for at least three months prior to individual casework.

WHO SHOULD BE A MEMBER OF THE CHILD PROTECTIVE SERVICE TEAM WITHIN THE CRIMES AGAINST CHILDREN UNITS?

Other members from various agencies should be inclusive to this unit, since they bring their specific expertise to complete a proper investigation. It is our opinion that the following individuals who should comprise this team are as stated: Registered Nurse, School Principal, Detective, and Social Worker.

SHOULD AN OUTSIDE AGENCY SYSTEMATICALLY REVIEW THE CHILD PROTECTIVE SERVICE TEAM'S PERFORMANCE?

All agencies must have an outside quality control board that monitors case investigations on a random basis and when requested by the public. This Board must include members similar to the Child Protective Service team, with the addition of an individual from the public. No member may be employed more than three years, to maintain the integrity of the boards' unbiased decisions.

SHOULD WE MAINTAIN A CHILD ABUSE INDEX LIST?

The child abuse index list shall be maintained only when an individual has been prosecuted and convicted by a court of law for a crime against a child. Today's said list shall be destroyed, so as to prevent harm to those currently listed who have been accused of a crime against a child, but that have never been prosecuted or convicted. And, children should never be placed on any list that would categorize them in an adverse manner, such as this.

SHOULD THERE BE NEW RULES AND REGULATIONS RELATED TO FOSTER CARE?

There should be a limited number of children allowed to be placed in any single home under foster care, including adoption. No single family shall be allowed to adopt or provide foster care to more than two children at any time. The only exception shall be when siblings number more than two and are placed in the same single dwelling. This will eliminate the financial incentive for monetary gain related to housing foster children and adoptions.

Redlands, California 92373
Yucaipa, California 92399
July 12, 2004

U.S. House of Representatives
Washington, DC 20515–0542

To our Honorable U.S. House of Representatives,

It is unfortunate that Child Protective Service officials have mislead the government into believing, that increased funding is necessary to solve the multitude of problems that encompass C.P.S. This agency is utilizing the funding issue as the scapegoat for their problems, when in actuality the workers themselves, the lack of their personal accountability, are the source of the problem. Further funding will not solve C.P.S'S current crisis, only the restructuring of this agency will provide a solution.

Sincerely,

Cynthia Huckelberry
Sushanna Khamis

Statement of Tracey Feild, Institute for Human Services Management, Baltimore, Maryland

Reforming Child Welfare Financing[1]

Introduction

The current debate on what is wrong with child welfare funding is focused primarily on the lack of flexibility in the federal Title IV–E program. State policy makers complain that Title IV–E reimburses states for a portion of the cost of keeping a child in out-of-home care, while excluding reimbursement for the cost of services to prevent removal from the home or to expedite reunification. The interim report from the Pew Commission on Foster Care stated that:

The vast majority of dedicated federal child welfare funds—Title IV–E—can only be accessed by states once children have been removed from their families of origin. . . . As a result, states' ability to invest in prevention or in alternatives to foster care is limited.[2]

This criticism of the Title IV–E program, however, is misguided. The real problem with child welfare funding is the Medicaid program, or to put it more precisely, state implementation of the Medicaid program. This paper will argue that the real culprits in the child welfare funding dilemma are state budget directors, and Medicaid and behavioral health administrators and policies. The paper offers recommendations for statutory change that could address the child welfare funding problem within the context of both Title IV–E and the Medicaid program.

Federal Assistance for Child Welfare Costs

The Adoption Assistance and Foster Care Act of 1980, Title IV–E of the Social Security Act, offers federal matching reimbursement for foster care and adoption subsidy costs to assure that children from low-income families, who must be removed from their homes, will have federal support for board and care costs and case management services. Other federal programs address the need for other services. These programs include:

- Medicaid: for health care and therapeutic services;
- Social Services Block Grant (SSBG): for social services to children and families;
- Title IV–B: for a full range of child welfare services;
- Temporary Assistance to Needy Families (TANF): used in child welfare for emergency services, relative support, other family stability services as defined by each state.

These four programs are the primary sources of federal funds used by states to pay for services to abused and neglected children. Given this range of federal programs, and the flexibility offered through the Social Services Block Grant and Title IV–B, the question becomes: Why would more flexibility be needed or desired? The simple answer is that while Title IV–E and Medicaid are entitlement programs, meaning the federal government guarantees it will share in the cost of allowable services for eligible children regardless of spending levels, the SSBG, Title IV–B, and TANF are not.

The SSBG, Title IV–B, and TANF have fixed allocations. The SSBG was "capped" in 1972, and Title IV–B has always had a fixed allocation. Federal funding for the SSBG was $2.4 billion in 1982; in 2004, the appropriation was $1.7 billion. Because it is a "generic" social services program, available for a wide range of services (e.g., child welfare services, services for the elderly, mental health services, services for the developmentally disabled, etc.), it has been particularly vulnerable to federal budget cuts.

Title IV–B funding, available for a wide range of child welfare services, has had a three-fold increase over the same period, but the total allocation in 2004 was only about $700 million federal, making it a minor player in child welfare funding overall. Relative to Title IV–E spending, at close to $7 billion federal in 2004, Title IV–B is little more than a gap-filler.[3]

Flexibility and the Title IV–E Program

Several years ago, the Title IV–E waiver program was instituted by Congress to allow states to experiment with using Title IV–E more flexibly in order to test innovative approaches to child welfare service delivery and financing. The states were

[1] This statement is excerpted from: Tracey Feild, "Medicaid: The *Real* Problem with Child Welfare Funding," Baltimore, MD: Institute for Human Services Management, April 2004.

[2] G. Hochman, A. Hochman, J. Miller, *Foster Care: Voices from the Inside,* Washington, D.C.: The Pew Commission on Children in Foster Care, March 2004, p. 26.

[3] *Child Protection Report,* Vol. 29, No. 25, December 18, 2003, page 197.

allowed to design and demonstrate a wide range of approaches to "reform" child welfare and improve outcomes in the areas of safety, permanency and well-being. The reason these waivers were instituted was because of state child welfare administrators' concerns that Title IV–E was too categorical, and was simply too rigid to allow for innovation in improving child welfare outcomes. To date, some 25 demonstrations have been developed in 17 states.

Due to implementation problems, and problems with the various program and research design efforts intended to test the effectiveness of the innovations, results of these demonstrations have been somewhat inconclusive. However, the Illinois Department of Children and Family Services has successfully demonstrated through its Title IV–E waiver that using Title IV–E funds to pay caregivers (primarily relatives) monthly stipends to care for children as legal guardians in an "assisted guardianship" program, rather than as foster or adoptive parents, has improved permanency beyond what would have been expected without the program.[4] Interestingly, the assisted guardianship program uses Title IV–E funds to pay primarily for board and care, an already allowable IV–E expense, but to a caregiver who is not currently an allowable category of caregiver under the Title IV–E program. Without a doubt, if Congress amended Title IV–E to include this category of caregiver as an allowable expense within the program, overall permanency for children would improve.

Other waiver demonstrations used waiver flexibility to provide and fund services that are currently not allowable through the traditional Title IV–E program, including demonstrations in California, Colorado, Connecticut, Delaware, Illinois, Indiana, North Carolina, Ohio, Oregon, New Hampshire, and Washington. Among these states, all have used Title IV–E waiver flexibility, in part, to provide and/or pay for services that would prevent placement in out-of-home care, or would expedite reunification. A portion of Title IV–E waiver funds has been used to purchase therapeutic services that are allowable through the federal Medicaid program for children who are Medicaid-eligible. State child welfare agencies have been using waivers in order to pay for services through the Title IV–E program that should be, but are not available through the Medicaid program.

Child Welfare's Unmet Needs

Research undertaken in the last 20 years on the effect of abuse and neglect on brain development, mental health, socialization, and school performance demonstrates the negative impact of abuse and neglect on child development and mental health. There is a substantial body of evidence showing that children who have been abused or neglected are at risk for a range of psychopathological outcomes.[5] The fact is that abused and neglected children, by virtue of being abused or neglected, have a medical need for therapeutic services that is different from the general population.

Additionally children who enter foster care are more likely than children in the general population to be in poor health. According to the AmericanAcademy of Pediatrics, "Compared with children from the same socioeconomic background, [children in foster care] . . . suffer much higher rates of serious emotional and behavioral problems, chronic physical disabilities, birth defects, developmental delays, and poor school achievement."[6] The U.S. General Accounting Office found that, "Foster children are among the most vulnerable individuals in the welfare population. As a group, they are sicker than homeless children and children living in the poorest sections of inner cities."[7]

A group of mental health researchers concluded that:

The risk factors and high incidence rate of psychopathology among children in foster care placements necessitate concurrent attention to clinical needs and child welfare goals for permanency. *This dual directive suggests that the mental health needs*

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[4] The evaluation found the permanency rate in the demonstration group was 77.9%, while the permanency rate in the control group was 71.8%. a difference of 6.2%, which is significant at the 0.02 level. See Children's Bureau website: http://www.acf.dhhs.gov/programs/cb/initiatives/cwwaiver/ill.htm for highlights of the evaluation findings.

[5] Cohen, P., et. al., "Child Abuse and Neglect and the Development of Mental Disorders in the General Population," *Development and Psychopathology,* 13, 2002, pp. 981–999.

[6] American Academy of Pediatrics Committee on Early Childhood, Adoption, and Dependent Care. "Health Care for Children in Foster Care (Policy Statement RE9404)," *Pediatrics,* Vol. 93, No. 2, 1994, pp. 335–338.

[7] U.S. General Accounting Office, *Foster Care: Health Needs of Many Young Children Are Unknown and Unmet.* GAO/HES–95–114 (1995).

of children in care may be qualitatively and quantitatively different from the general population of children and necessitate specialized service delivery. (emphasis added)[8]

Given the overwhelming mental health and rehabilitative needs of the foster care population, a population that is 95 percent Medicaid eligible, one would expect that Medicaid services, both behavioral health and rehabilitative services, would be readily available to meet the needs of children disadvantaged primarily by their parents' actions or inactions. Remarkably, the Medicaid behavioral health system has generally failed to meet the therapeutic needs of the child welfare population.

Federal Medicaid Requirements

Federal Medicaid law supports, and even mandates the provision of services to children to address their primary and behavioral health care needs regardless of the preferences or constraints of the individual states. The failure of states to address the therapeutic needs of the child welfare population, in spite of federal law, is a function of a combination of the low priority given to the child welfare population and state Medicaid budget concerns.

One of the general principles of the Medicaid program is "comparability", meaning that all eligible clients must have equal access to services based on the medical necessity criteria established for each service. This principle is intended to insure that eligible clients have equal access to medical services across each state. Access to services can only be distinguished by a client's medical necessity for each service, which each state specifically defines within its Medicaid program. The concept of medical necessity is used to assure that only clients with a defined medical need for a service have access to that service. Unfortunately, the concept of medical necessity is also used to limit access to services, by making medical necessity standards for therapeutic services extremely narrow.

Narrowly-defined medical necessity criteria for therapeutic services tend to disadvantage any high risk group. Typically services are not available for *risk* of emotional problems or for *non-severe* emotional problems. Even though the risk of poor outcomes for the child welfare population is far greater than for the general Medicaid population, states have generally kept all children needing services in a single group for determining medical necessity. Services become available when a child has finally met the criteria for severe emotional disturbance. Even when services are available to a less severe population, waiting lists delay access to services or even access to evaluations needed to determine the level of need. Furthermore, available services are often limited to traditional office-based services that poorly suit the needs of the child welfare population.

Historically, special access to Medicaid services for abused and neglected children, or even the smaller subset of foster children, has been impossible to obtain through state Medicaid systems based on the inability of the child welfare system to produce any evidence that abuse or neglect itself, or the need to place children in out-of-home care, places children in a unique health risk category. Empirical evidence, however, now exists as discussed briefly above.

The federal Medicaid program was designed to meet the health care needs of low income individuals, and since 1989, was intended to meet the specialized needs of children *regardless* of limitations imposed by the individual states. Fifteen years ago, the Congress added language to the provisions of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program to assure that children with health needs, including mental health needs, receive treatment for those needs, even if a state's Medicaid program did not cover those specific needs. The Omnibus Budget and Reconciliation Act of 1989 (OBRA'89) amended Sections 1902(a)(43) and 1905(a)(4)(B) and created Section 1905(r) of the Social Security Act setting forth the basic requirements of the program. Under EPSDT:

The Act requires that any service which [states] are permitted to cover under Medicaid that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen, must be provided to EPSDT participants regardless *of whether the service or item is otherwise included in [a state's] Medicaid plan.*[9] (Emphasis added.)

