

You Get What You Pay For

REAL REFORM MEANS ENDING THE FOSTER CARE “ENTITLEMENT”

**National Coalition for
Child Protection Reform
53 Skyhill Road (Suite 202)
Alexandria VA 22314
(703) 212-2006
nccpr@nccpr.org
www.nccpr.org**

You Get What You Pay For

REAL REFORM MEANS ENDING THE FOSTER CARE “ENTITLEMENT”

By Richard Wexler, Executive Director, National Coalition for Child Protection Reform

CONTENTS:

Overview	3
The background – and the stakes	4
<i>Other sources of funding – and how they’re misused</i>	5
The Bush Administration tried to break the logjam, but they didn’t try very hard	5
Myths about “crack” still haunt the debate	6
A campaign of fear and smear	7
The block grant bogeyman	8
Waivers	8
Florida’s success	9
Future waivers in jeopardy	9
The foster care-industrial complex still stands in the way	10
The need for targeting	10
<i>The dismal record to date</i>	11
CWLA: Out to make things even worse?	12
The camel’s nose already is in the tent	13
Better alternatives, real solutions	14
<i>Don’t be afraid of the block grant bogeyman</i>	15
Endnotes	16

ABOUT NCCPR

The National Coalition for Child Protection Reform is a non-profit organization whose members have encountered the child protection system in their professional capacities and work to make it better serve America’s most vulnerable children. **Board of Directors:** **President:** *Martin Guggenheim*, former Director of Clinical and Advocacy Programs, New York University School of Law. **Vice President:** *Carolyn Kubitschek*, attorney specializing in child welfare law, former Co-coordinator of Family Law, Legal Services for New York City. **Directors:** *Elizabeth Vorenberg*, (Founding President) former Assistant Commissioner of Public Welfare, State of Massachusetts; former Deputy Director, Massachusetts Advocacy Center; former member, National Board of Directors, American Civil Liberties Union; *Annette Ruth Appell*, Associate Dean for Clinical Affairs, Washington University Law School, St. Louis, former Associate Dean for Clinical Programs, William S. Boyd School of Law, University of Nevada, Las Vegas; *Marty Beyer, Ph.D.*, clinical psychologist and consultant to numerous child welfare reform efforts; *Ira Burnim*, Legal Director, Judge Bazelon Center for Mental Health Law, Washington, DC; former Legal Director, Children’s Defense Fund; former Staff Attorney, Southern Poverty Law Center; *Prof. Paul Chill*, former Associate Dean, University of Connecticut School of Law; *Prof. Dorothy Roberts*, Northwestern University School of Law, author *Shattered Bonds: The Color of Child Welfare* (Basic Civitas Books: 2002); *Witold “Vic” Walczak*, Legal Director, Greater Pittsburgh Chapter, American Civil Liberties Union Foundation of Pennsylvania; *Ruth White*, Executive director, National Center for Housing and Child Welfare, former Director of Housing and Homelessness, Child Welfare League of America. **Staff:** *Richard Wexler*, Executive Director. Author, *Wounded Innocents: The Real Victims of the War Against Child Abuse*. (Prometheus Books: 1990, 1995).

Funding for this publication was provided by The Atlantic Philanthropies and the Open Society Institute. We thank the Foundations for their support, but acknowledge that the views expressed in this publication are those of NCCPR alone and do not necessarily reflect the opinions of our funders.

You Get What You Pay For

REAL REFORM MEANS ENDING THE FOSTER CARE “ENTITLEMENT”

Overview

It is rare to find a moment at any event involving child welfare that is genuinely inspiring. But at an otherwise poorly-organized and overstaffed media briefing last year, where reporters were expected to spend two-and-a-half hours listening to ten speakers before getting to ask a question (which may explain why few showed up) one moment made it truly worthwhile.

A grandmother from Florida, Sylvia Kimble, talked about how the state Department of Children and Families saved her family. She talked about how an agency which, only a few years earlier, would have thrown her grandchildren into a succession of foster homes, instead provided her with the help she needed to care for them. Kimble previously had been featured in [this story in *The New York Times*](#).

The purpose of the event was to showcase safe, proven approaches to keeping families together and avoiding foster care. But there was one striking irony. The multi-billion dollar foundation that organized the event so far refuses to support the change in child welfare financing that made this success story possible.

The foundation, Casey Family Programs, is not alone. The entire child welfare establishment, led by one of the trade associations with members who have the most to lose, the Child Welfare League of America (CWLA), has formed a phalanx of opposition to the kind of real child welfare financing reform that made Florida’s success possible.

