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Overview of Child Welfare Services in Tennessee State

September 2007

Tennessee's child welfare system has undergone dramatic changes over the past few years. Throughout the 1980s and early 1990s, child welfare in Tennessee was under-funded and fragmented among six state agencies that failed to communicate with one another or coordinate their efforts. In 1996, a single state agency, the Department of Children's Services (DCS) was created by executive order to house child welfare and juvenile justice services. In 2000, Children's Rights, a national non-profit that advocates for children in foster care, filed a class action lawsuit, claiming over-utilization of emergency shelters and large group facilities, untrained caseworkers, high levels of placement instability, inadequate efforts to achieve permanency, inadequate educational services and disparate treatment of African-American children in foster care.

The *Brian A.* class action lawsuit was settled in 2001, which resulted in broad-based system reform and an infusion of significant new state funding. The settlement agreement requires the state to accomplish the following:

- Decrease the lengths of stay of children in state custody;
- Decrease the number and rate of children re-entering state custody;
- Reduce the number of placement moves experienced by children in state custody;
- Reduce the number and rate of children being restricted from their own families, communities and family placements; and
- Reduce all disparities associated with race/ethnicity, gender or age.

Implementation of the settlement agreement has resulted in major changes in practice, policy and legislation. A detailed description of these changes is beyond the scope of this memorandum. Instead, we have below identified some of the principles underlying the Tennessee reform experience, as articulated in the Settlement Agreement, the DCS Practice Model and state legislation. Many of these principles are identical to those underlying the argument for reform of federal child welfare financing.

Brian A. Settlement Agreement: Principles

The *Brian A.* Settlement Agreement includes a set of 14 principles that, among other things, affirm the need to reduce reliance on foster care as a way to keep children safe from maltreatment and, when out-of-home placement is necessary, to place children whenever possible with relatives. Five of these principles are as follows.



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- The state should make reasonable efforts to avoid foster care placement by providing services to preserve the biological family whenever that is reasonably possible. However, child welfare decision-makers must have the professional capacity to make determinations as to when making efforts to preserve the biological family, or leaving the child with that family, is neither safe for the child nor likely to lead to an appropriate result for the child (Principle 2);
- After children enter placement, all non-destructive family ties should be maintained and nurtured. Children should be placed with relatives who are able to provide a safe, nurturing home for them, and should be placed with siblings, and relationships with relatives and siblings should be facilitated and maintained by the child welfare agency (Principle 3);
- Foster care should be as temporary an arrangement as possible, with its goal being to provide a permanent home for the child as quickly as possible. In making the determination about what plans and services will best meet this goal, the child's interests must be paramount (Principle 4);
- Children in out-of-home placement must have timely decision-making about where and with whom they will spend their childhood, and timely implementation of whatever decisions have been made (Principle 9);
- The state should achieve these goals in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of the child's safety, keeping a child as close to home as possible (Principle 11).

DCS Practice Model

The DCS Practice Model, developed in response to the Brian A. litigation, contains a number of guiding principles that echo the principles found in the Settlement Agreement. In addition, the Practice Model includes standards relating to fiscal issues, procurement of services and resource allocation. The following standards emphasize funding flexibility, collaboration and achievement of desired outcomes:

Standard 2-501

DCS will develop a comprehensive, flexible and collaborative funding system that effectively uses resources and is based on incentives for achieving desired outcomes for children and families.

Standard 2-502



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DCS's flexible funding system will support service delivery based on the needs of children and families.

Standard 2-503

DCS's Division of Fiscal and Administrative Services will collaborate with regional management teams to develop regional capacity to understand and implement flexible funding strategies.

Standard 6-200

DCS's flexible funding system will use the broadest funding streams permitted by State and federal law in order to purchase services that accommodate the individual and multifarious needs of children and families.

Standard 6-201

DCS's flexible funding system will permit the Department to share resources with system and community partners working for same and compatible outcomes for children and families in order to create seamless and integrated program and service options across systems.

Standard 6-202

DCS's flexible funding system will permit interested regions to share resources by working together on specific projects and to develop agreements for pooling monies from specific funding categories into larger funding pools.

Standard 6-203

DCS will provide regional staff with greater control and flexibility in financing services and allocating resources at the local level.

This last standard (6-203) is accompanied by commentary that, although pertaining to financing that flows from the state to localities, could be equally applied to federal financing of state child welfare systems:

Commentary: Flexible funding is much more than an accounting technique. It is the means for producing tangible results for families. The changes in practice as a result of flexible funding will be most significant at the level of worker-family interaction where families experience seamless and accommodating service provision. Flexible funding will provide the means to meet a need virtually at the moment the need is identified. Case managers will access a broad array of public and private resources when a need first surfaces rather than at the time of absolute crisis. Funding will be used in a proactive and collaborative way, to offset more costly and recurring expenses. It will obviate referrals to the only thing left on the menu, regardless of whether that service is really what a child or family needs.



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State Legislation

In addition to enhanced funding for implementation of the *Brian A. Settlement Agreement*, the Tennessee Legislature has supported the efforts of DCS with legislation intended to help strengthen families, prevent child maltreatment, avoid foster care placement and support kinship families. One of the more significant pieces of legislation was HB 447, enacted in 2005 to mandate an alternative response system under which DCS may respond to lower risk cases with an assessment of need for family and community support services, rather than an investigation. The act expresses legislative intent as follows:

Families can change the circumstances associated with imminent risk to a child when they are provided with intensive, comprehensive services tailored to their strengths and needs. The fundamental assumptions are that most children are better off with their own families than in substitute care and that separation has detrimental effects on both parents and children. Where possible, then, preservation of the family serves as the framework for services, but in any case the best interests of the child shall be paramount.