This section of the Social Security Act make it clear that costly therapeutic and rehabilitative services needed by Medicaid-eligible children in the child welfare system should be available and provided and federally reimbursed through the Medicaid program. But they are not, in spite of the provisions of EPSDT and in spite of the federal reimbursement available for those services.

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[8] Berson, I., et.al. *Mental Health Care for Child Welfare Clients: Final Report,* Tampa, FL: Louis de la Parte Florida Mental Health Institute, University of South Fl., 2002.

[9] From the *State Medicaid Manual,* Center for Medicare and Medicaid Services, April 1990, page 5–5.

State Medicaid Response to Child Welfare Needs

In any state, access to federal Medicaid funds is controlled primarily by the availability of non-federal matching funds. Matching funds can be comprised of state and/or local public revenue funds. Because of the spiraling growth of state Medicaid budgets, access to federal Medicaid funds, in spite of federal statutory language guaranteeing access to needed services for children, is often limited by the availability of matching funds.

State budget directors, at the very least, typically view all expansion of Medicaid services as cost increasing. Hence in some states, the implementation of the EPSDT provisions beyond basic health screening, immunizations, and primary health care has been perfunctory at best. Screening processes that could identify the need for therapeutic services have not been widely implemented. A recent study found that "23 states have no specialized behavioral health screening tools and no behavioral health questions or prompts in their [EPSDT] comprehensive screening tools."[10] Without specific behavioral health screening tools, it is likely that most mental health problems, particularly in young children, would not be identified in an EPSDT screen.

The lack of specific mental health screening tools seems to represent an assumption that mental health problems not identified will not have to be treated, and therefore, will not incur costs. The cost saving nature of failing to install specific mental health screening tools in order to identify mental health problems, however, ultimately seems short-sighted and perhaps short-lived, since untreated mental health problems may simply worsen until they become obvious and more costly to treat.

State Medicaid administrators, like it or not, are often put in the no-win position of trying to control spending, at the expense of meeting eligible children's *federally mandated* behavioral health care needs. For the general population, denying access to Medicaid for needed behavioral health services means that eligible children likely will not get the service. Some children will improve without the service, some will get worse. Again, the untested assumption is that waiting to serve just those clients who get worse would be less costly than serving all clients with needs identified early. While this assumption may or may not be true in general, it does not work for the child welfare population.

The child welfare system has an obligation to provide needed services for the child welfare population, particularly the custody population, regardless of federal funding availability. If a child needs costly residential treatment, the child welfare system is obligated to provide it regardless of whether or not Medicaid reimburses the cost. Therefore, preventing access to Medicaid for the child welfare population means that the service will be paid from capped federal funds, or state/local funds only.

What state elected officials and policy makers consistently fail to recognize is that preventing child welfare access to federal Medicaid reimbursement for services the system *will pay for anyway,* as part of the custodial obligation, only serves to save *federal* dollars—the state actually spends more general revenue funds by spending state or local funds without benefit of federal reimbursement, or by spending capped flexible federal funds that could be used for less costly family-based social services. If the therapeutic services will be provided to children in the child welfare caseload anyway, it makes more sense to access federal Medicaid reimbursement for a portion of the cost than to rely solely on state, local or limited flexible federal funds.

Fundamental Differences between State Behavioral Health Goals and the Child Welfare Mandate[11]

Access to behavioral health services is typically routed through a state's behavioral health system. The goal of most state behavioral health systems is to provide a level of services that can achieve an acceptable standard of care for the most people, while keeping within the agency's budget. And with this approach comes the trade-off between access to services and limits on services. This goal, while reasonable for the general population, is in direct opposition to the mandate of the child welfare system, which is simply to meet the mental health needs of the child welfare population. The child welfare system, particularly when acting as parents to children in custody, cannot pick and choose who will get therapeutic services and

[10] R. Semansky, et.al. "Behavioral Health Screening Policies in Medicaid Programs Nationwide," *Psychiatric Services,* Vol. 54, No. 5, May 2003, p. 737.

[11] The term "behavioral health" is meant to include both mental health and substance abuse services, which, depending on the state, can be together in a single agency, or in separate agencies—one for mental health and one for substance abuse.

when, based on diagnoses, based on the likelihood of treatment success, or based on funding levels.

Behavioral health administrators, while recognizing that Medicaid is a fundamental part of their statewide behavioral health program, typically see their mission as serving those with behavioral health needs *regardless* of Medicaid eligibility. Therefore the system is automatically limited not only by availability of non-federal matching funds for Medicaid-eligible clients, but by what the state/ local government can afford without benefit of *any* federal reimbursement for those who are not Medicaid-eligible.[12] The behavioral health service array and access to services are highly controlled by these funding constraints. Programs are designed that include inpatient care and outpatient counseling, with varying levels of service in between, depending on available funds. Definition of medical necessity for each service is carefully controlled, allowing limited access to basic services for all with some level of need, but allowing access to intensive services to only those most in need. Many child welfare clients fall just short of the criteria that would allow them access to intensive services, and are therefore left with the same limited access to basic services, including long wait lists, as the general population.

Often, for mental health services, intensive services are limited to seriously mentally ill adults and severely emotionally disturbed children; while those with lesser needs may only have access to outpatient counseling. Services require Medicaid match for eligible recipients, and use funds without benefit of federal reimbursement for those who are not eligible for Medicaid. Moreover, some states have passed on the obligation to provide and control behavioral health services and costs to managed care contracting entities, which may give limited attention to the contractors' performance in the area of at-risk children.[13] Finally, since the system is designed to meet the behavioral health needs of all of the state's citizens, and because of funding limitations, the systems typically are limited in how well they can meet the needs of any one client. The result is that behavioral health administrators are often forced to choose between adults and children, and/or between the high need population, which includes the child welfare population, and the general population.

While OBRA'89 established an entitlement for services for Medicaid-eligible children, most states are not willing to create separate benefit packages for Medicaid-eligible and non-Medicaid-eligible children. Therefore, behavioral health administrators create a single array of services, with a single set of medical necessity standards. Because many children needing behavioral health services are not Medicaid-eligible, and may in fact, have inadequate private health insurance, the state often cannot afford more than a very basic behavioral health program. But this strategy makes sense from a behavioral health system point of view: At least some behavioral health services are available to all in need.

In order to address funding limitations, state and local behavioral health agencies are forced to implement strategies that limit access to services. Through these mechanisms, all children, both Medicaid-eligible and non-Medicaid—eligible children are prevented from accessing adequate and appropriate therapeutic services in a timely way. The effect of limiting access to these services for the child welfare population is that either Medicaid-eligible children do not get the services they need (or do not get them timely), and/ or the child welfare system is forced to pay for these Medicaid-allowable services out of 100 percent state or local funds, or from their limited, capped, flexible federal funds.

While some behavioral health administrators have embraced the child welfare population, there are many who view the child welfare population as an unwanted drain on their limited resources, rather than the most needy and "at risk" target for their resources. Behavioral health administrators encounter the same fiscal roadblocks to expanding access to services as other agencies, and rarely find their needs are a priority for Medicaid or other budgetary increases. When there is support for increases in behavioral health budgets, community support for such increases is often focused on the more visible, de-institutionalized, seriously mentally ill adults, rather than children. When there is pressure to increase services for chil-

[12] State behavioral health agencies have federal Community Mental Health Block Grant funds that total less than $500 million nationally, may have access to federal SSBG funds, and have state and/or local funds.

[13] For more discussion of managed care impact on mental health services for children and youth and the child welfare population, see: I.R. Berson, et. al., *Mental Health Care for Child Welfare Clients:* Final Report, Louis de la Parte, Florida Mental Health Institute, University of South Florida, July 2002, and J. McCarthy and C. Valentine, *Tracking State Managed Care Reforms As They Affect Children and Adolescents with Behavioral Health Disorders and Their Families,* National Technical Assistance Center for Children's Mental Health, Center for Child Health and Mental Health Policy, Georgetown University Child Development Center, December 2000.

dren, behavioral health administrators tend to rationalize a choice for serving the general population of children rather than the child welfare population, based on their understanding that the child welfare system is obligated to meet the therapeutic needs of the child welfare population. Therefore, the reasoning goes, behavioral health resources can be spent on children who are not a part of the child welfare system. Unfortunately, this choice can result in the elimination of federal Medicaid reimbursement for at least a portion of the substantial level of therapeutic services that is provided (or should be provided) to the child welfare population.

Medicaid and behavioral health administrators tend to assume that growth in behavioral health service utilization among child welfare clients represents over-utilization of services rather than: (1) increased need for therapeutic services, (2) increased recognition of need for therapeutic services, or (3) increased understanding by child welfare administrators and providers of how to access Medicaid reimbursement for therapeutic services that previously had been provided without benefit of Medicaid reimbursement. This erroneous belief results in extra efforts to limit services to the child welfare population. Examples of discriminatory attitudes toward the child welfare population, and high need populations in general, are too numerous to describe here. But all are effective strategies for curtailing behavioral health and Medicaid costs (both federal and non-federal). However, they also serve to restrict access to services altogether. While these strategies may be a politically acceptable way to ration scarce resources for the general population, a substantial body of research documents that children in the child welfare system, particularly those in custody, are at very high risk of poor mental health and developmental outcomes. These cost containment strategies only serve to exacerbate their already high risk of poor outcomes. Particularly for children in custody, each state has an affirmative obligation to meet children's therapeutic and rehabilitative needs. Allowing these needs to go unmet because resources are scarce represents a failure to fulfill the custodial obligation.

The federal government's Child and Family Service Reviews document the failure of state behavioral health systems to meet the therapeutic needs of the child welfare population. Of the 40 completed state reviews, only two states (5%) met the federal standard of 90 percent of children with mental health needs being adequately assessed and provided needed mental health services.[14]

Had the reviews measured only access to, and receipt of Medicaid-reimbursed behavioral health services for Medicaid-eligible children, it is likely that a smaller percentage of cases would have achieved "substantial compliance" in many jurisdictions. Because of problems accessing quality or timely services through Medicaid, many jurisdictions use block grant funds, capped federal funds, all state funds, local funds, or child welfare provider donations to cover the cost of the therapeutic services. Medicaid-allowable therapeutic services provided to Medicaid-eligible children *funded with other than Medicaid funds* helped states achieve the compliance levels they did achieve in the federal reviews.

Fixing the "Child Welfare Funding Problem

Child welfare administrators, clamoring for more flexibility in Title IV–E, do not understand that the Medicaid program, *by federal law,* should be addressing the service needs they cannot figure out how to meet within their existing fund sources. And because of their own pressures, both state Medicaid and state behavioral health administrators have not been helping them address their unmet needs.

To a state's behavioral health system, Medicaid is a service program; to a state's child welfare system, Medicaid is a fund source. The goal of the state child welfare system should be to maximize federal revenues *for services it will provide anyway because of the custodial obligation;* while the goal of the behavioral health system is to scale the service system to its budget. As long as the behavioral health system successfully achieves its goal, the child welfare system's goal can never be met, because there will always be Medicaid-allowable services for Medicaid-eligible clients that fall outside of the program defined by the state behavioral health system's budget. The only viable solution, given state budgetary limitations, is to separate the child welfare therapeutic services program from the state behavioral health service system. Separating therapeutic services in the two systems would allow child welfare:

- To maximize federal revenues for needed services, and

[14] For an indepth analysis of the states' performance through 2002, see J. McCarthy, A. Marshall, M. Irvine and B. Jay, *An Analysis of Mental Health Issues in States' Child and Family Service Reviews and Program Improvement Plans,* Washington, D.C.: National Technical Assistance Center for Children's Mental Health, Georgetown University Center for Child and Human Development, April 2004.

- To use its non-federal funds to match either Medicaid for therapeutic services or Title IV–E for board and care, or both as needed.