As is so often the case, the opponents of reform typically are not ill-motivated. Most people in child welfare enter the field for the right reasons – they really want to help vulnerable children. Even people at

child welfare agencies which depend on the *status-quo* to stay in business have persuaded themselves that their agency’s best interests and children’s best interests happen to be identical. Rationalization is powerful – and dangerous.

Being well-motivated is no excuse for the kind of smug, sanguine attitude that would prompt CWLA to claim that a foster care system which destroys the lives of tens of thousands of children every year “isn’t broken” – it’s just never gotten enough money.

But being well-motivated is no excuse for the kind of smug, sanguine attitude that would prompt CWLA to claim that a foster care system which destroys the lives of tens of thousands of children every year “isn’t broken” – it’s just never gotten enough money.¹

The child welfare establishment, a kind of “foster care-industrial complex,” which leans left the way the military-industrial complex leans right, also has displayed an ends-justify-the-means mentality. Indeed, it turns out that some groups on the left can be just as willing to distort and deceive for a “greater good” as those on the right.

The alternative to real reform suggested by Casey Family Programs and others, is, in fact, a budget-buster that almost

certainly is dead on arrival. Even were it workable, it would not create nearly as much change as has been seen in Florida, because it's all carrot and no stick.

Other proposals, including what is apparently the top priority of CWLA, actually would make the system worse

Unless there is a significant change of heart in the foster care-industrial complex, or a sudden willingness in Congress to challenge it, no other state is likely to get the opportunity that Florida seized. At worst, "reform" may turn into nothing but a wind-fall for those who take away children and throw them into foster care, at the expense of safe, proven alternatives. The financial incentives actually could get worse.

Indeed, since 2008, they've already worsened twice. (See *The Dismal Record to Date*, p.11.)

The background – and the stakes

Understanding the issue requires a journey into a wonkish world filled with terms like "delinking" and "eligibility look-back." It's worth the trip, because the stakes are so high.

To understand those stakes, consider what a single mother in the Bronx named Rose Mary Grant had to do every week for months, just to see her then-11-year-old son, Issa, as described in a keenly-observed story in the Westchester County, N.Y. *Journal-News*.

*"Starting from her brick apartment tower, Rose walks a block to Gun Hill Road, takes the 28 bus to the subway station, catches the 5 train to Harlem, makes her way down 125th Street, boards the Metro-North train to Dobbs Ferry, and rides a shuttle ... At each step, she places two metal crutches ahead of her and swings forward on two prosthetic legs."*²

The journey would have been worth it, had there been something worthwhile for Issa at the end of the line. But there wasn't.

Issa was trapped in a "residential treatment center" a form of "care" that does little or no good, and was utterly unnecessary for Issa.³

Issa was not paranoid, he was not schizophrenic, and he was not delusional. The only label pinned on him was Attention Deficit Hyperactivity Disorder. Sometimes, at home, he was seriously out-of-control. But his handicapped, impoverished single mother couldn't do what middle-class and wealthy families do: find a good psychiatrist and hire home health aides.

She couldn't do that because the federal government does almost nothing to help pay for such alternatives. But, in many cases, the federal government will gladly reimburse states between 56 and 83 cents for every one of the 86,000-or-more dollars per year it costs to keep children like Issa in an "RTC."

Issa finally did get home, and the RTC where he was housed is reforming its own practices to help more children in their home communities.

But the reason Issa couldn't be cared for in his own home by his own mother for so long is rooted in the way the federal government helps states and localities finance child welfare.

Foster care is funded by the federal government as an open-ended entitlement. It's known as Title IV-E. For every eligible child (and I'll get back to eligibility later) the states are reimbursed for anywhere from 56 percent to 83 percent of the cost of warehousing that child in a foster home, a group home, or an institution. (The percentage for each state is the same as whatever that state gets for Medicaid, which, in turn, is linked to the average income of state residents.)⁴ Aid for adoption subsidies also is an entitlement under the same program.

The only funding stream even partially reserved for prevention and family preservation, known as Title IV-B, is not an entitlement; and it is strictly limited.

The result, in Federal Fiscal Year 2010 the federal government is expected to

Other sources of funding, and how they're misused

TANF AS CHILD WELFARE SLUSH FUND

There are a variety of other federal aid programs that can be used to fund child welfare, at the discretion of the states. Among the largest, and the most misused, is Temporary Assistance for Needy Families (TANF).

