



SUMMARY AND ANALYSIS OF CHILD WELFARE PROVISIONS INCLUDED IN THE DEFICIT REDUCTION OMNIBUS RECONCILIATION ACT OF 2005 (S. 1932)

After taking nearly a year to gain passage, Congress finalized a budget reconciliation bill (S. 1932) on February 1, 2006 that reduces federal spending for entitlement programs by nearly \$40 billion. Many of these cuts impact services and supports to abused and neglected children and families.¹

One of the greater impacts of this flawed legislation is the reduction of support for grandparents and other relatives caring for abused and neglected children. The reconciliation bill alters the eligibility criteria for federal foster care and adoption assistance (Title IV-E), restricts certain kinds of state claims for federal reimbursement of administrative costs under the federal foster care program, and clarifies the use of Medicaid targeted case management services for children in foster care. The bill also includes substantial cuts to child support, Medicaid, and student loans, and reauthorizes TANF, adding stringent new work requirements while providing almost no funding increase in child care.

Highlights of the bill include:

Title IV-E Foster Care and Adoption Assistance

Title IV-E foster care is cut by \$577 million, which will impact the ability of grandparents and other relatives to care for abused and neglected children who are not able to live safely with their parents. Cuts in Title IV-E funding total \$577 million over five years and \$1.29 billion over 10 years.

¹ Entitlement programs commit the federal government to reimbursing benefits based on meeting certain eligibility criteria. Because the budget bill makes statutory changes to the eligibility criteria for federal foster care and adoption assistance (Title IV-E), restricts certain kinds of state claims for federal reimbursement of administrative costs under the federal foster care program, and clarifies the use of Medicaid, the federal government's financial support for these programs will decrease.

The bill makes these cuts by:

- repealing the 2003 *Rosales v. Thompson* 9th Circuit judicial ruling that expanded Title IV-E foster care eligibility to some children being cared for by grandparents and other relatives. This change cuts federal spending on Title IV-E foster care by \$397 million over five years and \$879 million over 10 years; and
- enacting restrictions on the use of Title IV-E administrative case management funding for the placement of children in kinship homes, children considered “candidates” for foster care, and children leaving ineligible facilities (such as psychiatric, crisis centers and some juvenile facilities) and moving to foster care. These changes cut federal spending on Title IV-E by \$180 million over five years and \$411 million over ten years.

Title IV-B Promoting Safe and Stable Families Program (PSSF)

The bill includes a one-year, \$40 million increase in funding for PSSF. These funds are an important flexible federal source of funding for an array of services for families with children and are often used to prevent and remedy the difficulties that bring families to the attention of the child welfare system.

Court Improvements

The bill creates two \$10 million court improvement funds to increase the coordination between state courts and state child welfare systems.

TANF Reauthorization

The budget bill reauthorizes the Temporary Assistance for Needy Families (TANF) program for five years with no increase in funding. The bill also requires states to:

- Meet higher work requirement by having at least 50% of TANF adult recipients in single parent families, and 90% of two parent families, meeting work requirements by FY 2007. To meet this stricter requirement, states must reduce the number of families receiving TANF assistance since 2005.
- Apply all work requirements to “state-only” programs. These state-only programs are programs funded solely with state dollars and used to serve some families who cannot meet certain federal requirements such as those who are legal immigrants, undergoing substance abuse treatment, or two-parent families living in high unemployment rural areas.

Child Care

The bill reauthorizes the federal child care program with few changes and little increase in child care funding.

- Child care funding will increase by \$200 million for FY 2006 only (less than a 5% increase). For fiscal years 2007-2010 child care funding would not increase. Any future increases in federal funding would depend on annual Congressional annual appropriations decisions.

Child Support Enforcement

The budget bill eliminates the child support federal incentive match. The federal government has matched the incentive payments that states reinvest in their child support enforcement programs since the early days of the child support program. These incentives have given states the resources needed to improve their child support program and helped states double their child support collection rates in the last decade.

- That change will result in a net reduction of \$1.6 billion over five years and by \$4.9 billion over ten years.
- The Congressional Budget Office estimates that the cut in federal funding from the elimination of the child support federal incentive match will cost families \$8.4 billion in child support in the form of payments owed to children by their non-custodial parents that will go uncollected—leaving children without the support they need.