The narrow vision of state child welfare administrators in identifying the "problem" as a Title IV–E problem is understandable. Title IV–E, along with its required non-federal match, is the most significant fund source in the system. It is "their" program. Medicaid is not their program; not a program in which their input is sought or desired. Relative to nursing homes, hospitals, pharmaceutical companies, and the like, child welfare is little more than Cinderella asking permission to attend the ball. With few exceptions, the needs of the child welfare population carry little weight or priority with state Medicaid directors.

The solution to the "child welfare funding problem" involves two minor corrections in the Title IV–E program, increases in the Title IV–B program, and the creation of a new Medicaid program. Regarding Title IV–E, two corrections should be made:

1. Federal reimbursement should be allowed for children placed with legal guardians (assisted guardianships); and
2. Eligibility for Title IV–E should be de-linked from 1996 AFDC eligibility standards, and shifted to annually-determined federal poverty standards, or other related measure for each state.

The two recommended changes would update eligibility standards and add a proven-successful permanency option, while maintaining the categorical, and more importantly, the entitlement nature of the Title IV–E program.

Of more significance to the overall well-being of children and families served through the child welfare system are changes in the federal Medicaid program. A separate sub-program of therapeutic and rehabilitative services specific to the states' custody population, or those at risk of custody due to abuse, neglect, dependency, or delinquency should be created within each state. Given the unique medical necessity of the children in this category, based on their uniquely poor chances of having positive long-term developmental, emotional and educational outcomes, this service program could be created within Medicaid *under current federal law*. However, because of child welfare's limited access/clout/priority with state Medicaid systems, because of child welfare administrators' limited understanding of federal Medicaid law, and because of state policy makers' overall attitude toward any growth in the Medicaid budget (even if growth in Medicaid saves state funds elsewhere), this has happened in only a few states.

Under this proposal, the federal government would mandate that a child welfare therapeutic and rehabilitative services program be designed and defined by the Title IV–E single state agency, with input from the state Medicaid and behavioral health administrators. Public input from clients, providers, and advocates should be required and documented as well. The service array, the medical necessity criteria for each service, the provider qualifications for each service, the units of service, the rate setting process, the payment levels for each service, and the quality assurance and audit procedures would be determined and undertaken by the Title IV–E single state agency. All of these details would be submitted in an amendment to each state's Medicaid plan, and would become part of the each state's Title IV–B plan as well.

Under this plan, child welfare administrators could be assured that:

- The Medicaid service array met the needs of their population, and included community-based, culturally-relevant, in-home therapeutic and rehabilitative services for children and families;
- Services were delivered by clinicians with expertise in abuse/neglect issues;
- Services would be reimbursed at levels adequate to attract qualified providers;
- Units of service were reasonable to require only appropriate levels of documentation;
- Audit procedures were designed to address problems and control fraud, rather than simply to reduce utilization through intimidation.

For those who believe that the cost of such a program would be prohibitive, remember that non-federal matching funds in child welfare systems are always limited. In fact, there are a number of states in the south that do not fund all Title IV–E allowable services through Title IV–E because they do not have enough matching funds available, but the requirement for match is critical to their budget processes. Each state's child welfare therapeutic program would be geared toward its individual service needs. But growth in the non-federal match included in each agency's budget could be funneled into board and care (Title IV–E) *or* therapeutic services (Medicaid), both with federal reimbursement, depending on the need. The intent of this program is to allow states to use their non-federal matching funds to match

either Medicaid or Title IV–E, thus providing federal reimbursement for therapeutic services to prevent placement, to expedite reunification, or to reduce the level of substitute care to a more homelike setting.

Rather than use Title IV–E waiver funds to pay for Medicaid-allowable services for Medicaid-eligible children, states would use Medicaid funds to pay for these services, and use non-federal match funds to match Medicaid rather than match Title IV–E. This step would free flexible federal funds and state/local funds to pay the cost of social services, and to pay for the cost of services for clients who are ineligible for Title IV–E or Medicaid.

Title IV–B is the program intended to reimburse the cost of home-based child welfare social services, and could be used to pay for services to prevent placement and expedite reunification for children and parents who are not eligible for Medicaid. But it cannot make a dent in meeting these needs at current funding levels and should be increase

Conclusions

Title IV–E is not the problem with child welfare funding; lack of access to Medicaid services is the problem. If all of the federally Medicaid-allowable services for Medicaid-eligible clients currently funded by flexible but limited federal funds, or by 100 percent state/local funds were shifted to Medicaid, flexible federal and state/local funds would become available within child welfare budgets to pay for the cost of social services, and for the cost of services for federally-ineligible clients. Furthermore, increases in federal spending in Medicaid due to this change would be controlled by the availability of non-federal matching funds. While states would increase their federal Medicaid revenues for the new child welfare services, they would decrease their federal Title IV–E revenues for the concomitant reduction in board and care costs. The overall bottom line spending for child welfare would only increase through the usual state/local budget processes. Child welfare systems would be able to leverage federal funds to gain local match for badly-needed therapeutic and rehabilitative services, which, because of limited access to Medicaid services, are currently being supplemented through flexible federal and all-state/local funds.

Statement of William Grimm, National Center for Youth Law, Oakland, California

Chairman Herger and other Distinguished Members of the Subcommittee on Human Resources: Thank you for consideration of our written testimony on **Mental Health Services for the printed record of the Hearing to Examine Child Welfare Reform Proposals.**

Founded in 1970, The National Center for Youth Law (NCYL) is a non-profit law center that through enforcement of federal and state laws seeks to improve the lives of low-income children. NCYL attorneys and support staff focus their work in four areas: safety and protection of abused and neglected children, economic security, health and mental health care, and juvenile justice. The Center has played a key role in expanding access to federally funded health care services and other public benefits for low-income children and families, addressing deficiencies in the foster care system, improving child support enforcement, and helping teenagers in the juvenile justice system. We also have extensive experience in conducting trainings, providing technical assistance, and publishing useful materials for foster parents, Court Appointed Special Advocates (CASAs), legal services and pro bono attorneys, and other child advocates.

I am currently counsel in *Braam v. State of Washington,* a case challenging conditions for children and youth in foster care in the State of Washington. Multiple placements of children in foster care, the failure to provide mental health care to those children, and the failure to provide foster parents with adequate support services are some of the issues in Braam.

During the last year we have analyzed many of the Final Reports and Program Improvement Plans completed as part of the federal Child and Family Services Reviews (CFSRs). Our published articles on the Reviews have included a critique of the process itself and detailed examinations of the findings on placement stability, preservation of sibling relationships, foster parent training, and foster parents' right

to notice and opportunity to be heard.[1] Our most recent article on the CFSRs examines findings on the provision of mental health services to child abuse victims and foster children by child welfare agencies.

The data provided by the Final Reports of the CFSRs lays bare the abysmal performance of state agencies in ensuring that children who are at risk of being removed from their homes and children placed out-of-home receive appropriate mental health care to address the exceptional psychological and behavioral problems these children experience. The severe scarcity of mental health services results in turbulence and uncertainty that has lasting consequences, for which children and families pay the price.

Deficient Mental Health Services: A Long Documented Concern

For the most part, the information provided by the CFSRs is not new or unprecedented. Problems highlighted by the Final Reports echo concerns long documented in research literature and other published materials. Without exception, studies of the health status of children in care identify the pervasive presence of emotional disorders as the most serious unmet health problem.[2] Several studies indicate that between 50 and 80 percent of children in foster care suffer from moderate to severe mental health problems, including socio-emotional, behavioral, and psychiatric problems warranting treatment.[3] The National Survey of Child and Adolescent Well-Being (NSCAW) recently indicated that nearly half of foster children have a clinical level of behavioral and emotional problems: 47 percent of children ages 6 to 11, and 40 percent of children ages 12 to 14.[4]

The higher prevalence of mental health problems among children in the child welfare system is the result of experiences and trauma associated with high-risk and often dysfunctional family settings, acute reactions to the trauma of being placed in foster care, and separation from the biological parent. While many of these problems likely have their roots in the underlying abuse or neglect that led a child into foster care in the first place, long and uncertain periods in foster care exacerbate poor outcomes.[5] Emotional problems may endanger successful placements, contribute to multiple placements, and place demands on the mental health system for services that are often not available.[6]

Nevertheless, even with documented high rates of mental health problems, it has been estimated that only about 25 percent of children in foster care are receiving mental health services at any given time.[7] The use of evidence-based treatments for foster children is very low, and the dominant focus of treatment is on sexual abuse and somewhat on physical abuse.[8] In spite of the clear evidence that the long-term effects of neglect are equally damaging, there is very little attention given to this issue. Data show that children with a history of sexual abuse are three times more likely to receive mental health services, while children with a history of neglect are only half as likely to receive treatment.[9] African-American and Hispanic children are least likely to receive services, and they typically need to display more pathology to be referred to mental health services.[10]

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[1] Bill Grimm & Isabelle Hurtubise, *Child and Family Services Reviews: An Ongoing Series, Part I: A Background to the Review Process,* Youth Law News, Jan.-Mar. 2003, at 1–11; Bill Grimm & Isabelle Hurtubise, *Child and Family Services Reviews: An Ongoing Series, Part II: An Examination of Placement and Visitation,* Youth Law News, Jan.-Mar. 2003, at 14–30; Bill Grimm, *Child & Family Services Reviews: Part III in a Series, Foster Parent Training: What the CFS Reviews Do and Don't Tell Us,* Youth Law News, Apr.-Jun. 2003. For copies of our quarterly journal *Youth Law News,* please contact the National Center for Youth Law at 510–835–8098 or visit our website at www.youthlaw.org.

[2] Child Welfare League of America, *Standards For Health Care Service for Children in Out-of-Home Care,* Child Welfare League of America, Washington DC (1988). at 2.

[3] DosReis, Zito, Safer, & Soeken, *Mental Health Services for Youths in Foster Care and Disabled Youths.* American Journal of Public Health. 91(7): 1094–99 (2001).

[4] The National Survey of Child and Adolescent Well-Being (NSCAW) is a longitudinal survey that collected information about a large number of children under age 15 who have had contact with child welfare services, including 1,279 children living in foster care homes in 2000.

[5] Barbell & Freundlich, *Foster Care Today.* Casey Family Programs: Washington DC, 2001.

[6] CWLA Standards of Excellence for Health Care Services for Children in Out-of-Home Care (1998) at 2.

[7] Halfon N, Berkowitz G, Klee L, *Mental Health Service Utilization by Children in Foster Care in California.* Pediatrics. 89 (6 Pt 2): 1238–44 (1992).

[8] John Landsverk, Ph.D., Children's Hospital San Diego, Proceedings based on the Surgeon General's Conference on Children's Mental Health: Developing a National Action Agenda (September 18–19, 2000).

[9] *Id.*

[10] *Id.*

In many cases, the lack of appropriate community mental health care leads to high use of emergency and hospital care or unnecessary costs to other systems. Children who need mental health treatment are not getting it early enough to prevent a host of adverse outcomes. When a child's behavioral and psychological problems go untreated, his/her prospects of attaining a safe, stable, and permanent home progressively diminish.

Children Receiving In-Home Services Least Likely to Obtain Mental Health Treatment

Failure of state and county child welfare agencies to meet the psychological and behavioral treatment needs of child abuse and neglect victims was a recurrent conclusion of the CFSRs. Through on-site case reviews, comprised of reading case files and interviewing children and families engaged in services, reviewers were to determine whether the mental health needs of children had been met. A meager four out of the 48 states for which final reports are publicly available achieved an overall rating of strength in addressing mental health of the child.[11] For the majority of states, representing a staggering 91% of child welfare agencies, mental health services were rated as an area needing improvement.[12]

In examining whether a child's mental health needs were met, reviewers analyzed whether (1) mental health needs had been appropriately addressed, and (2) appropriate services to address those needs had been offered or provided. Reviewers rated mental health a strength when they determined that the child's mental health needs were significantly or partially assessed and mental health needs were significantly addressed. When the agency failed to assess or address the child's psychological or behavioral needs, mental health was rated as an area needing improvement.