TANF is the program that replaced “welfare as we knew it.” By slashing welfare rolls states freed up large amounts of federal money for other purposes. The idea was that states would use these surplus funds to help impoverished families become self-sufficient, by providing things like day care and job training.

But some states have turned TANF into a child welfare slush fund. Michigan, for example, now funds almost all of its child abuse prevention and family preservation programs with TANF surplus funds. So money is taken away from programs to help poor people become self sufficient (and thereby keep their children) to fund other programs to do essentially the same thing. Michigan takes away with one hand what it gives with the other.⁵

Other states are worse. They actually take TANF money and funnel it into child abuse investigations and foster care with strangers. In Connecticut, for example, in just a single year, more than \$120 million in funds that could have gone to provide low income day care was diverted. Instead, the money went to pay for child abuse investigators who take away children on “lack of supervision” charges (such as when a working parent can’t afford day care) and to the strangers who then take those children into their own homes as foster parents.⁶ Texas also has diverted TANF money into child abuse investigations.

Ohio and Michigan use TANF money to subsidize adoptions, without regard to the adoptive parents’ income. Had Madonna chosen to adopt an impoverished child from Michigan instead of Malawi, she would have been eligible to collect an incentive payment, using money originally intended to help low-income families. In effect, states like Michigan and Ohio are picking the pockets of poor people in order to help the wealthy adopt poor people’s children.⁷

The use of TANF as a child welfare slush fund illustrates a vital issue for any reform of child welfare finance: If you put the foster care money and the prevention money in the same pot and turn it into a free-for-all, prevention will lose every time. The foster care-industrial complex and the middle-class interests of foster and adoptive parents will trump poor people every time. They’ll scarf up the prevention money, leaving the system even worse than it is now.

Any change in financial incentives should make it possible to use foster care money for prevention, but it must never allow existing prevention money to be used for foster care.

spend, via Title IV-E, \$4.7 billion to hold children in foster care and another \$2.46 billion to subsidize adoptions. It will spend, at most, \$660 million to help to keep children out of foster care through Title IV-B. The real figure is even lower because some money in these “prevention” funding streams can be spent on foster care and adoption.⁸

This means that while safe proven alternatives to foster care cost less in total dollars, it sometimes can cost a state or locality less to throw a child into foster care.

So while this does *not* mean, as some have alleged that “government makes money on foster care” it *does* mean that there is a huge, perverse incentive to use foster care instead of better alternatives.

The Bush Administration tried to break the logjam – but they didn’t try very hard

The Bush Administration came up with a plan to make foster care funding flexible. It would have worked like this: On a purely voluntary basis, states could opt out of the current system for five years and replace it with a negotiated lump sum equal to the estimated amount the state would have received for foster care under the current entitlement. The amount would be adjusted annually for inflation. The money then could be used for alternatives to foster care – as well as continuing to be available for foster care.⁹

States that kept their foster care pop-

ulations under control, or even better, reduced them, would wind up with more money under this plan – money which they would have to plow right back into child welfare.

Since alternatives to foster care are not only more humane than foster care and safer than foster care but also less expensive than foster care, the potential for such savings is considerable.

What part of “voluntary” did my fellow liberals fail to understand?

But states that persisted in a take-the-child-and-run approach to child welfare and, in particular, states that caved in to “foster care panics” – huge surges in removals of children in the wake of high-profile tragedies, would have to pick up the tab for their poor policies themselves.

That was the whole idea: Take away the incentive to use foster care instead of better, safer alternatives.

Once in, a state would have to stay in for five years. But the decision to accept the deal in the first place under this plan was strictly voluntary. Any state that didn’t like the plan could simply stick with the *status-quo*. What part of “voluntary” did my fellow liberals fail to understand?

There was another proposal which would not have been voluntary. It was introduced by the then-chair of the relevant subcommittee when Republicans controlled the House of Representatives.¹⁰ But it never even got out of committee – and no one in the Senate even would introduce it.

But even the existence of such proposals, including the one that was purely voluntary, infuriated the foster-care industrial complex, in particular the Child Welfare League of America. CWLA members in-

clude lots of big private foster care and institutional care “providers.” Their existence depends on an endless supply of foster children, fueled by an endless supply of federal dollars. (The problem is compounded by the way most states and localities choose to reimburse private agencies, something discussed in [NCCPR’s Issue Paper on financial incentives](#).)