Medicaid

Targeted Case Management for Children in Foster Care

The bill clarifies states' use of Medicaid funded targeted case management services for children in the child welfare system. This clarification assumes federal Medicaid savings of \$760 million over five years and \$2.1 billion over 10 years. Estimates also assume that the changes would shift some costs to the federal foster care program thereby increasing federal Title IV-E spending by \$350 over five years and \$940 million over 10 years.

- This clarification could result in limiting the ability of state child welfare agencies to use Medicaid targeted case management services for children in foster care.

Other Medicaid Provisions:

- Allows states to now charge families a co-payment of 10% if their income is 100% to 150% of the poverty level, (\$16,000 to \$24,000 for a parent and two children). For families whose income is above 150% of the poverty level, states could charge a 20% co-payment and a premium.
- Medicaid buy-in is allowed for children with disabilities whose family income or resources are at or below 300% of the poverty level (\$58,000 for a family of four). This will allow parents to go to work and earn above-poverty wages while maintaining Medicaid health care for their disabled child.

Analysis of Child Welfare Provisions Included in the Deficit Reduction Omnibus Reconciliation Act of 2005 (S. 1932)

1. Foster Care and Adoption Assistance

Clarification of Eligibility for Foster Care Maintenance Payments

The bill overturns the Title IV-E Foster Care Assistance financial eligibility criteria established in the 9th Circuit Court of Appeals² 2003 ruling in *Rosales v. Thompson*.³ While Title IV-E eligibility is still linked to 1996 AFDC income criteria, the court ruled that financial eligibility could be determined from the home the child resided in over the past six months or the home of removal. Since many children live with grandparents or other relatives on a temporary basis while determinations are made about what is in the best interest of the child, the *Rosales* decision resulted in more children living in the 9th Circuit states becoming eligible for federal foster care assistance.

The bill resets the determination of Title IV-E income eligibility to the criteria used prior to the *Rosales* ruling. Eligibility for federal foster care assistance must again be determined by looking to the home from which the child was legally removed due to allegations of abuse and neglect (typically the parents).

Two examples:

- In the *Rosales* case, the child was originally living with his parents and was not eligible for AFDC in *their* home. Officials removed the child, alleging maltreatment, and informally placed him with Ms. Rosales, his grandmother, without going to court. At that time, the child met AFDC financial eligibility criteria for Title IV-E while in the grandmother's home. Later, the county filed a dependency action in court. Ms. Rosales became the child's foster parent. Under current policy at the time, the child was not Title IV-E eligible because he did not meet the AFDC financial eligibility criteria in his parents' home, which is where he was legally removed from. The 9th Circuit Court of Appeals disagreed and said that the child could meet the Title IV-E AFDC financial eligibility criteria based on the income of Ms. Rosales, the child's grandmother. Under the criteria established in the budget reconciliation bill, Ms. Rosales' grandchild would not be eligible for federal foster care assistance.
- In another case, a child was originally living with her mother, where she was AFDC eligible. The child was then informally placed with her grandmother; in whose home she also was AFDC eligible. However, more than six months passed before the county welfare department filed a dependency action in court against the child's mother. Prior to the *Rosales* decision, HHS said the child was not eligible for Title IV-E Foster Care benefits because although the child was eligible for AFDC in the home of her mother, she did not live there in the six months before court proceedings were initiated. Under *Rosales*, the child is eligible for Title IV-E because she lived with the grandmother, a qualified relative eligible for AFDC, within

² Ninth Judicial Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. U.S. territories Guam and the Marianna Islands are also included.

³ *Rosales v. Thompson*, 321 F.3d 835 (9th Cir. 2003)

the six-month period. Under the criteria established in the budget reconciliation bill, this child is not eligible for federal foster care assistance.

- **Savings to the Federal Government:** According to the Congressional Budget Office (CBO), these changes will result in reduced federal spending on Title IV-E foster care by \$397 million over five years (FY2006-FY2010) and \$879 million over 10 years.
- **Impact:** These changes may make it less likely that children who lived with a relative before they were formally brought into the foster care system will become eligible for federal foster care assistance. In California alone, up to 4,000 children will be denied federal foster care assistance due to this change.⁴ The reduction in federal foster care eligibility in California will cost the state \$20 million per year, and reduce the income of a grandparent serving as a foster parent and with two grandchildren by \$592 per month and over \$7,000 per year.⁵

Due to this change, it is unlikely that children currently receiving federal foster care assistance due to the *Rosales* decision will lose this assistance. However, for children entering care in the 9th Circuit states, the more restrictive criteria will now apply. As a result, states in the 9th Circuit will have to support a larger share of children living in foster care with out any federal assistance.