Our analysis of the CFSRs revealed that children at risk of removal who are receiving in-home services are considerably less likely than foster children to receive adequate psychological and behavioral treatment for their mental health needs. Taking the state reports together as a whole, mental health was rated a strength in 77.6 percent of foster care cases compared to 62.8 percent of in-home service cases.[13] In many states, the discrepancy between foster care and in-home cases is even more striking than this figure suggests. In New Jersey, for example, federal reviewers determined that the agency met the mental health needs of the child in 76 percent of foster care cases compared to 26 percent of in-home cases.[14] Similarly, California's Final Report included a "key finding" that the agency "did not pay sufficient attention to mental health needs of children in in-home cases."[15] Numerous Final Reports included comments from stakeholders voicing concern over critical deficiencies or barriers in accessing appropriate treatment for mentally ill children who were residing at home with their biological families.[16]

In other hearings before this subcommittee witnesses have expressed concerns about the amount of federal funds available for foster care in comparison to the much smaller amount for preventive services to families. When children who remain at home do not receive needed mental health services, their risk of entering the child welfare, mental health or juvenile justice systems increases substantially. A child welfare caseworker may encourage a family to voluntarily give up custody of their child in order to obtain state-funded services that are not available without the parent surrendering custody to a government agency. Services to treat severe mental health disorders are extremely expensive and private insurance tends to run

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[11] Delaware Final Report at 45, Iowa Final Report at 51, Kansas Final Report at 38, Utah Final Report at 42. Final Reports are available at http://www.acf.hhs.gov/programs/cb/cwrp/index.htm (last visited July 23, 2004).

[12] *Id.*

[13] These figures are calculated from data on the 48 states for which final reports are publicly available as of July 23, 2004. 15 states do not provide information by case-type, preventing comparison between in-home and foster care cases, including those for Arkansas, Delaware, District of Columbia, Florida, Indiana, Kansas, Massachusetts, Minnesota, New Mexico, New York, North Carolina, North Dakota, Oregon, Texas, and Vermont.

[14] New Jersey Final Report at 73. *See also* Utah Final Report at 43 ("The item was rated as a strength in 97 percent of foster care cases compared to 60 percent of in-home cases"); Washington Final Report at 46 ("The item was rated as a strength in 82 percent of the foster care cases compared to 45 percent of the in-home service cases.).

[15] California Final Report at 58.

[16] Alaska Final Report at 71–2; Arkansas Final Report at 39–41; District of Columbia Final Report at 55; Georgia Final Report at 33; Hawaii Final Report at 55–7; Louisiana Final Report at 59; North Carolina Final Report at 30; Oklahoma Final Report at 73; South Carolina Report at 58; South Dakota Final Report at 3; Washington Final Report at 46; Wyoming Final Report at 52.

out after a few months. Affected children are often ineligible for Medicaid because income or assets keep them ineligible. The US General Accounting Office (GAO) documented that in the fiscal year 2001 alone, approximately 3,700 children were placed into child welfare systems so they could access mental health services.[17] Moreover, this estimate is considered low because 31 states did not respond to the survey. Increasing numbers of children with mental or emotional disorders are unnecessarily and inappropriately dumped into the child welfare system. This system is not well suited or equipped to deliver the kinds of services these children need.

Nevertheless, the custody relinquishment tragedy is a symptom of a much broader problem. The separation of children from their families, *whether voluntary or involuntary,* that occurs when we fail to provide mental health services almost always carries with it a host of negative outcomes. What is more, entering the foster care system does not ensure that appropriate mental health services will be provided to a child in need.

Foster Children with Mental Health Needs Face Community Neglect

Once children are placed in foster care, the trauma of separation from their families and the experience of multiple moves can increase their vulnerability and compound their mental health problems. As demonstrated by the CFSR findings in mental health, children in out-of-home care frequently do not receive appropriate and individualized mental health treatment. Mental health was rated as an area needing improvement in 22.4 % of foster care cases.[18] This figure suggests that approximately one in four foster children are never assessed for mental health needs and/or never provided with appropriate mental health services to address their needs. When this statistic is considered alongside information on state policies and practices, caseworker anecdotes, and stakeholders' concerns over service gaps discussed in the final reports, a dismal picture of the provision of mental health services to children in foster care emerges.

Furthermore, our discovery in *Braam v. State of Washington* uncovered that child welfare agencies often purchase mental health services for which there is little evidence of effectiveness. Much money, including federal Medicaid and Title IV–E dollars, is spent on these services. Meanwhile, many states fail to provide services that have a proven success addressing mental health and behavior needs of children. A recent report of the Washington State Institute for Public Policy provides an overview of many such services.[19]

While all children are dependent on others for their care and well-being, children who are taken into the custody of the state are uniquely dependant upon government agencies. More than 15 years ago, the Child Welfare League of America (CWLA) issued standards for the provision of mental health services for children in foster care.[20] These were followed by similar standards put forward by the American Academy of Pediatrics (AAP) in 1994 that were re-affirmed in 2002.[21] Similar recommendations on the delivery of mental health services for children in foster care were made by the American Academy of Child and Adolescent Psychiatry (AACAP).[22] The CWLA, AAP, and AACAP recommend that all children should receive a mental health screening when placed in foster care and receive a comprehensive mental health assessment by a mental health professional as part of a comprehensive evaluation within a month of being placed in foster care. The standards also emphasize the need for a systematic, coordinated approach to the delivery of services to meet children's ongoing mental health needs. A report of the Surgeon General's Conference on Children's Mental Health corroborates these recommendations by suggesting that all children entering care should receive comprehensive

[17] General Accounting Office Report, *Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services,* GAO–03–397, April 2003.

[18] See *supra,* note 13.

[19] Steve Aos, Roxanne Lieb, Jim Mayfield, Marna Miller, Annie Pennucci. Benefits and Costs of Prevention and Early Intervention Programs for Youth (July. 2004)

[20] Child Welfare League of America, *Standards For Health Care Service for Children in Out-of-Home Care,* Child Welfare League of America, Washington DC (1988).

[21] American Academy of Pediatrics (AAP) Committee on Early Childhood, Adoption and Dependent Care. Health Care of Children in Foster Care. *Pediatrics* 93:335–338 (1994); AAP Committee on Early Childhood, Adoption and Dependent Care. Health Care Needs of Young Children in Foster Care, *Pediatrics* 109:536–541 (2002).

[22] American Academy of Child and Adolescent Psychiatry (AACAP) *Policy Statement Psychiatric Care of Children in the Foster Care System,* available at http://www.aacap,org/publications/policy/ps445htm (2001).

mental health assessments and that public funding streams should be expanded to improve the use of evidence-based treatment.[23]

The CFSR findings suggest that many states are falling far short of meeting these standards. For example, a few states appear to have *no* statewide policy for conducting any form of mental health screening for children entering out-of-home care.[24] For example, while Iowa was one of the four states rated as achieving "strength" in meeting the mental health needs of the child, there are no guidelines for identifying mental health needs for children who may require mental health treatment.[25] Instead, a caseworker "may issue" temporary orders for treatment or evaluation.[26] Most state policies appear to rely on a child's caseworker to identify mental health problems warranting treatment.[27] The widespread endorsement of this approach is troubling given that caseworkers are unlikely to have expertise in identifying children's mental health issues. The Colorado Final Report featured a child who entered foster care and received no mental health assessment because the caseworker indicated that there were no needs. However, reviewers who studied the case noted that the child had been exposed to domestic violence and substance abuse by the mother, had separation issues with the father and mother, and had, at one time, been kidnapped by relatives while walking home from school.[28] This history suggests that a mental health evaluation by a professional is warranted. In some states, Alabama and California, for example, the agency provides specialized training for workers to enhance their ability to identify a child's underlying issues.[29] Nevertheless, the reliance on a caseworker to pick up on a child's behavioral and emotional issues during short, infrequent meetings may explain why many foster children's mental health issues go undocumented or untreated.

Even if a child is properly identified as having behavioral or psychological issues warranting treatment, lack of follow-up appears to be a widespread and pervasive problem.[30] For example, a case reviewed in the District of Columbia featured a child who was professionally diagnosed with post-traumatic stress syndrome, yet who received no mental health services or follow-up whatsoever.[31] The root cause of this common problem may be that children with mental health issues are typically involved with both mental health and child welfare agencies. The roles and responsibilities of these agencies are rarely clearly defined, which makes it difficult for foster parents, caseworkers, and therapists to navigate the systems.

Another frequently mentioned problem was a lack of individualized mental health services. The treatment of children with behavioral or psychological issues appears to be frequently driven by what is readily available rather than what is appropriate. Numerous Final Reports described case plans as "boiler plate," "cookie cutter," or "generic."[32] The Final Reports revealed severe service gaps in the following areas: lack of therapeutic foster homes for children with serious emotional and behavioral issues, long waiting lists for mental health services that can take up to nine months, a need for more psychologists and psychiatrists, high turnover in Medicaid-funded therapists and counselors, lack of culturally appropriate services, absence of services in rural areas or prohibitively high transportation costs, lack of substance abuse services for adolescents, and a lack of high-end services for seriously emotionally disturbed children.

The Adoption and Safe Families Act (ASFA) of 1997[33] established the goals of safety, permanency, and well-being for all children involved with child welfare agencies. This Act, and parallel child welfare reforms in many states and local communities, have increased the pressure on child welfare agencies to achieve permanency

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[23] John Landsverk, Ph.D, Children's Hospital San Diego, Proceedings based on the Surgeon General's Conference on Children's Mental Health: Developing a National Action Agenda (September 18–19, 2000).

[24] Idaho Final Report at 48 ("There is no requirement for a mental health assessment of children in foster care."); Iowa Final Report at 51; Michigan Final Report at 59–60.

[25] Iowa Final Report at 51.

[26] Iowa Code Anon. 232.98: Physical & Mental Evaluations.

[27] *See, e.g.,* Alabama Final Report at 54; Alaska Final Report at 55; California Final Report at 57; Colorado Final Report at 48; Delaware Final Report; Massachusetts Final Report at 27; Montana Final Report at 55; Missouri Final Report; Missouri Child Welfare Manual, Section 4.4.3.1: Child Assessment Guideline; New Mexico Final Report at 47; New Jersey Final Report at 74; Pennsylvania Final Report at 59.

[28] Colorado Final Report at 48.

[29] Alabama Final Report at 54; California Statewide Assessment at 191 (June 18, 2002).

[30] *See, e.g.,* Arizona Final Report at 41; Arkansas Final Report at 40; Georgia Final Report at 33; Illinois Final Report at 35.

[31] District of Columbia Final Report at 56.

[32] *See, e.g.,* Arkansas Final Report at 67; Hawaii Final Report at 75; Iowa Final Report at 71.

[33] Public Law 105–89.

for children more quickly and to be held accountable for better outcomes for children and their families. But more remains to be done. Our analysis of the CFSR findings on mental health services provide some important lessons for Congress.

1. The Federal Child Welfare Reviews Should Guide Federal Child Welfare Reform

On May 13, 2004 the Subcommittee on Human Resources held its hearing on state efforts to comply with the CFSRs. Wade Horn, Assistant Secretary for Children and Families, Department of Health and Human Services, testified briefly, emphasizing the critical role the Federal Review process plays in engaging states in assessing the quality of their child welfare systems and in undertaking the process of improvement. While this Committee has heard from the Pew Commission and state child welfare administrators, we believe that the importance of the CFSR data has been largely overlooked in driving federal reform efforts.

The CFSRs represent a huge undertaking with the potential to become one of the most important initiatives embarked upon to improve child welfare services across the nation. The Reviews contain a wealth of information on all areas of child welfare services, from child protection and family preservation, to foster care, family reunification and adoption services. The Reviews examine caseworker practice in the field, review the state agency's capacity to serve children and families effectively, and assess the relationships between state agencies serving the child welfare population.

Congress should rigorously examine the CFSR findings and draw upon this information in order to create federal programs or reforms that will address the most widespread and pervasive problems facing our nation's most vulnerable population.

2. Congress Should Create Incentives to Encourage Greater Coordination Between Child Welfare and Mental Health Service Agencies

Whether we focus our attention on the provision of in-home or out-of-home services, obtaining mental health services frequently requires interaction with multiple state agencies, which results in the creation of unique challenges. Many of the programs and systems that serve families have their own eligibility criteria, regulations, and case tracking and management systems, including Medicaid, mental health, and substance abuse programs. This means that children and families involved in multiple systems typically have many caseworkers, therapists, and psychologists or psychiatrists who may not be in communication with one another.