The Children’s Defense Fund also had a fit, both because of a knee-jerk suspicion of anything from the Bush Administration – which was understandable but, in this case, wrong – and also because their slogan should be “no dollar left behind.” The thought of giving up any kind of “entitlement” funding was more than they could bear.

CDF’s opposition also revealed something else about the group’s leadership. For all their rhetoric claiming prevention really works, in their heart of hearts, they don’t seem to believe it.

All the research showing that these programs are far better – and safer – than foster care was no match for a gut-level fear that somewhere, someplace there might be a child who wouldn’t be torn away from his parents when he should be. There is, unfortunately, no comparable gut-level fear for all the children whose lives are destroyed by needless removal from their homes.

Myths about “crack” still haunt the debate

The heart of CDF’s fear could be boiled down to: “What if there’s another ‘crack’ epidemic,” – some circumstance beyond a child welfare agency’s control that might cause a huge increase in foster care? The prospect that states might have to pay for this themselves was more than CDF could bear.

But this logic fails on several counts:

- The actual “crack” epidemic of the late 1980s was fueled as much by fear and hype as by the actual drug. While the prob-

lem was serious and real, the response – mass confiscation of poor people’s children – was an absurd overreaction. The hype about “crack babies” proved to be largely fiction.¹¹ Indeed, in many cases, the greater danger turned out to be foster care.

All the research showing that these programs are far better – and safer – than foster care was no match for a gut-level fear that somewhere, someplace there might be a child who wouldn’t be torn away from his parents when he should be. There is, unfortunately, no comparable gut-level fear for all the children whose lives are destroyed by needless removal from their homes.

This can be seen in a landmark study from the University of Florida Medical Center. Researchers studied two groups of infants born with cocaine in their systems. One group was placed in foster care, the other with birth mothers able to care for them. After six months, the actual physical development of the infants was better when they were left in their own homes. For the foster children, being taken from their mothers was more toxic than the cocaine.¹²

It is extremely difficult to take a swing at “bad mothers” without the blow landing on their children. If we really believe all the rhetoric about putting the needs of children first, then we need to put those needs ahead of everything – including how we may feel about their parents. That doesn’t mean we can simply leave children

with addicts – it does mean that drug treatment for the parent almost always is a better first choice than foster care for the child.

But then, as now, foster care funding incentives encouraged tearing apart families, with no comparable assistance for the better option: drug treatment.

The real lesson of the “crack epidemic” is that, should another such tragedy occur, we’ll be a lot better able to handle it if we have a flexible system of child welfare funding, instead of one that encourages an addiction to foster care.

In addition:

- In a real emergency, states could go to Congress and seek emergency funding, just as Wall Street, the auto industry, and so many others have done.

- Most important: No state would have been forced to change anything. Any state so terrified of another crack epidemic, or anything else, that it didn’t want to take part didn’t have to. Again, what part of “voluntary” did my fellow liberals fail to understand?

A campaign of fear and smear

So CDF, CWLA and others mounted a campaign of disinformation, fear, and smear worthy of, well, the Bush Administration. At one point CDF actually claimed that the plan would “dismantle ... foster care.”¹³ If the fact that this is absurd on its face isn’t enough, the fact that foster care in Florida is not, in fact, dismantled, should be enough to settle that argument.

Another CDF publication specifically cited Florida as a state that could lose out under this kind of flexible funding.¹⁴ Of course it didn’t work out that way.

Still another group, Fight Crime – Invest in Kids, resorted to what is commonly called Astroturf campaigning (in which the grassroots are fake) to help kill off reform.

They had police chiefs in three states present reports supposedly about their individual states and how those states allegedly

would be harmed by flexibility. In fact, the title of each report was identical, except for the name of the state, and the content was nearly identical, except for short sections to insert local data. And they all came out of FCINK's main office in Washington.¹⁵ The content also was misleading, both about foster care in general and the flexible funding plans in particular.

The block grant bogeyman

But the biggest catch-phrase in the rhetorical arsenal of the foster care-industrial complex, the one sure to strike terror into the hearts of liberals, was "block grant." That's what they called this plan, and that's not true. Indeed, it is the same sort of Orwellian use of language conservatives use to label the estate tax the "death tax." And, unfortunately, it's just as effective. (See the chart at the end of this publication for a rundown of why this plan was not, in fact, a block grant.)

Among the fears stoked by the block grant language: the claim that somehow block grants are easier to cut than entitlements. In fact, entitlements are not written into the Constitution; they're just laws, and those laws can be changed just as easily as the laws that provide for "block grants."

