



Child Welfare Reform: Issues and Recommendations

By Varina Winder ¹
January 15, 2008

Rep. Jim McDermott (D-WA), chairman of the House Subcommittee on Income Security and Family Support with jurisdiction over child welfare issues, is reportedly preparing a package of child welfare reforms to be released in early 2008. The package is rumored to include provisions on guardianship assistance (also known as kinship care), provisions addressing the needs of children aging out of the foster care system, and changes for tribal-administered foster care programs. It is unclear whether a more comprehensive reform of child welfare financing will be proposed.

This paper provides a brief overview of some of these issues and the positions of the Alliance for Children and Families and United Neighborhood Centers of America (UNCA). The members of the Alliance and UNCA are child welfare providers across the nation, including therapeutic foster care centers, residential treatment programs and state associations for children, among others.

RECOMMENDATIONS

- **Support Policies Extending Care to “Aging Out” Youth:** Approximately 67 kids “age out” of foster care each day, meaning they reach adulthood and are discharged from the child welfare system to themselves, usually at age 18. Due to current Title IV-E limitations on funding reimbursement, continued funding for services for discharged youth may come only from state funds.

The Foster Care Continuing Opportunities Act (S.1512, sponsored by Sen. Boxer (D-CA)) would allow states to expand their definition of child under Sections 475 and 477 of the Social Security Act by allowing the state to re-define the age of adulthood from age 18 to as high as age 21. Rep. Tom Udall (D-NM) may introduce a similar bill on the House side later this year.

Alliance / UNCA Position: The Alliance and UNCA support the Boxer bill (S. 1512).²

- **Support Financial Assistance for Relative Caregivers of Children in Foster Care:** Of the estimated half-million children currently in foster care in the United States, thousands could exit the system with custody transferred to relatives who are willing to become their legal guardians.

¹ For more information, please contact Varina Winder, Policy Analyst at vwinder@alliance1.org or at (202) 429-0400 x16.

² See Varina Winder, “Aging Out of Foster Care: Boxer Bill Would Expand Services for Older Foster Youth,” December 4, 2007. Available online at: http://www.alliance1.org/Public_Policy/analyses/Aging-Out_%20Dec07.pdf.

Unfortunately, under current federal law the caregivers of these children are likely to lose the financial assistance they received as foster parents if they become legal guardians and provide permanent homes for these children.

The Kinship Caregiver Support Act, introduced in 2007 in both the House (H.R. 2188) and the Senate (S. 661), would provide assistance to relatives who become the legal guardians of children in their care. The legislation would:

- Maintain existing federal financial assistance for foster children for relatives who choose to become their legal guardians;
- Require notice to be given to relatives of children who enter foster care and authorize states to establish separate licensing standards and regulations for relative guardians; and
- Establish a Kinship Navigator Program to help relative guardians navigate their way through available programs and services.

Alliance / UNCA Position: The Alliance and UNCA support the Kinship Caregiver Support Act (H.R. 2188, S. 661) as introduced.³

- ***Provide Tribes with Direct Access to Title IV-E Funding:*** The federal government supplies states with Title IV-E funding to provide such foster care services as maintenance payments, including clothing, food and shelter, training for staff, collection of data and administrative and placement payments. Although in 1978 the Indian Child Welfare Act (ICWA) codified in statute tribal authority for foster care decisions for Indian children, tribes must negotiate a contract with the state to receive any Title IV-E funding. Due to the difficulties in negotiating such contracts, over half of federally recognized tribes in the U.S. do not have such an agreement. Lacking direct access to federal funds, tribal communities today rely on an incomplete patchwork of agreements with states to gain funding for needed services.

The Tribal Foster Care and Adoption Act of 2007 (S.1956), introduced on August 2, 2007, by Sen. Max Baucus (D-MT) and its companion bill (H.R. 4688) introduced in the House by Rep. Pomeroy (D-ND), would provide tribes with the same direct access to Title IV-E funds as states. Legislation similar to S.1956 has been proposed in past Congresses to help address these inequities, although none has been enacted into law. The Congressional Budget Office (CBO) estimates that S.1956 would cost \$270 million over ten years.