What's more, the roles and responsibilities of agencies are not clearly delineated, resulting in inter-agency disputes that can delay or deny services to children and families. Fiscal constraints can lead families to seek services from agencies that are not suited to meet their children's needs, but might have funding available. Many final reports included comments from stakeholders voicing concern over the lack of coordination between child welfare and mental health agencies.[34] In describing the lack of integration and coordination between child welfare and mental health agencies, stakeholders frequently used such words as "barriers," "gate-keeping," "conflict," and "logjam."[35]

Assuring child well-being requires more coordination across publicly-financed systems. One way Congress could address this problem is to give priority to Title IV–E waiver demonstration projects that encourage or facilitate coordination between agencies. Collaboration between mental health and child welfare agencies at a system level can be done in a variety of ways, including co-location of staff, sharing of financial resources, cross-system training, designation of special liaisons, interagency collaboration teams, and interagency agreements.

3. Congress Should Enact The Keeping Families Together Act to Improve Access to Children's Mental Health Services

Pending before Congress is the Keeping Families Together Act,[36] which would address, in part, the scarcity of available in-home mental health services discussed above. This proposed legislation represents an important step toward meeting the needs of these children and promotes an alternative to the closed doors and fragmented systems that parents and caseworkers face when they seek help for children.

The bill would increase the availability of home and community-based services and give states an incentive to continue to support such services. New York, Vermont and Kansas, for example, have all improved outcomes and reduced costs in their child mental health systems since adopting a Medicaid waiver that helps

[34] *See, e.g.,* Alabama Final Report at 74; Colorado Final Report at 65; District of Columbia Final Report at 73; Georgia Final Report at 50; Florida Final Report at 60; Iowa Final Report at 71.
[35] *Id.*
[36] H.R. 3242, 108th Cong. (2003); S. 1704, 108th Cong. (2003).

fund home and community-based services for children with mental health needs. By promoting a coordinated system of care, this bill also recognizes the critical need to address fragmentation between the various agencies responsible for serving children, including education, mental health, juvenile justice, and child welfare. Collaboration between federal, state, and local agencies is absolutely essential to getting children the services they need. We encourage Congress to move towards enactment of this important legislation.

We appreciate this opportunity to share our findings and recommendations with the Subcommittee.

Statement of Terry L. Cross, National Indian Child Welfare Association, Portland, Oregon

The National Indian Child Welfare Association submits this statement on current proposals to reform federal child welfare financing and the potential impacts upon Indian children, families, and tribal governments. Attached is a brief description of our organization and our work.

We are pleased that the subcommittee is studying ways to improve services and financing of child welfare services for this nation's children and families. Our constituency, American Indian and Alaska Native tribal governments and their children and families, have not always benefited from the federal government's programs in child welfare and we are glad that the subcommittee is taking steps to make sure any new proposals reach this very vulnerable population. Your proposal, as well as the Pew Commission's recommendations, acknowledges the great injustice done to Indian children by proposing that tribal governments be able to provide the services and protections of the Foster Care and Adoption Assistance Act to the children under their jurisdiction.

Representative Frenzel, in his testimony before this subcommittee last week said that the Pew Commission began and ended every meeting by judging their work to see if it met the goal of every child having a safe, permanent home. Chairman Herger has asked the public to make recommendations on child welfare legislation that is premised on the goal of doing more to protect our children. If one truly takes these principles to heart, then you must make real efforts with regard to tribal governments and the children under their jurisdiction. Legislation to accomplish this must take into account the sovereign nature of tribal governments, the fact that they have not been able to access the Title IV–E Foster Care and Adoption Assistance programs (nor the Title XX Social Services Block Grant nor, until very recently, the Title IV–D child Support Enforcement program) and their economic and cultural circumstances.

Background

The subcommittee's draft proposal would change the requirements and funding system for the Title IV–E and IV–B programs. We understand and support the need to make changes to improve services leading to improved outcomes for children. Indian children have been and continue to be disproportionately represented in state foster care systems. Where improvements have occurred, tribes were always critical players in providing services or identifying permanent placements. The primary barrier to Indian children receiving more timely and lasting permanency, in our view, has been the lack of funding and opportunities to serve their children and families living on tribal lands and provide resources and expertise to states that have Indian children and families in their jurisdiction. Where tribal governments have been empowered through funding and opportunities to serve their members, Indian children have faired better (Red Horse, Martinez, & Day, 2001). Below we have provided a brief description of tribal access to Title IV–E and Title IV–B.

Title IV–E serves very few American Indian or Alaska Native children living on tribal lands, because of a statutory oversight that only allowed tribal governments to access the program if they could develop an agreement with the state they reside in. These tribal/state agreements are not mandated and both states and tribes have experienced difficulty in trying to develop agreements (U.S. Department of Health and Human Services, Office of Inspector General, 1994 and Brown, Limb, Munoz, R., and Clifford, 2000). This has resulted in American Indian and Alaska Native children being ineligible for a federal entitlement that all other children are guaranteed. Currently, there are only about 70 tribes that have agreements with states on Title IV–E, and some of these agreements do not provide access to all program components (administration, training, and maintenance funds).

Under Title IV–B, tribal governments are eligible for direct funding. However, the amounts and number of tribes eligible to apply are very small. Title IV–B, Subpart 1, Child Welfare Services is formula driven based upon the number of children under age 21. This formula is expected to allocate $5.2 million in FY 2004 for tribal governments, with 477 of the 560 eligible tribal governments receiving less than a $10,000 grant. Half of the 477 tribal grantees will receive a grant of less than $5,000. Under Title IV–B, Subpart 2, Promoting Safe and Stable Families, the statute contains a formula that determines tribal allocations and eligibility. To be eligible to receive funding a tribal government must receive a grant of $10,000 or more under the formula. In FY 2004, this provides eligibility to approximately 66 tribes to share in $5.05 million (1% of the mandatory funding = $3.05 million and 2% of the discretionary funding = $2.0 million).

While tribal child welfare funding from federal and state sources has been limited in most cases, tribal governments have made exceptional strides in developing services that are responsive to their communities and reforming service delivery systems when needed. The use of volunteers, leveraging multiple funding sources, and developing partnerships with other private and public entities are nothing new to tribal governments and share a common thread with the values that we see forming the foundation of reforms now being considered. Other supporting services for children, such as mental health, are also being reviewed and new approaches are being developed to serve American Indian and Alaska Native children. These efforts are increasing coordination between service providers in many child related service arenas and utilizing the strengths of families and community more effectively to deliver treatment in less restrictive settings and with greater impact (Cross, Earle, Echo-Hawk Solie, and Manness, 2000).

Financing Child Welfare

As we indicated earlier, we view the subcommittee's efforts to reform federal child welfare financing as an important goal. How American Indian and Alaska Native children and the tribal governments that serve them fit into these efforts is a discussion that is important to continue and is acknowledged in the subcommittee's draft proposal by making tribal governments eligible. In addition, Congressman Camp has demonstrated his support for helping tribal governments secure Title IV–E funding by co-sponsoring H.R. 443, legislation under the subcommittee's jurisdiction that makes tribal governments eligible to apply for and administer the existing Title IV–E foster care and adoption assistance program. The President's flexible funding proposal also acknowledges the need to include tribal governments in any funding reform too, as does the Pew Commission Report. Some of these proposals need improvement, and we have shared our comments to that end with the subcommittee both in writing and in meetings with staff.

Given that tribal governments have not been afforded the opportunity to operate the Title IV–E program and therefore have not been able to establish historical data on their needs or trends in relation to foster care and adoption assistance, our first choice would be the enactment of H.R. 443. Providing tribes with an opportunity to operate the current foster care entitlement program, which by a Congressional Budget Office score reaches only $54 million at it's peak, will ensure that future reform efforts will have data and are well informed and that American Indian and Alaska Native children are not unintentionally left without foster care support in the immediate future, as is now the case. We are heartened that the subcommittee did review H.R. 443 and incorporated some of its provisions in their draft proposal.

Should Congress decide to cap the appropriations for the foster care program and/or make changes similar to the subcommittee's proposal, we have the following comments, recommendations, and questions.

Adoption Assistance. We appreciate that the subcommittee's draft proposal keeps the Title IV–E Adoption Assistance program as an open-ended entitlement and that tribes will be eligible to administer those funds. Adoption practice in Indian Country has been evolving, even without federal funds, to incorporate support for customary adoption practices and policies. The National Indian Child Welfare Association has been at the forefront of promoting this evolving practice and now has a manual with a model code that is being used in many tribal communities. Customary adoption is helping improve support for adoption in Indian Country and increasing the number of permanent placement options for American Indian and Alaska Native children.

Foster Care Maintenance. We are supportive of the provisions under the proposal that would make tribal governments eligible to receive funding under this program, including tribal consortium and the development of agreements with states. As stated above, however, we feel strongly that the best policy is to keep the foster care maintenance program as an open-ended entitlement, especially in light of the

bill eliminating the income requirement for the program. We also support the waiver authority for the Secretary of DHHS with regards to program requirements and data reporting. These provisions acknowledge the unique circumstances of tribal communities and service delivery systems while still protecting children and yielding important data. We also see that the proposal provides that a tribe that elects to operate this program must do so in the same manner as a state. Our understanding of this draft is that tribes will be developing their own codes and standards consistent with Title IV–E and IV–B. We agree with this approach, and many tribes have already developed codes, program policies, and foster care standards of this nature, which makes us confident that other tribes will also be able to do this. This approach will ensure that tribal codes and standards reflect tribal realities and help improve protections and outcomes for Indian children.

The subcommittee proposes that tribes would be eligible to receive 0.9% of the overall appropriation, which starts in year one at approximately $16.2 million. As stated earlier, the Congressional Budget Office score for H.R. 443 reaches $54 million at its peak after ten years. This considers full implementation of the program (maintenance, administration, and training) with an increase in the number of tribes coming into the program over several years. The subcommittee proposal only includes foster care maintenance funding, which currently makes up about 50% of the federal Title IV–E foster care dollar. Using these numbers and the available data that show Indian children are over-represented in the foster care system, it makes sense to increase the reserved amount to 2% of the overall appropriation for tribes. This would ease fears that the tribal children in different tribal areas would be left without any foster care support and that tribes would have to drain off other child welfare funds that could be used to prevent children from entering the foster care system in the first place.

The rollover provision in the Foster Care Maintenance section is another important provision for tribal governments, especially considering their lack of access to foster care funding historically. Being able to roll over funding would be very helpful as tribes work to fine tune their services and establish a foundation in foster care services.

Subsidized Guardianship and Child Welfare Waivers. The subcommittee has addressed subsidized guardianships by expanding the state waivers program. Tribes view guardianship as an important permanency option, as do many states that are currently supporting guardianship through state funds or have waivers targeting this permanency option. Unfortunately, tribes do not have funding to support guardianship and are not eligible to apply for waivers. Efforts to include tribes in state waiver projects have been very difficult and unsuccessful in most cases. We recommend that you consider support for guardianships in a manner similar to how the Pew Commission has recommended. If this is not possible, we would recommend that you make tribal governments eligible for the federal waiver program.

Match Requirements. With regard to the federal match requirements, we are in support of the subcommittee's proposal to develop tribal medical assistant rates used in calculating the federal and tribal match rates for the foster care maintenance and adoption assistance programs. H.R. 443 included additional language that would have provided the Secretary of DHHS with authority to modify match rates for IV–E administration and training to take into consideration the extreme poverty that exists for most tribes and contributes to an inability to generate significant general revenues. Language in H.R. 443 would also allow tribes to utilize other related federal and state funding to satisfy their match, which is commonly done with other federal programs. This provision also considers the economic conditions of most tribes by recognizing that the only tribal income they may have comes from federal or state sources. Allowing federal and state sources for tribal match can also be done without supplanting funds. The subcommittee's proposal reduces the federal match for the Foster Care Maintenance, Adoption Assistance, Safe Children, Strong Families program and Foster Care Crisis program under their proposal, which could have the effect of dramatically reducing the number of tribal applicants. Our recommendation would be to include the provisions under H.R. 443, mentioned above, and not to subject tribes to the reductions in federal match in the programs related to this in the proposal.