In fact, the Administration plan actually would have made it harder to cut funding. The current entitlement can be cut whenever Congress wants. The Administration plan would have locked in the federal government to a five-year contract. During that time, funds could not be cut, and even would increase with inflation.

And, as will be seen below, flexible funding actually saved Florida's system from devastating cuts.

The foster care-industrial complex never really had anything to fear. The Administration plan never even made it into bill form, and, as noted earlier, the House bill never even got a Senate sponsor. The Bush Administration was far less serious

about passing it than opponents were about killing it, so it went nowhere, even when the Republicans controlled Congress.

Waivers

But the Administration went another route. They offered essentially the same deal to a limited number of states and localities in the form of a "waiver" granted by the Department of Health and Human Services. HHS had long been authorized by Congress to grant a small number of waivers, but generally they were limited either geographically or in their scope. Offering an entire state the option of using any or all of its foster care money on alternatives was unprecedented.

**The real lesson of the
"crack epidemic" is that,
should another such tragedy
occur, we'll be a lot better
able to handle it if we have a
flexible system of child
welfare funding, instead of
one that encourages an ad-
diction to foster care.**

I don't know how many states even were interested, probably very few. Most probably were too timid to try to break their addiction to the foster care entitlement. In addition, each waiver required the recipient to set up an independent evaluation.

Ultimately two states received waivers: Florida and Michigan. But at the very last minute, so late in the game they'd already issued a press release bragging about their waiver, state officials in Michigan chickened out. The state's children remain haunted by their act of cowardice.

In addition, California, where indi-

vidual counties run child welfare, was granted authority to use the waiver in up to 12 of its 58 counties. But only two opted in, Alameda and Los Angeles.

Florida's success

At the time the waiver took effect in Florida, in 2007, that state was known nationwide for its failed child welfare system. The state had been in the nation's longest foster-care panic – a giant surge in removals of children that began in 1999, thanks to a combination of a high-profile child welfare fatality and some of the worst leadership ever to plague a state child welfare agency.¹⁶

Florida has proven wrong all the fears about flexible funding. The independent evaluation found that the changes brought about by the waiver have improved child safety.

By 2007, better leaders were in charge, and they realized the only way to fix the system was to reverse course. The waiver let them do it.

The waiver allowed for a significant reduction in entries into foster care. That created savings in two ways: First, the alternatives to foster care cost less. But second, whereas under the old system, Florida would get less foster care money each year if the number of children taken away declined, under the waiver, the state was held harmless – Florida got the same amount of money, plus an increase for inflation. This money then was plowed back into further bolstering an emerging infrastructure of prevention and family preservation.

In the process, Florida has proven

wrong all the fears about flexible funding. The independent evaluation found that the changes brought about by the waiver have improved child safety.¹⁷

In addition, rather than making child welfare funding more vulnerable to cuts, as the fear-mongers claimed, the waiver actually saved Florida's child welfare system from devastating cuts when the recession hit. Lawmakers preparing such cuts were stopped in their tracks when the Florida Department of Children and Families pointed out that the waiver contained a maintenance of effort provision: Cut existing funding too deep, and the entire waiver is lost.

In contrast, in Michigan, the state that abandoned the waiver at the last minute, a combination of dreadful child welfare leadership and the lack of a waiver to protect vulnerable children led to devastating cuts in an already weak network of prevention and family preservation.¹⁸

In Los Angeles County, implementation of the waiver has been disappointing. Partly because of weak leadership in the county child welfare agency, the amount of money diverted from foster care to alternatives has been less than it should have been, and there are only the first signs of reversing years of increases in entries into foster care. The Los Angeles waiver started a year later than Florida, so there's been no independent evaluation report yet.

But once again, none of the fears of flexible funding opponents has materialized, and there is no evidence of any compromise of safety. Los Angeles County children are not a lot better off because of the waiver, but they *are* better off for it.¹⁹

Future waivers in jeopardy

Unfortunately, the political standoff during the Bush Administration created the worst of both worlds. When Congress rebuffed the Administration's plan to offer flexible funding to every state, the Administration retaliated by letting the HHS waiver

authority expire. Congress has not restored it. So no other state can benefit from Florida's success. It is not even clear what will happen to the existing waivers when they expire.

The foster care-industrial complex still stands in the way

The Florida experience proved the fear-mongers wrong – but they aren't arguing on the merits anyway. Although, as noted earlier, most of the opponents are well-motivated, their arguments are rooted in everything from vested interest, to their own lack of a *real* belief in prevention, to the tyranny of personal experience – which is what can happen when a personal experience is so profound that it may cloud judgment and obscure the bigger picture.²⁰

So the odds of other states getting the same chance to succeed that Florida got remain slim.