Alliance / UNCA Position: The Alliance and UNCA support the Tribal Foster Care and Adoption Act (H.R. 4688, S. 1956) as introduced.⁴

- ***Oppose CMS-Proposed Regulation on Medicaid Rehabilitative Services:*** In August 2007, the Centers for Medicaid and Medicare Services (CMS) issued a proposed regulation (CMS-2261-P72 Fed. Reg. 45201) that would restrict the types of services allowable under the Medicaid rehabilitative services option. This regulation would cut \$2.29 billion in funding under the rehab option by preventing states from billing Medicaid for rehab services, as the CMS regulation states these services are the responsibility of the child welfare system. The regulation also proposes an “intrinsic to” test, which would exclude federal financial participation in Medicaid for any service that is “intrinsic” to another, non-medical program, such as foster care, juvenile justice, or child

³ See Patrick Lester and Christina Vamvas, “Kinship Caregiver Support Act,” June 21, 2007. Available online at: http://www.alliance1.org/Public_Policy/policynews/Kinship_Caregiver.pdf.

⁴ See Varina Winder, “Tribal Foster Care and Adoption of 2007,” September 13, 2007. Available online at: http://www.alliance1.org/Public_Policy/legislation/Tribal.pdf.

welfare. In addition to creating confusion with the use of the word “intrinsic” (the regulation provides no specific guidance), one possible effect is that providers and state agencies may have to “unbundle” therapeutic foster care services, as the rule only provides federal funding for “medically necessary rehabilitation services...that are clearly distinct from packaged therapeutic foster care services.”⁵ This means providers would spend more time and money on tracking and documenting services in small time blocks and less time providing care for the child.

Alliance / UNCA Position: Although the Medicare, Medicaid, SCHIP Extension Act of 2007 (Pub. Law 110-173) includes a moratorium on the proposed regulation until June 30, 2008, the Alliance and UNCA continue to oppose the Bush administration’s regulation restricting Medicaid billing for rehabilitative services.

- ***Support Eliminating Ties Between Title IV-E Eligibility and 1996 AFDC Income Standards:*** Title IV-E is an open-ended entitlement providing funding reimbursement is available only for those children who meet strict eligibility requirements. Due to the so-called “lookback” provision, support may only be provided for those children whose biological parents’ income met 1996 eligibility requirements for Aid to Families with Dependent Children (AFDC), which has never been adjusted for inflation. This means a smaller and smaller proportion of children is eligible for federal Title IV-E funds each year.

Addressing Title IV-E financing issues will be a challenge in the current Congress. Congressional Democrats have reinstated Pay-As-You-Go (PAYGO) rules for entitlements and tax changes as part of a larger effort to return to the fiscal discipline that produced federal surpluses in the late 1990s. Under these rules, any new entitlement spending or tax cuts must be paid for with offsetting entitlement cuts or tax increases.

Alliance / UNCA Position: The Alliance and UNCA support phasing out the outdated tie to AFDC. Possible alternatives for determining eligibility could include a link to other federal programs with an income standard, such TANF and Medicaid.

— o —

About the Alliance for Children and Families and United Neighborhood Centers of America

The Alliance for Children and Families, a nonprofit association, was formed by the 1998 merger of Family Service America and the National Association of Homes and Services for Children. The Alliance represents over 370 nonprofit organizations across the nation that provide services and economic empowerment to children and families. Alliance agencies cover a wide spectrum of providers, including a diversity of faith-based organizations and nonsectarian agencies. Together, these organizations deliver more than \$2 billion annually in services to more than 8 million people in nearly 6,700 communities across the United States. More information about the Alliance is available at www.alliance1.org.

United Neighborhood Centers of America (UNCA) is a voluntary, nonprofit, national organization with neighborhood-based member agencies throughout the United States. Formerly known as the National Federation of Settlements and Neighborhood Centers, it was founded in 1911 by Jane Addams and other pioneers of the settlement movement. More information about UNCA is available at www.unca.org.

⁵ Section 441.45(b)(1)(i) of CMS Regulation 2261-P72, available online at: <http://www.cms.hhs.gov/MedicaidGenInfo/Downloads/CMS2261P.pdf>