Safe Children, Strong Families Program. We are pleased that you included tribes as eligible for this program in the subcommittee's proposal. As you know, tribal governments have been eligible for both of the Title IV–B programs (see description of tribal access in Background section). We like the flexibility that states and tribal governments are given to use this funding and the purposes for the grant program. We also like the waiver authority you have provided the Secretary of DHHS to examine plan requirements and determine if they are appropriate for tribal appli-

cation and the ability of the Secretary to use a broader source of data to calculate the number of children in a tribe for determining funding allocations.

The subcommittee proposal would reserve for tribes up to 0.45% of the overall appropriation from the mandatory funding and 0.5% of the discretionary funding. In year one this would amount to approximately $17.5 million in mandatory funding and $2.6 million in discretionary funding. Under the current Title IV–B, Subpart 1 program, tribes receive approximately 1.75% of the overall appropriation. Under the current Title IV–B, Subpart 2 program, tribes receive 1% of the mandatory funding and 2% of the discretionary funding. To bring tribal programs up to the same level in service capacity that states are, we would recommend that the Safe Children, Strong Families grant program increase the amounts reserved for tribes to 1.5% for both the mandatory and discretionary programs. This would also be consistent with the need of tribal children for these services based upon the disproportionate number of these children in care and the minimal level of access tribal governments have had to these programs.

We are, however, very concerned about the bill's required 32% match rate for tribes and know it would effectively eliminate many, many tribes from applying for this program. The 2000 Census reports a 25.7% poverty rate nationally for Indians and Alaska Natives, and, of course, in some reservation areas, the poverty rate is much higher than that.

Foster Care Crisis and Challenge Grants. We support the concept of providing a contingency fund for states that have unexpected and unpreventable increases in foster care placements. Because of the variability of factors that can contribute to a spike in foster care placements, it is essential that there is a protective net to help vulnerable children. We noticed that tribes are not included in the Foster Care Crisis funding program and would recommend that you also make them eligible. We would also recommend making tribes eligible for the Challenge Grants authorized in this proposal. The draft bill should be amended to allow tribal governments to share in the rewards and incentives for improving outcomes for Indian children in the child welfare system in the same way that states are.

Regulations. H.R. 443 includes a provision that would ensure that DHHS consults with tribes and tribal organizations in the development of regulations. We did not see this language in the subcommittee's draft but think it would be a valuable addition.

Definition of Tribe, Tribal Organization, and Reservation. The definition of tribes in the subcommittee's proposal only includes tribes with a reservation and Alaska Native tribes. This should be modified, because tribes can exercise authority over non-reservation children, particularly through transfers from state court under current federal law and because tribes without a land base sometimes can join in consortia with tribes with a land base to provide services to their children. In addition, tribes without a land base have entered into agreements with states to define services and jurisdiction that have served Indian children, tribes, and states very well and this definition would create conflicts for those states and tribes. The best way to address this issue is to use the application process where a tribe includes information about its service area (federally designated) and not by excluding them from the definition itself.

If a reservation requirement is to be included, we recommend doing it outside the definition of tribe and defining reservation using the standardized definition within the Indian Child Welfare Act. The ICWA definition is:

Reservation is defined in ICWA as Indian Country as defined in 18 U.S.C. 1151 (that definition defines Indian Country as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles of which have not been extinguished, including rights-of-way running through the same) and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

If this approach is taken, however, we would recommend including the former reservations' in Oklahoma language currently in the draft bill in addition to the Indian Child Welfare Act definition.

Court Oversight

We are glad that you acknowledge the critical role of court systems in ensuring permanency for children. In Indian Country, tribal juvenile courts also have an im-

portant role and are constantly working to improve their processes and outcomes even with little federal support. The court improvement projects that have been supported by Title IV–B funds have been very beneficial to states improving their outcomes for children in the child welfare system; however, tribes have not been eligible to receive these funds in the past. Improving tribal program support is very important, but tribal courts are integral partners in this effort too. We recommend that you make tribal courts eligible to share in the court enhancement funding under the subcommittee's proposal.

Conclusion

We are very appreciative of the subcommittee's efforts to include tribal governments in its proposal. Your support for increasing tribal capacity in child welfare is what is needed if we are to improve child welfare outcomes for American Indian and Alaska Native Children in this country. We understand that this is a draft proposal and that there will be more discussion, and welcome the opportunity to be part of this discussion. Indeed, the draft bill does need improvements with regard to its tribal provisions. The National Indian Child Welfare Association works closely with tribal governments across the country and national organizations, including the National Congress of American Indians, so we have the ability to be able to bring the issues in Indian Country to the subcommittee process. Thank you for your effort, and we look forward to working with you soon.

REFERENCES

Brown, E., Whitaker, L.S., Clifford, C., Limb, G., and Munoz, R. (2000). *Tribal/state Title IV–E intergrovernmental agreements: Facilitating tribal access to federal resources. Seattle:* Casey Family Programs.

Cross, T., Earle, K., Echo-Hawk Solie, H., & Manness, K. (2000). Cultural strengths and challenges in implementing a system of care model in American Indian communities. *Systems of Care: Promising Practices in Children's Mental Health, 2000 Series, Volume I.* Washington, DC: Center for Effective Collaboration and Practice, American Institutes for Research.

Red Horse, J. G., Martinez, C., & Day, P. (2001). *Family Preservation: A case study of Indian tribal policy.* Seattle, WA: Casey Family Programs.

U.S. Department of Health and Human Services, Office of Inspector General. (1994). OEI–01–93–00110, *Opportunities for ACF to improve child welfare services and protections for Native American children.* August, 1994. Washington, DC: United States Government Printing Office.

The National Indian Child Welfare Association

The National Indian Child Welfare Association (NICWA) is a national, private non-profit organization dedicated to the well-being of American Indian children and families. We are the most comprehensive source of information on American Indian child welfare and work on behalf of Indian children and families. NICWA services include (1) professional training for tribal and urban Indian child welfare and mental health professionals; (2) consultation on child welfare and mental health program development; (3) facilitation of child abuse prevention efforts in tribal communities; (4) analysis and dissemination of public policy information that impacts Indian children and families; (5) development and dissemination of contemporary research specific to Native populations; and (6) assisting state, federal, and private agencies to improve the effectiveness of their services to Indian children and families.

In order to provide the best services possible to Indian children and families, NICWA has established mutually beneficial partnerships with agencies that promote effective child welfare and mental health services for children (e.g., Substance Abuse and Mental Health Services Administration, Indian Health Services, Administration for Children, Youth and Families, National Congress of American Indians, Federation of Families for Children's Mental Health, and the Child Welfare League of America).

Statement of John A. Johnson, New York State Office of Children and Family Services, Rensselaer, New York

The nation's investment in services to its abused and neglected children has long served as fodder for national discussion and debate. Yet, in the swirl of concern about the safety, permanency and well being, little substantive change in federal funding has occurred in more than two decades. Uncapped federal funding remains available for care and maintenance of the poorest children entering care—and then only when compliance has been achieved with a myriad of rules that only marginally relate to achieving pivotal outcomes. Federal spending on services to prevent

out-of-home placements or to reunite children with their families remains a negligible proportion of the federal child welfare spending.

In short, federal funding appears to reward separation of vulnerable children from their families, rather than exhaustion of services to maintain them safely at home or to return them home if they are already in placement. This investment strategy would be suspect under any circumstances, and judges faced with ordering separation of families have expressed wariness about expectations placed upon them given the federal focus on foster care in funding and in publication of rules and guidelines.

The renewed discussion of instituting a federal block grant for foster care seems well timed for New York State. The number of children in foster care has decreased steadily for almost a decade. Governor Pataki and the Legislature have demonstrated a commitment to supporting a continuation of this decrease by investing in services to prevent placements and, where unavoidable, to shortening lengths of stay by funding an array of services. The guarantee of continued funding at current level, would allow New York State to serve vulnerable children in the context of their families, and their families in the context of their communities.

In considering an alternative to foster care financing, New York has advocated the following:

- *De-Link from 1996 AFDC standards.* All children in foster care would be eligible for title IV–E assistance and presumed eligible for Adoption Assistance. Child welfare relies on an eight-year-old means test to determine financial eligibility for services provided by all states regardless of income. Elimination of this means test for foster care and adoption services is both sensible and cost efficient. The amount of federal participation in setting a block grant for foster care would, as noted above, be based on historical spending. Adoption services could be reimbursed based on either: (1) the percent of federal expenditures in relation to state spending going forward in time towards future claims and continuing reimbursement at that level or (2) the use of the current rates of eligibility for Title IV–E Adoption Subsidies in establishing federal participation for future year claims. This is consistent with the recommendations made to this committee by the Pew Commission, the American Public Human Services Association (APHSA), and the Child Welfare League of America (CWLA).
- *Make participation optional and provide states sufficient time to opt-in.* Lead time will be important to states to allow for calculations to determine the benefits of participating, to make any needed regulatory, statutory and systems changes, to involve stakeholders in improving services and to instruct the field of practice changes. Two years following enactment seems to be the minimum time required to structure funding changes to succeed.
  - *Make sure the states' baseline for establishing spending levels remains certain, as it is in TANF.* To set the level of annual federal funding for a state on anything other than spending for a recent year seems disingenuous and would obviate most the incentives for participation in the program. While the number of foster care days used by New York State has declined, the children and youth entering care present unique challenges to mental health, educational and other special needs. To successfully meet these needs has proven costly in two arenas. The cost of care days has risen and the cost of establishing and of maintaining a comprehensive mix of community-based services also has grown.

Finally, this baseline must remain at a constant level once set, not be impacted by audits for at least five years with no retroactive audits, and must provide for growth over the duration of the capped entitlement to permit states confidence in budgeting over the life of the financing.

- *Equitably calculate states' baseline.* For purposes of implementing a child welfare finance alternative, calculate the baseline as the sum of a State's Title IV–B allotment and its title IV–E administrative and training expenditures.
- *Declare all foster children in a class for the purpose of Medicaid eligibility determination in all facilities.* New York State recommends that children in a foster care facility continue to receive funding for medical care should they, for example, be transferred to a hospital. This investment has a short and long term pay-off to the child, state and federal governments. In other words, Medicaid eligibility cannot be tied to a facility, but must be tied exclusively to the foster child, regardless of setting.
  - *Eliminate federal title IV–E Reviews and other administrative requirements.* These reviews have been viewed as "paper reviews" to establish case eligibility for federal funding. A capped entitlement would obviate the need for

such a case-by-case review and allow for increased focus and use of funds for outcomes.

- *Prohibit the creation of new data reporting requirements for child welfare services.* States have struggled with meeting the evolving federal data requirements, at a high cost to accomplish required changes. New YorkState has found requirements that differ from federally specified data to provide more information for accountability, planning and research. To ignore state-specific data designs retards meaningful use of data in making sorely needed program improvements.
- *Prohibit the unfair treatment of kinship foster care.* Subsidized guardianships, including placements with grandparents and other relatives, are an important permanency option for many children. Currently, the federal government does not provide specific funding to support that option. The draft legislation permits subsidized guardianship only as a waiver option for a state rather than automatically including it in maintenance. It is critical that subsidized guardianship and kinship programs be an option for all state and local child welfare systems if our goal is to increase the rate of permanency for these children.
- *Encourage the engagement of families by adequately funding preventive service dollars.* The safety and permanence of children in foster care depends upon funding for services and supports to avoid and/or reduce the length of stay in out-of-home placements. Engaging families in casework involves a heavy financial burden and the states are encouraged to support this practice through the recommendations of the Pew Report and CFSR PIP approved plans. Federal participation should substantiate these federal findings.
- *Provide for true transferability of funding.* Both the Pew Commission and the subcommittee's draft legislation recommend states be allowed to transfer "excess" federal foster care maintenance funds into the services block grant for reinvestment into other child welfare services. These "excess" funds would come from a state reducing its foster care expenditures below a certain baseline. Based on states' current struggle to adequately cover the cost of care for its children, the likelihood of excess funds seems remote. "Unused" transferred foster care funds should not be relied on as a primary source of new funding for prevention and other services. I support rewarding states for improving performance. However, any opportunity for transfer must be constructed in a way that does not provide a disincentive to provide the care that children in foster care need.
- *Incentive dollars should be a reward for good practice.* Providing ongoing funding as a reward for programs that demonstrate elements of success is a positive step in developing best practice standards. Instead, federal dollars for planning and preventive care are capped and distributed in a competitive manner on demonstration programs.
- *Support the national priority of adoption.* Adoption assistance should neither be capped nor support reductions in funding or FMAP.
- *Prohibit the establishment of national standards as part of this finance option mandate.* The CFSR is still a work in progress. Many states have yet to have the Program Implementation Plans (PIPs) approved. The Administration for Children and Families has yet to make decisions concerning the next round of the CFSR. Because of this, it would be precipitous to legislate any national standards.
- *Directly relate Maintenance of Effort Requirements (MOE) to states title IV–E match for title IV–E and allow for flexible use of the matching funds.* Flexibility would enable states to adapt evidence-based practices from child welfare and other fields to help children remain safely in their own homes and communities.
- *Make available contingency funds to states that experience significant increases in foster care.* As New York discovered with the crack epidemic in the 80's, states may experience unique circumstances that result in caseload growth. For states with a caseload growth of, for example 10% or more over a two-year period, a provision for a 50% state match of federal contingency funds would provide some relief from unanticipated costs while discouraging state abuse of funding. Because caseload shifts seem related directly to unique state circumstances, New York recommends that any growth be measured within the state and not against national trends.
- *Allow for an inflationary increase in funding.* As recommended by The Pew Commission, APHSA and CWLA, the annual appropriation for title IV–E should be increased by the CPI plus 2%.