Simplification of Eligibility for Adoption Assistance

The bill also somewhat simplifies the eligibility for federal adoption assistance. The past policy required that the AFDC eligibility criteria had to be met at two points: when the child was removed from his home and placed in foster care, and when adoption proceedings were initiated. The bill eliminates the second AFDC test.

- **Savings to the Federal Government:** CBO estimates this change will have little to no effect on the number of children eligible for federal adoption assistance.
- **Impact:** This change will simplify the eligibility process for children becoming eligible for federal adoption assistance.

Clarification Regarding Federal Matching of Certain Administrative Costs Under the Foster Care Maintenance Payments Program

The bill incorporates several provisions of a pending U. S. Department of Health and Human Services (HHS) rule limiting the ability of states to receive federal reimbursement for foster care administrative costs. First clarified by HHS in 2001, these administrative funds target costs incurred on behalf of children in kinship placements, children considered candidates for foster care, and children leaving non Title IV-E eligible facilities (such as psychiatric, crisis centers and other juvenile facilities) and moving to foster care.

⁴ California Assembly Human Services Committee. (2006, Jan. 24). Informational hearing on California human services and federal budget reconciliation.

⁵ Ibid.

These administrative funds are used to pay for time spent by social workers to find and make a placement, as well as ensure that the child's placement and permanency goals are reviewed according to specified intervals, and that other federal case review protections, such as case plans, are provided for each child.

→ **Savings to the Federal Government:** These changes restricting a state's use of Title IV-E administrative funds will result in a cumulative, reduced federal spending totaling \$180 million over five years (FY2006-FY2010) and \$411 million over ten years. The degree of impact will vary by state. According to the Congressional Research Service some states project losses between \$200,000 to \$100 million annually, while a few demonstrate that this change will have little or no financial impact.

Case Management and Administrative Costs Related to Kinship Care Placements

The bill restricts federal Title IV-E administrative matching funds for foster and adopted children placed with relatives. While these funds would continue to be available for children who have been placed with relatives who are *licensed* by the state as a foster home, these federal funds would no longer be available if the relative caregiver does not meet the state's foster care licensing requirements within 12 months, or the average time it takes to license foster parents in that state, whichever is less.

For more than a decade, HHS recognized the need to fund Title IV-E foster care case management and placement services for children living with a grandparent or other relatives. Many times a state used different licensing standards and requirements for children placed with relatives. These standards ensured the health and safety of the child, but were more flexible than licensing standards in place for non-relative foster placements for requirements such as the requirement for the amount of bedroom space available for the child.

→ **Impact:** This bill reverses longstanding HHS policy by withdrawing supports that have ensured continued family connections when a child is removed from his or her parents care. This change undercuts services and support to grandparents and other relative placements, even though Congress directly identified kinship placements as a preferred permanency option for abused and neglected children in the 1997 Adoption and Safe Families Act (ASFA). As a result of this change, states may have to support a larger share of foster children living with relatives using only state funds, or states may require all relative caregivers to meet all licensing standards. This would result in fewer relatives being able to care for abused and neglected children.

Case Management and Administrative Costs Related to "Candidates" for Foster Care

The bill also limits the use of Title IV-E administrative funds that are currently used to provide case management services for children who are potential "candidates" for foster care, but not yet placed into foster care. These services are often focused on preventing child abuse.

In the past, states could use Title IV-E administrative funds to support children who were considered potential "candidates" for being removed from their home and placed in foster care meaning that unless a child received services, they would likely be placed in foster care. This had

been a long-standing HHS policy documented through a series of HHS program instructions. With this change now made in the bill, states can continue to use these funds for children deemed candidates for foster care, but the bill imposes a new requirement that no less than every six months, states must review each child's candidacy for foster care.

- **Impact:** Supports may now be denied for at risk children who may be able to avoid being placed in foster care if they and their families were able to receive appropriate services.

