An Overview of Child Welfare Waivers

The Most Recent IV-E Waiver Legislation

Reform of child welfare services and financing gained traction after the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351) became law in 2008. Advocates and champions on the Hill continue to push for greater reform efforts. In the meantime, the restoration of child welfare waivers has been enacted as an interim action, due in large part to their feasibility in the current federal fiscal environment.

The Child and Family Services Improvement and Innovation Act (P.L. 112-34) was passed by Congress in late September and signed by the president on September 30, 2011. In addition to amending and reauthorizing IV-B of the Social Security Act, it also reinstates waiver authority for Title IV-E demonstration projects**.**

Waivers are legislatively-authorized and administratively-approved interruptions of federal regulation to allow states more flexible use of a particular funding stream. Title II of P.L. 112-34 renews the Department of Health and Human Services' (HHS) authority to waive certain federal child welfare policy requirements (particularly title IV-E foster care maintenance funds) to allow states to carry out alternative services and supports that promote safety, permanence and well-being. Waivers are intended as a strategy for learning more about innovative and effective child welfare practices. One of the requirements for waiver demonstrations is that they must remain cost-neutral to the federal government, so states cannot receive more from the federal government than they would have received under titles IV-B or IV-E of the Act without the waiver.

P.L. 112-34 allows HHS to issue up to 10 waivers each year from 2012 through 2014. Waivers cannot exceed five years in duration or end after 2019, including waivers enacted under previous legislation.

To qualify, a state must:

- Increase permanence by reducing time in foster care,
- Increase positive outcomes for children and families, or
- Prevent maltreatment and re-entry into care.

In addition the state must have in place or plan to implement at least two of the following policies, with at least one implemented after the waiver application:

- Establishing a bill of rights for children in care,
- Implementing a health and mental health plan for children in care,

- Covering kinship/subsidized guardianship with IV-E funding, extending IV-E foster care to 21,
- Implementing a plan to reduce congregate care, increasing the placement of siblings together,
- Implementing a plan to improve the recruitment and retention of quality foster families,
- Establishing procedures to assist youth in transitioning out of care,
- State plan inclusion of older youth guidance in their own transition plan, and
- The establishment of one or more programs to prevent placement in care and provide permanency.

HHS is given authority to terminate any waiver demonstration if they determine it is not making significant progress toward implementing the improvement policy within three years of approval. Furthermore, the bill includes reporting requirements that must start two years prior to the waiver application, account for all child welfare spending during the time of the waiver, provide periodic reports, and obtain an independent evaluation. Periodic reports must be posted on state websites and sent to the House Committee on Ways and Means. Independent evaluations of the project are required without preference to a particular research design. Finally, tribes are eligible to apply for waivers if they are administering a IV-E plan.

The History of Waivers

Congress passed Public Law 103-432 in 1994, establishing section 1130 of the Social Security Act. This was the original legislation giving HHS the authority to approve state demonstration projects involving the waiver of certain provisions of titles IV-E and IV-B of the Social Security Act. In 1997, The Adoption and Safe Families Act (ASFA) extended and expanded HHS' waiver authority by allowing the approval of up to 10 new waiver projects each year.

Since the enactment of the child welfare waiver authority, 24 states have implemented one or more demonstrations involving a variety of service strategies. HHS has generally approved waivers lasting up to five years. Some states have implemented specific interventions focused on certain child welfare populations, whereas others have experimented with system-wide reforms. Following is a list of waiver demonstration topics enacted by states:

- Subsidized guardianship/kinship permanence
- Flexible funding and capped IV-E allocations to local agencies
- Managed care payment systems;
- Services for caregivers with substance use disorders;
- Intensive service options, including expedited reunification services;
- Enhanced training for child welfare staff;
- Adoption and post-permanency services; and

- Tribal administration of IV-E funds.

The U.S. Children's Bureau website includes a report (http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/2012/profiles_demo2012.pdf) with greater detail of the outcome of waiver demonstration projects.

Advocacy Views on Child Welfare Waivers

Waivers are sometimes considered a budget neutral way for states to develop innovative reforms to the child welfare system, giving states the ability to dedicate more funds to prevention, early intervention and family support services with out having to make a large fiscal investment. However, there is some concern that waivers could impede more sweeping child welfare financing reform.

CWLA would prefer that Congress undertake a much more comprehensive approach to reform but realizes that waivers present an opportunity pursue policies at the state level that make progress toward that final goal. We continue to call on Congress to push toward broad and thorough reform. CWLA supports P.L. 112-34's reauthorization of waivers because it encourages innovation, tests promising initiatives, and focuses on improvements in prevention, safety, permanency and quality of care. In particular, we are glad to see enhanced accountability to better ensure that the demonstrations are furthering our collective knowledge base.

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