- *Do not complicate the issue of child welfare financing by adding legislation that affects the Interstate Compact on the Placement of Children (ICPC).* The proposals made by the White House and the Subcommittee pertain to federal funding mandates. ICPC is a procedural issue that concerns children placed beyond a state's border. ICPC legislation should remain separate from this funding process.
- *Allow for states to use federal funding to reward court performance that enhances outcomes for foster children.* Currently, federal rules limit federal child welfare funding to the courts to federal court improvement funds. Courts have little incentive to join with child welfare services administrators and providers as partners in achieving safety and permanency of children.

By allowing states to establish outcome indicators for courts and to provide funding to courts that work to achieve such indicators, partnerships would be fostered. Family treatment courts in New York provide a model for collaboration For example-family treatment courts hold biweekly hearings with substance abusing parents, the child welfare agency, substance abuse treatment provider, and legal representatives for the parties to review progress in treatment and activities toward effecting reuniting foster children with their parents. Despite the increased court costs and the success of the model, no federal child welfare funding may be invested in offsetting court costs. Assigning state child welfare administrators some voice in the use of federal court improvement funding and federal title IV–E to advance child welfare-court collaborative promises continued improvements in outcomes for vulnerable children and their families.

In addition, the bill language should permit certain court expenses such as monitoring orders, judicial training, mediation as well as other identifiable court activities related to permanency and better outcomes for foster care children to be allowable as Title IV–E costs.

Naturally, because families who come to the attention of the child welfare system typically face the challenge of substance abuse, domestic violence, poverty, overcrowded housing and unstable relationships between parents, continued funding to meet these multiple and complex needs remains critical to improving permanency, safety and well-being of the nations' most vulnerable children. In the face of current economic conditions, federal leadership and funding underpins the success of states' efforts to achieve shared outcomes for our children and their families.

As Commissioner of New York's agency that oversees child welfare, I am encouraged by the serious attention given to the critical issues arising from child welfare by Congress and this committee. I thank the Members for their attention and look forward to the full committee's proposal as well as positive progress in this arena.

Statement of John R. Seita, Battle Creek, Michigan

The foster care system is broken and needs substantial overhaul. That much is evident. It's also clear that most of the recommendations over the years about how to improve that system have failed.

Which brings us to the latest effort, from the Pew Commission on Children in Foster Care.

The commission released a report last month recommending significant changes in foster care financing and ways to strengthen courts in order to better help foster children. As a former foster child, my concern is not about how many of the recommendations will become policy or if they would work—both impossible to predict.

What disturbs me is the composition of the commission.

I agree that improving foster care must be a priority. I lived in more than 15 foster homes. I understand the misery of feeling alone, unwanted and unloved. I've experienced the difficulties of life both in and after foster care.

The 15-member commission includes one foster care alumna. In the old days, people of color called this kind of representation "tokenism."

The commission lacks the alumni participation to be credible. The participation of alumni at the table of power is essential to the design of foster care policy, practice and resource allocation. Yet the views of foster care alumni are barely included, if at all.

Instead, a cartel of the usual suspects has commandeered the process, which will result in the same old sorry "reforms" being rained upon foster kids—without the input of those in care or formerly in care, who are the real experts.

Few of us would endorse the findings of a civil rights commission comprised of 14 Caucasians and one person of color. Few would embrace the conclusions of a women's commission comprised of 14 men and one woman. Why would anyone embrace the views of a foster care commission that systemically denies the importance of a representative alumni role and partnership?

In my communications with the Pew Commission over a year ago, I urged that more alumni be included on the commission. The commission staff informed me that "focus groups" would gather the input of alumni and that views from those currently and formerly in care would be collected through the Internet. Therefore, there was no need for increased alumni participation on the commission.

The commission apparently doesn't realize that for many alumni, this patronizing approach renders its findings suspect. The composition of the commission cannot reflect the views of the population it purports to represent. Rather, its elitism and exclusion continue a pattern of stifling participation, denying empowerment and marginalizing its consumers.

If the Pew Commission were a business, millions of former foster kids would boycott it.

While consumer inclusion might seem radical to the Pew Commission, the involvement of consumers on boards and commissions is not uncommon in other fields. The United States Commission on Civil Rights, for instance, is a diverse and balanced group of eight people comprised of Caucasians, African-Americans, a Native American and a person with a disability. The Michigan Council on Developmental Disabilities includes people with developmental disabilities, family members of people with such disabilities, and professionals from agencies charged improving opportunities for developmentally disabled people.

Similarly, former foster children must be an integral part of the decision-making process for improving foster care policy and practice. Clearly, those in charge of foster care have not done a good job on their own. One thousand "blue ribbon" panels made up of non-consumers on their own cannot fully know how to improve the foster care system.

I urge Congress to take no action on the Pew recommendations until a commission of foster care alumni reviews the report and issues its own findings. We cannot continue to harm foster children through ignorance and arrogance. Otherwise, we risk following the adage, "If you want more of the same, keep doing what you're doing."

Strength-Based Approaches Expand into Leadership

A Michigan study of children's agencies found that very few had any former youth in care either in leadership or board roles. The author, himself a product of the child welfare system, suggests that quality services will require perspectives of these former consumers of care.

The Strength-Based Revolution

Exciting new practices have emerged in the field of youth development and have been widely documented and practiced. Positive youth development, positive psychology (Larson, 2000; Seligman & Csikszentmihalyi, 2000), asset building, and the strength-based approach are slowly replacing the historical practices of deficit reduction, labeling, and "fault fixing." This swing of the pendulum away from looking for deficits, diseases, disorders, and dysfunctions not only feels good and seems intuitively proper, but also is supported by recent research on resilience (Werner & Smith, 1992; Werner & Smith, 1977; Garmezy,1981; Rutter, Giller, & Hagell, 1998; Wolin & Wolin, 1993), asset building (Benson, 1997), positive youth development (Pittman & Irby, 1996), and seminal ideas, such as the Circle of Courage (Brendtro, Brokenleg, & Van Bockern, 2002) and family privilege (Seita & Brendtro, 2002). A logical extension of the strengths movement is to involve "former consumers of children's services in the leadership and governance of these organizations.

Youth are the best experts on themselves. Young people who are in care and in other alternative settings have a variety of strengths that can be identified, tapped, shaped, strengthened, and utilized to create and support powerful caring environments that can reclaim all young people and that represent the best of positive youth development (Seita & Brendtro, 2002; Brendtro, Ness, & Mitchell, 2001).

These same youth who age out of the system and into adulthood may possess leadership skills and personal insight that could contribute to the leadership and governance of the child welfare system. Perspectives from former youth in care strongly suggest that child welfare often fails those whom it is designed to serve (Raychaba, 1992).

System Failures

At any given point there are over 600,000 children within the child welfare system who are placed in out-of-home status; most survive to adulthood, although a few die at the hands of caregivers and abusive parents. Over 25,000 children transition out of foster care and other dependent settings every year as young adults. Children in foster care constitute less than.003% of the nation's population. However, 17% of state prisoners are former foster-care children, 40% of foster children leave the system to go on the nation's welfare rolls, and 39% of the homeless youth in Los AngelesCounty are former foster-care children (Connolly & McKenzie, 1999). In an evaluation of foster care independent living programs, Cook (1990, 1992) found:

- 66% of 18 year olds had not completed high school or obtained a GED;
- 61% had no job experience;
- 38% had been diagnosed as emotionally disturbed;
- 7% had a drug abuse problem;
- 90% had a health problem;
- 17% of the females were pregnant;
- 40% had held a job for at least one year;
- among the females, 60% had given birth;
- 25% had been homeless for at least one night, and fewer than 1 in 5 were completely self-supporting.

In a 1998 study of Wisconsin youths 12–18 months after they emancipated from foster care in 1995, Courtney and Piliavin (1995, 1998) found that 37% had still not completed high school, and 18% of the youths had been incarcerated at some point since their discharge.

Nevada KIDS COUNT (2001) interviewed 100 youth who had aged out of foster care at least six months previously. While 63% were employed at the time of the interviews, 55% had lost at least one job since leaving care. About two-thirds had earned less than $10,000 annually, and 41% did not have enough money to cover basic living expenses. Nearly a quarter of them had supported themselves at some time by dealing drugs, and 11% had had sexual intercourse in exchange for money.

The outcomes of the child welfare system are appalling; yet, there seem to be few remedies and even fewer effective and concrete strategies to fix what we have unleashed in the child welfare system. The number of children being placed in out-of-home placements, such as foster care homes and other settings, has shown a steady increase over the last two decades, according to statistics provided by the Administration for Children and Families, a division of the U.S. Department of Health and Human Services (1999).

Efforts such as family preservation programs—programs that provide intensive in-home support services—have emerged as one attempt to keep families together and to keep children out of the child welfare system. Typically, family preservation provides counseling, transportation support, and occasional tangible support, such as washers and dryers—all in the name of keeping a family intact and reducing out-of-home placements.Wrap-around is another attempt to reform child welfare, functioning in a manner similar to family preservation, and provides intensive family support. Wrap-around programs work with families to establish family goals. A wrap-around worker is often assigned to work with the family to help the family reach its goals. In the spirit of maintaining families, other efforts include kinship care, where a child at risk is placed with extended family. Related efforts include the Community Action Agency and its foster grandparent programs for youth who have limited extended family. In spite of these efforts, the child welfare system continues to limp along at best. Perhaps it is time to consider two new approaches: applying the strength-based practices represented by positive youth development and including those who have actually experienced the system as youth to advise and lead the system.

Overview

Clearly, common practice across America demonstrates that it is appropriate, and even desirable, for constituents to play a leadership role in the agencies and organizations that are designed to serve them. A recent example of constituency-led activism occurred when students at GallaudetUniversity for the hearing impaired demanded that one of their own, I. King Jordan, become the next president of the university, overruling the Gallaudet Board of Directors' original choice of a person of hearing.

Formal leadership access for disenfranchised persons is important since those who are in formal leadership positions have access to decision makers, influence on budget disbursement, policy, and practice, and the power and the respect to make

decisions influencing direction for its constituency. However, there seems to be little institutional will to integrate child welfare alumni into leadership roles. A first study conducted in Michigan by the author, a child welfare alumnus, paints a dismal picture of the participation levels of child welfare in any formal leadership roles in child welfare agencies.

The Michigan Study

The purpose of this research was to conduct a status study of how many child welfare alumni are in leadership positions in child welfare agencies across the state of Michigan. The study sought to determine how many board members of Michigan child welfare agencies are child welfare alumni. Related interests include the number of child welfare alumni in leadership roles, such as chief executive officer, chief operating officer, or another executive level within Michigan child welfare agencies.

The School of Social Work at Michigan State University conducted this study in partnership with the Michigan Federation for Children and Families. The Michigan Federation is a statewide membership organization comprised of private, nonprofit child and family serving agencies, regional and local child and family advocacy organizations, and individuals who are interested in protecting children, building families, and strengthening families.