Case Management and Administrative Costs Related to Children Exiting Institutions into Foster Care

The use of federal Title IV-E administrative funds is now limited to a one-month period when a child is transferred from an institution outside of the child welfare system, such as a hospital or juvenile facilities. Child welfare agencies use these funds to provide continued case management support to these children. In some instances, a state may transfer a child to an institution, such as a hospital, crisis care center, or a juvenile facility. The child welfare agency may intend for the child to return to foster care following this rehabilitative placement.

- **Impact:** Restricting the use of Title IV-E case management and planning services to no more than one month for these children and youth jeopardizes the continual planning needed to help facilitate the return of these children and youth to foster care. Limiting coverage for one month does not allow the child to fully meet and address the reason for their initial placement in the facility.

2. USE OF CHILD WELFARE RECORDS IN COURT PROCEEDINGS

The bill adds a clarification that is consistent with the provisions contained in the 2003 Child Abuse and Protection Treatment Act (CAPTA) amendments. The budget bill adds a Title IV-E state plan requirement clarifying required confidentiality provisions related to information about children served and does not limit the ability of a state to determine its policies regarding public access to court proceedings on child abuse and neglect or other child welfare related court proceedings. The exception is that the policies must, "at a minimum ensure the safety and well being of the children, parents, and family."

- **Savings to the Federal Government:** This clarification is not expected to have any financial impact.
- **Impact:** This clarification could assist in making federal law consistent with state practice.

3. PROMOTING SAFE AND STABLE FAMILIES PROGRAM

Promoting Safe and Stable Families (PSSF) (Title IV-B, Subpart 2) funds are an important flexible federal source of funding for an array of services for families with children. PSSF is one of the few federal sources of funds for services aimed to prevent and remedy the difficulties that bring families to the attention of the child welfare system.

The budget bill provides a one year (FY2006) increase in mandatory, or guaranteed funding for PSSF, bringing the mandatory funding up to \$345 million from the current level of \$305 million.

In addition to the mandatory funds guaranteed for PSSF annually, Congress also has the ability to approve up to \$200 million each year in additional discretionary funds. In FY 2006, Congress approved \$89.1 million in discretionary PSSF funds, a decrease of nearly \$9 million from the FY 2005 level—far short of the \$200 million that Congress could have approved. Therefore, the *net increase* for PSSF funding in FY 2006 will be slightly less than \$30 million, bringing total funding (mandatory and discretionary) for the program from \$403 million in FY 2005 to \$434 million in FY 2006.

→ **Cost to Federal Government:** \$40 million for FY 2006 only.

→ **Impact:** The increase in nearly \$30 million in PSSF funds will provide states some additional funds, but it will not offset the impact of the nearly \$600 million loss in Title IV-E child welfare funds that states will face due to the cut included in the budget reconciliation bill. Net FY 2006 increases in PSSF for states will range from an estimated \$3.5 million in California, to a low of an estimated \$30,000 in Wyoming. The increased funding for PSSF in 2006 will bring the total five year increase in PSSF funding (2002 through 2006) to \$466 million, well below the \$1 billion commitment made by the Administration during the 2001 PSSF reauthorization. Congress will be readdressing PSSF in 2006, as reauthorization for the program is needed.

Grants to Strengthen Court Handling of Child Welfare Proceedings

The bill amends the current Court Improvement Project (currently funded as a set-aside of regular PSSF funds),⁶ which provides grants to state's highest courts to use to assess and improve their child welfare proceedings. The bill provides additional funding for two new grant programs, each funded at \$10 million annually, aimed at strengthening the performance of courts on behalf of children who have been abused and neglected, including those in foster care and those waiting to be adopted. One grant's focus is aimed at improving courts timely and complete action on behalf of children in foster care through improved data collection and better coordination between the courts and the state child welfare system. The other grant is to provide training to judges, attorneys and other legal personnel in child welfare proceedings. In applying for the new grants, courts must demonstrate effective collaboration between the courts, the state child welfare agency and Indian tribes. These new grants had been proposed in pending legislation (S. 1679/H.R. 3756).

→ **Cost to Federal Government:** \$20 million per year for five years.