Other important pieces of legislation include the following:

HB 704 (2005): Requires DCS and the Commission on Aging to collaboratively design and implement a full range of educational, counseling, referral and other services designed to encourage and support elderly and/or disabled foster parents who participate in the kinship foster care program.

SB 2315 (2005): Earmarked \$1.25 million to fund the Relative Caregiver Program to support children in relative care.

Implementation of the Settlement Agreement: Current Status

A September 12, 2007 monitoring report of the Technical Assistance Committee (TAC) established by the settlement agreement credits DCS for dramatic reductions in the use of congregate care settings, substantial increases in the percentage of siblings placed together, a reduction in the foster care caseload with no increase in foster care re-entries (from 10,769 on 6/30/01 to 9,271 in 6/30/06), impressive increases in finalized adoptions of children from foster care, and the addition of subsidized guardianship as a permanency option funded with a Title IV-E waiver. The report also noted improvements in training, child welfare workforce, resource allocation, in-home services, data collection and analysis, and quality improvement, among other things.

The TAC, however, noted that DCS has not made satisfactory progress in the following areas:

- Placement stability;



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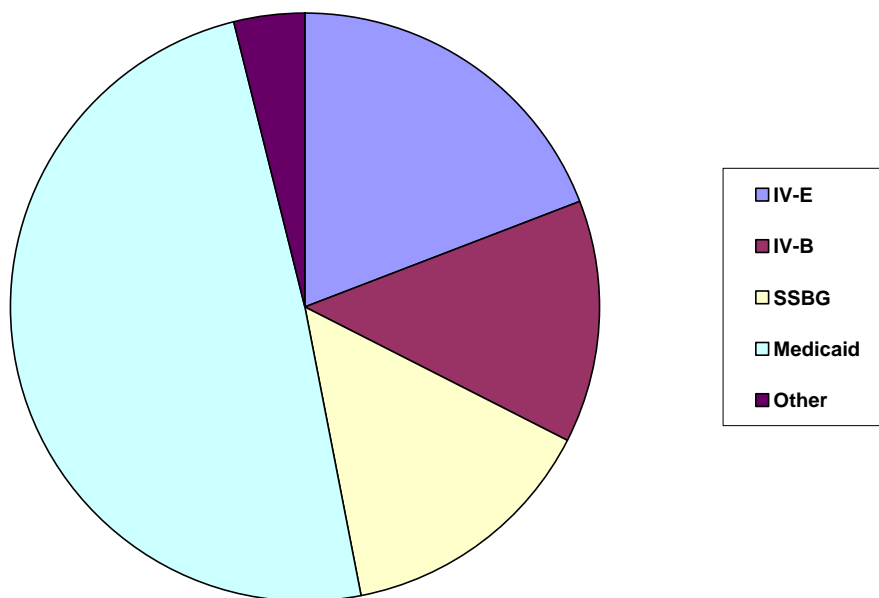
- Visits between foster children and their parents and siblings;
- Services and supports to youth for successful transition to adulthood;
- Lack of permanency for youth who age out of foster care.

The TAC report identifies two areas of activity that have the most significant potential for improving outcomes. The first is adequate implementation of DCS's Child and Family Team Process for engaging families, developing and implementing case plans and supporting the professionals, relatives and others who are part of the families' support network. The second is recruitment and retention of foster and adoptive families, particularly kinship families. According to the TAC, the state has relatively few kinship resource homes compared to many other child welfare systems. In fact, the percentage of children in kinship homes declined from 18 percent in 2003 to 13.7 percent in 2006.

Child Welfare Financing in Tennessee

Traditionally, Tennessee has relied heavily on Medicaid to finance its child welfare system. In FY 2004, Medicaid accounted for almost one-half of all federal child welfare spending in the state, compared to 10 percent nationally. In contrast, IV-E spending accounted for only 19 percent of federal child welfare spending in the state, compared to 50 percent nationally. See pie chart below.

Federal Child Welfare Spending in Tennessee, FY 2004



Source: Urban Institute, 2006



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States that use Medicaid to fund child welfare services typically do so in the areas of targeted case management (TCM) and rehabilitative services (RS). The continued ability of states to use Medicaid for TCM services on behalf of children in foster care is in doubt after passage of the Deficit Reduction Act. Although the DRA required the Centers for Medicare and Medicaid Services (CMS) to issue rules, CMS has not yet done so. The continued availability of RS for foster children is also in doubt. CMS issued a proposed rule on August 13, 2007, which would, among other things, provide that Medicaid reimbursable RS does not include services "furnished through a non-medical program as either a benefit or administrative activity including services that are intrinsic to elements of programs other than Medicaid, such as foster care, child welfare, education, child care . . . and juvenile justice." In other words, the proposed rule would codify what many states have already experienced, the elimination of states' ability to use Medicaid to pay for RS for children in the child welfare system. Thus, Medicaid as a child welfare funding stream appears to be highly vulnerable.

Conclusion

Child welfare in Tennessee is in the process of transformation from a system characterized by over-reliance on congregate care to a system in which flexible funding is used to meet families' needs before foster care placement becomes necessary. This transformation, however, is limited by the restrictions placed on federal funding for child welfare, most notably Title IV-E and Medicaid. Greater funding flexibility at the federal level would be very much in line with the guiding principles and desired outcomes articulated by DCS, as set forth above. As Tennessee continues to reduce its foster care caseload, it would also benefit from the ability to reinvest federal IV-E foster care "savings" into prevention services. Federal financing reform could also support Tennessee's efforts to place more children in foster care with relatives.