The population for this study included the 104 child welfare agencies within the database of the Michigan Federation of Children and Families. Since the entire database was surveyed, there was no use of inferential statistics, and simple descriptive statistics were reported.

The final return rate after several contacts was 59%. Only six agencies, or about one out of ten, reported having board members who were child welfare alumni. No agencies reported having either a chief executive officer or any executive staff who were a child welfare alumnus.

New Leadership Roles

The Michigan survey suggests that perhaps 90% of child-serving organizations have no policy input from former youth who were consumers of such services. Ideally, child welfare alumni should be a part of policy and legislative change and integral in the leadership and governance of child welfare services going forward. Considering the documented outcomes of the child welfare system, the terrible price paid by child welfare alumni, and the lack of formal participation in child welfare system leadership by child welfare alumni, it seems reasonable to enact policy, legislative, and practice changes in the child welfare system to repair the wrongs that have been perpetrated by the system.

Part of the problem with the child welfare system may be that few of those administering and leading the system have experienced the system as a consumer of services or have formally partnered with those who have experienced the system as consumers.

You're an orphan, right? Do you think I'd know the first thing about how hard your life has been, how you feel, who you are because I read *Oliver Twist?* Does that encapsulate you? (Damon, Affleck, & Van Sant, 1997).

The foregoing quote from the movie *Good Will Hunting* was part of a conversation between a therapist and a bitter child welfare alumnus. This exchange poignantly captures the difference between living as an orphan and merely studying the experience. Both scholarship and experience are necessary to form a new child welfare partnership. Based upon anecdotal evidence, there is no reason to suspect that results from across the nation will be much different.

A national study is planned to determine if the results from Michigan reflect national trends. The dismal outcomes demonstrated by the child welfare system as presently operated suggest that using alumni in board and leadership roles could provide fresh perspective to improve outcomes.

It is perhaps a vestige of the deficit perspective of "youth at risk" that we fail to involve them in the very mission of serving such youth. Would it even be thinkable that white persons were leading the National Association for the Advancement of Colored People or the Urban League? Men do not lead the National Organization for Women, heterosexuals do not lead the Gay and Lesbian Alliance, and young 20-something-year-olds do not lead the American Association of Retired Persons. Is it any more appropriate for the child welfare system to be led solely by the same people who initially caused the child welfare debacle?

"Uncle" Floyd Starr founded StarrCommonwealth, a home for boys at Albion, Michigan, in 1913. Starr, as we called it, was my last stop along the child-welfare trail. Mr. Starr was regarded as a visionary with unusual wisdom and energy. One of "Uncle's" dreams was to someday have one of his boys become the president of StarrCommonwealth. That dream was nearly realized when one of his boys, Gordon

Langley, directed Starr's Ohio campus in the 1950s. Sadly, Mr. Langley died before he was able to assume the leadership of Starr Commonwealth.

Were we to follow Mr. Starr's dream today with an integration of child welfare alumni as agency and policy leaders, we would create an innovative new partnership necessary to reform the child welfare system. Any new partnership should be collaborative and must not exclude all existing parties within the child welfare system. Rather, this should be a partnership that empowers child welfare alumni to guide, direct, change, and evaluate the child welfare system.

We will never develop quality systems and organizations of care if we ignore the perspectives of consumers. This has been widely recognized concerning families of disabled and troubled children. While young people in care must also be given a voice, it seems appropriate that with greater maturity they could provide unique expertise in guiding program and policy of youth-serving organizations. The evidence to date suggests that, in all likelihood, unless child welfare alumni are included in genuine decision-making, advising, and leading child welfare agencies, a crucial body of expertise is being ignored.

Letter to Pew Commission Members

This letter is to express our concerns about the Pew Commission on Foster Care, of which you are a member. Let us note, however, that while we appreciate your efforts on this very important issue, the composition of the commission is inappropriate.

Enclosed is an editorial entitled *The Fatal Flaw in Pew's Foster Panel* published in Youth Today that explains our point of view. Also enclosed is a recent journal article published in 2004 on foster care leadership entitled *Strength Based Approaches Expand into Leadership* from the journal Reclaiming Youth. Finally there is an article from the *Lansing State Journal* entitled *Ex-Foster Kids Needed in Leadership Positions.*

There are many foster care alumni who combine the experience of growing up in foster care placements with the professional expertise of working in the field. For some reason, however, those formerly in care are seldom included in the process of determining policy, practice, setting funding priorities and fund distribution. This systemic exclusion is what we call "Pew's Fatal Flaw."

Excluding the insights of those formerly in care is tantamount to 1) minimizing the value of insight gained through their experiences and 2) denying them a voice in shaping policy and practice. This exclusion thereby limits, indeed, damages the potential of foster care commissions to accurately shape policy regarding the foster care system. Therefore, we seek to work with those who serve foster care youth in a manner that will allow our insights to promote positive changes in the foster care system.

Let us note that there is a proud history in our nation with respect to the fight for civil rights and access to power and opportunity. People of color, women, those with disabilities, gays and lesbians, and other disenfranchised groups have fought hard for recognition, acceptance and representation. There are many foster care alumni across this country that lack access and recognition. The composition of the Pew Commission on Foster Care perpetuates denial of access and opportunity. Thus, excluding foster care alumni from the commission and like processes is not unlike the barriers historically faced by other, disadvantaged groups.

Like other historically disadvantaged groups, foster care alumni are not being afforded the systematic opportunity to use their voices, experiences and knowledge to shape policy and practice. Therefore, our mission is to create opportunities for foster care alumni to be a part of system improvement and advocacy through formal channels.

Recently, we convened a summit at the Michigan State University School of Social Work to explore ways to create pathways in child welfare leadership for foster care alumni. Nine of the eighteen attendees were those formerly in care, most of who have earned advanced degrees, and are committed to improving the foster care system.

We ask you to ponder two questions. Have you experienced the loneliness, fear, confusion, sense of abandonment and futility of living in and surviving the foster care system? If you were a foster child, who would you want to represent your needs and viewpoints?

We hope that you will think about these questions and help us to have our voices heard. We believe that another commission on foster care should be convened which would be populated by foster care alumni, in order to address the same questions and issues addressed by the Pew Commission and to review the Pew report.

This would set an example for future foster care commissions, provide a unique perspective of how to improve the delivery of services to foster kids and promote more positive outcomes of the foster care system.

We welcome the opportunity to have a dialogue with you on our views and hope that you will share our views with Carol Emig and others with the Pew Commission staff. Thank you for your commitment to the many children in the foster care system.

Ex-Foster kids needed in leadership positions

By Tim Martin

Lansing State Journal

John Seita couldn't imagine the NAACP with white leadership. Or the National Organization for Women with a male president. Or the AARP led by a 25-year-old. So why, the Michigan State University professor asks, is the state's foster care system virtually devoid of alumni in its leadership positions?

"The system is a mess, and it won't be fixed until people most experienced with it are involved," Seita said. Seita's credentials include bachelors, master's and doctorate degrees from Western Michigan University in topics ranging from sociology to education. But his street credibility comes from living in at least 15 different foster, group and detention homes after being removed from his abusive biological home.

His anger started with his mother. But he shared it by fighting with caseworkers, teachers or anyone else who crossed his path while growing up in Ohio. It eventually landed him at Starr Commonwealth, a home for troubled children in Albion, about 50 miles south of Lansing.

Seita harnessed his rage into a productive career. He's counseled kids, directed programs at Battle Creek's W.K. Kellogg Foundation and is now an assistant professor of social work at MSU He's helped research private Michigan child welfare agencies and found that none of the more than 100 responding agencies had foster care alumni in leadership roles. Now he's backing legislation that would establish focus groups of foster care youth to help shape Michigan's child welfare strategy. "It would be very valuable to get input from foster care alumni," said Bill Long, executive director of the Michigan Federation for Children and Families. "Their voices should be heard."

Statement of Volunteers of America, Alexandria, Virginia

Volunteers of America appreciates the opportunity to provide written testimony on the subject of child welfare reform. We commend the subcommittee for taking such interest in improving the system serving our nation's most vulnerable children and youth. Volunteers of America, a national nonprofit, faith-based human service organization, is driven by our mission to provide services to promote healthy development of children, adolescents and their families through a continuum of services from early prevention to intensive intervention approaches. Bonded by a commitment to faith, human dignity, and social justice, we have served children and families for over 100 years. Our experience has taught us that the faith community and federal and state governments are inseparable partners in this mission.

As a complete overhaul of the child welfare financing system is considered, Volunteers of America recommends the following:

1. Maintain foster care maintenance and adoption assistance as an open-ended entitlement, and expand support to all children in foster care.

All children and youth that come to the attention of the child welfare system are equally deserving of federal support. The current method of providing federal reimbursement only for children who meet restrictive income qualifications is no longer acceptable. Capping the IV–E entitlement may put states at risk of not being able to serve all children equally that have to be removed from their homes.

Children should have the same access to services regardless of the income of their birth family and regardless of the financial circumstances of their state. State systems must have the funding flexibility of an open entitlement in order to respond to increases in need for services that may come unexpectedly, such as the crack cocaine epidemic of the early 1990s.

2. Allow the Title VI–E entitlement to fund family strengthening services.

Family strengthening services promote the optimum functioning and maintenance of the family to best support the well being of the children within the family. Prevention and family strengthening services need to be incentivized within the child welfare financing system. We have found through our experience in serving families that children are better served when we can work with them in the context of their family, rather than once they have been removed. Families can often stay intact when intensive supports are placed around them at the first signs of trouble.

The Nurse Home Visitation model is a well evaluated and time tested example of an effective family strengthening program. Nurse Home Visitation strives to improve the health and social functioning of low-income first-time mothers and their babies by having nurses work to improve environmental contexts by enhancing informal support and by linking families with needed health and human services. The quantifiable results of this model are impressive: 80% reduction in rates of child maltreatment among at-risk families from birth through the child's second year; 56% reduction in the rates of children's health-care encounters for injuries and ingestions from birth through child's second birthday; 43% reduction in subsequent pregnancy among low-income, unmarried women by child's first birthday; and an 83% increase in the rates of labor force participation by first child's fourth birthday (Kempe Prevention Research Ctr. for Family & Child Health).

Other services that strengthen families and should be allowable uses if Title IV–E include:

- Identification and treatment of mental health problems
- Identification and treatment of substance abuse
- Identification of domestic violence and appropriate services
- Parenting education
- Parent support groups
- Respite services

3. Open Title IV–E subsidies to allow for guardianship and kinship placements, and allow eligibility for all services available for traditional foster families.

More than six million children—approximately one in 12—are living in households headed by grandparents or other relatives. In many of these homes, grandparents and other relatives have become the primary caregivers, or kinship caregivers, for children whose parents cannot or will not care for them due to substance abuse, illness, child abuse and neglect, economic hardship, incarceration, divorce, domestic violence, or other serious problems. New 2000 U.S. Census Data indicates that 2.4 million grandparents are taking on primary responsibility for their grandchildren's basic needs.

The use of kinship placements is an invaluable permanency option for many children and youth who are in formal foster care, as well as those in informal care. Kinship placements allow a child to stay within the context of their family network, even if their immediate family is not an appropriate placement. This is a particularly important option for older youth who are not likely to be adopted or fair well in a traditional foster family situation.

In addition, kinship families are in particular need of family strengthening and support programs available to traditional foster families when the primary care giver is a grandparent or older relative. Respite services and support groups are important to helping a grandparent, who may be dealing with their own health and other challenges, maintain a stable home.

4. Increase support for youth "aging out" of the foster care system.

It is estimated that each year 20,000 young people leave the foster care system at age 18 without being reunified with their families or adopted. These youth are at enormous risk of not transitioning into adulthood successfully. The Annie E. Casey Foundation reports that two to four years after aging out of foster care: 25 percent of the youth had experienced homelessness, nearly 50 percent had been arrested, more than 50 percent of the young women had given birth, only 50 percent of the youth were regularly employed, and a significant number were dependent on welfare.

Increased resources need to be focused on this segment of foster care youth to ensure that when they leave the foster care system they enter into a stable housing situation, have an education or employment plan, financial literacy skills, and a support system. Few youth who live in families are fully self-sufficient at age 18; it is unreasonable to expect that foster youth will be able to succeed without intensive services and supports.

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