→ **Impact:** States would receive additional federal funding to strengthen the performance of the courts on behalf of abused and neglected children, including those who have been in foster care and those waiting to be adopted. States applying for these two new grants in addition to

⁶ Through FY 2006, current law authorizes a Court Improvement Program set-aside of \$10 million out of the mandatory Safe and Stable Families funding, plus 3.3% of any discretionary funds Congress chooses to appropriate for the program. In FY 2005, just over \$13 million was available for the program.

the current Court Improvement Project grants would each receive a minimum of \$85,000 and the remaining funds would be distributed to states based on the proportion of children's population that are 21 and younger in each state. California would receive the most funding at approximately \$850,000, and a state the size of Wyoming would receive approximately \$95,000. As in the case with current Court Improvement funds the state highest courts would be required to supply at least 25% of the funds used for the purpose of the grant.

4. MEDICAID

Use of Medicaid Funded Targeted Case Management Services for Children in the Child Welfare System

Medicaid Targeted Case Management (TCM) provides necessary supports and services for children that have been abused or neglected. Of the 870,000 children enrolled in Medicaid due to their status as a foster child, 17% received TCM services. Children in foster care account for 15% of all Medicaid TCM expenditures.⁷ States have an option to provide these services. A state is reimbursed for TCM and rehabilitative services at the state's Federal Medical Assistance Percentage (FMAP) rate.

TCM services assist recipients in gaining access to needed medical, social, educational, and other services. Children who do receive Medicaid funded TCM services have been found to have greater access to physicians, prescription drugs, dental care, and rehabilitative services than those children who do not receive TCM services.

The bill clarifies the TCM benefit to include:

- assessment of an eligible individual to determine service needs by taking a client history, identifying an individual's needs, and completing related documentation;
- development of a specific care plan based on the information collected through the assessment that specifies the goals and actions to address the individual's needs;
- referral and related activities to help an individual obtain needed services; and
- monitoring and follow-up activities, including activities and contacts to ensure the care plan is effectively implemented and adequately addresses the individual's needs.

The bill also specifies that the TCM benefits for children in foster care would not cover:

⁷ Geen, R., Sommers, A., & Cohen, M. (2005). Medicaid spending on foster children. Available online at <http://www.urban.org/publications/311221.html>. Washington, DC: Urban Institute.

- research gathering and completion of required foster care documentation; assessing adoption placements; recruiting or interviewing potential foster parents; serving legal papers; conducting home investigations; providing transportation; administering foster care subsidies; and making placement arrangements.

Other Medicaid TCM provisions include:

- asserts that Medicaid can be billed only for TCM where “there are no other third parties liable to pay for such services, including as reimbursement under a medical, social, education or other program.”
 - codifies the ability of states to use an approved cost allocation plan for determining the amount that can be billed as Medicaid TCM services when case management is also reimbursable by another federally funded program, such as Title IV-E Foster Care and Adoption Assistance.
 - requires HHS to issue formal regulations to implement these clarifications.
- **Savings to Federal Government:** This clarification assumes net federal Medicaid savings of \$760 million over five years and \$2.1 billion over 10 years.
- **Cost to Federal Government:** Estimates also assume that the changes would shift some costs to the federal foster care program, increasing federal Title IV-E spending by \$350 over five years and \$940 million over 10 years.
- **Impact:** The budget bill assumes that costs to the federal government for Medicaid TCM services will decrease due to these changes. It is unclear how HHS will interpret these clarifications in regulation and the potential exists that TCM services for children in the child welfare system could be reduced and costs to states would increase. Since states have the option of providing Medicaid TCM services, the impact of these changes will vary greatly among states. According to FY 2001 information, only 12 states reported not using TCM services for children in foster care. Of the 38 states using TCM funds, 19%, or 144,508 children benefited by having greater access to physician services, prescription drug, dental, rehabilitative, inpatient, clinic, and home health care services.⁸ Medicaid TCM expenditures were \$266 million, or 7.1%, of all Medicaid allotment for children in foster care.

Other Medicaid Provisions

- Allows states to now charge families a co-payment of 10% if their income is at the poverty level, or up to 150% of the federal poverty level (\$16,000 to \$24,000 for a parent and two children). Current law restricts co-payments to \$3. For families whose income is above 150% of poverty, states could charge a 20% co-payment and a premium.

⁸ Ibid.

- The bill adopts provisions from the Family Opportunity Act previously introduced in 2003 that allows parents who earn above-poverty wages to also maintain Medicaid health care for their disabled child. Medicaid buy-in is allowed for disabled children whose family income or resources are at or below 300% of the poverty level (\$58,000 for a family of four). Medicaid for children has traditionally been limited to families that were at or below the federal poverty line. Previously, working parents who have severely disabled children would lose Medicaid eligibility for their disabled children if they had income and resources above the federal poverty line (FPL). Currently, the FPL is \$19,350 for a family of four. This expanded eligibility for Medicaid is projected to increase federal expenditures for Medicaid by \$1.5 billion.

5. TANF REAUTHORIZATION

The bill includes a five-year reauthorization of the Temporary Assistance for Needy Families (TANF) program with no increase in federal funding. The bill also adds increased work requirements.

- By 2007, states must have at least 50% of TANF adult recipients in single parent families meeting work requirements, and 90% of adults in two-parent families must also now meet the work requirements.
 - The bill does this by changing the caseload credit. This credit has allowed states to reduce the required work requirement based on how TANF caseloads have declined since 1996. Previously, no state had to meet the 50% work requirement but all states had adults working, with rates around 30% nationally. The new credit will only allow states the caseload credits if they have reduced their TANF caseloads since 2005. Caseloads in many states have not decreased since 2005, while some states have witnessed increases in caseloads. Most states will not be able to meet the 50% requirement and, as a result, could be penalized with a loss of federal TANF funds. To avoid these penalties, states could remove families from TANF public assistance in order to reduce their TANF caseloads and to obtain the caseload credit.
 - All states will have to apply the work requirements to programs funded with “state-only” resources. States have been allowed to use the state TANF funds (state funds that must be spent in order to draw the federal TANF funds) to set up separate state-only programs. Families in these state-only programs do not have to meet the federal work requirements. Many states have used state-only programs to assist two-parent families. These families tend to live in areas where unemployment is very high, such as rural areas, or these families may include an adult or child who is severely disabled and requires full time care. States also use these programs to assist other individuals who may be facing certain barriers, such as victims of domestic violence or adults with mental health or substance abuse problems. All states will now have to require these families to meet the more strict work requirements.
- **Impact:** As a result of the increased work requirements, states may lose federal funds resulting from penalties that HHS may apply because states cannot meet these new work

requirements. States may also decide to eliminate TANF cash assistance to all two-parent families. States could also eliminate other programs funded with state dollars that serve adults who cannot currently meet the federal work requirements.

6. CHILD CARE REAUTHORIZATION

The bill also reauthorizes the federal mandatory child care funds with few changes and almost no increase in child care funding. Child care funding would increase by \$200 million in FY 2006 year (less than a 5% increase in funding). Federal child care funding would not be increased from 2006-2010. Any future increases in federal child care funding would depend on annual Congressional appropriations decisions. Congress has not approved any increases in child care funding since 2002 and since that date, child care funding has been reduced.

- **Impact:** Prior to the changes made in this bill, the Administration had already projected a five-year loss in federally subsidized child care slots. With these changes, less federal child care assistance will be available for the next five years. The increased TANF work requirements coupled with the lack of increases in discretionary child care funds, means that the demand for child care services will be even greater while funding will not increase. These changes will also create pressure in states to move the TANF funds they are currently using to provide child care to fund other services such as job training, transportation, tracking of TANF requirements and subsidized employment.

7. CHILD SUPPORT ENFORCEMENT

The budget bill eliminates the child support federal incentive match. The federal government has matched the incentive payments that state reinvest in their child support enforcement programs since the early days of the child support program. These incentives have given states the resources needed to improve their child support program and helped states double their child support collection rates in the last decade.

- **Savings to federal government:** This change will result in a net reduction of \$1.6 billion over five years and by \$4.9 billion over ten years.
- **Impact:** The Congressional Budget Office estimates that the cut in federal funding from the elimination of the child support federal incentive match will cost families \$8.4 billion in child support in the form of payments owed to children by their non-custodial parents that will go uncollected—leaving children without the support they need.

If you have any questions, contact Liz Meitner, CWLA Vice President of Government Affairs, at emeitner@cwla.org or 202/942-0257.

*Child Welfare League of America
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