This could be seen at the Casey Family Programs event that showcased Florida's success. Casey officials ducked specific questions about supporting flexible funding. The publication they distributed at the event supported an alternative: Simply take the existing funding streams for prevention (Title IV-B) and make them open-ended entitlement as well.

Casey may not be alone. This idea seems to be gaining in popularity in the child welfare establishment, and may be the consensus proposal if and when Congress ever turns its attention to this issue. That's too bad. The proposal almost certainly will be dead on arrival, because of its cost.

Casey argues that "The costs ... could be offset by fewer children needing to enter foster care."²¹

The carefully-chosen word there is "could." Because the odds are it *won't* unless restrictions are built in.

The need for targeting

Prevention programs do indeed save

money; that's been proven over and over again. But only when they are targeted to populations that really would have needed the more expensive option had they not gotten the prevention.

Rather than making child welfare funding more vulnerable to cuts, as the fear-mongers claimed, the waiver actually saved Florida's child welfare system from devastating cuts when the recession hit.

So, for example, programs in which nurses visit new mothers in the mothers' own homes do indeed save money by reducing foster care placements and other bad outcomes. But that's because these programs are targeted to "at risk" mothers. If you offered the same service to every new mother, a lot of children would, no doubt, benefit. But most of them would be children who wouldn't have entered foster care anyway. So there would be no *financial* savings.

If you simply turned Title IV-B, which funds prevention and family preservation (as well as adoption and even some foster care) into an open-ended entitlement, states would label anything and everything a child abuse "prevention" program and costs would skyrocket. If I can figure that out, so can the Congressional Budget Office.

The other problem with this or similar ideas is that it's all carrot and no stick. If you simply make prevention an "add-on," the foster care industrial-complex, the network of private agencies that needs a steady supply of foster children to stay in business, and their allies, will continue with business as usual.

The dismal record to date

TWICE SINCE 2008, CONGRESS ACTUALLY HAS MADE FINANCIAL INCENTIVES WORSE

Twice since 2008, Congress has dealt with financial incentives in child welfare. Both times they made those incentives worse.

One change may have happened almost by accident. Under Title IV-E states are reimbursed for foster care at the same rate they receive for Medicaid. When the economic stimulus bill raised reimbursement for Medicaid, reimbursement for foster care automatically went up as well – so the incentive to use foster care instead of alternatives actually got worse.

But the other change was intentional. In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act. One way the act may increase adoptions is by providing still another huge incentive to pursue them at the expense of reunifying families.

The incentives, financial and otherwise, already are enormous. Everyone in child welfare, from the frontline worker to the agency chief, knows that the only time a child welfare agency gets good press is when it gets those adoption numbers up – and no one looks too closely at how it was done. It also is the principal means of psychic satisfaction for people in the field – witness the fact that while everyone claims the system's primary goal for children is reunification, the only option that is celebrated each year in most of the country is adoption. That is clear from all those annual "Adoption Day" events, each of which generates another favorable story in the local paper.

There's also a significant financial incentive. Since 1998, under the so-called Adoption and Safe Families Act, child welfare agencies receive a bounty of \$4,000 to \$12,000, and sometimes more, for every foster child adoption over a baseline number. There is, of course, no such payment when a child is returned to her or his own parents.

In 2008, Congress further stacked the deck. Under current law, the federal government reimburses a large share of foster care costs for about half of all foster care cases, and a large share of adoption subsidies for about half of all foster child adoptions. The other half are ineligible because eligibility is linked to an arcane funding formula, described in detail elsewhere in this document.

The Fostering Connections act phases out this link for adoptions.

The implications are profound.

For starters, this change ultimately will funnel at least an extra \$2.46 billion per year into adoption. That money is going to have to come from somewhere, and given the current state of the federal deficit, every new dollar for foster care and adoption is one less potential dollar for prevention and family preservation.

Though the law requires that the savings states gain from this new federal aid be spent on child welfare, that doesn't mean it has to go to prevention and family preservation. So those savings are far more likely to be plowed into hiring more child abuse investigators, more foster care, and big raises in rates for group homes and institutions – further worsening the imbalance in child welfare funding. (See *Other Sources of Funding, and How They're Misused*, p.5).

But that isn't even the worst of it - this new money for adoption also creates a terrible new incentive:

Consider the hypothetical case of Tommy, an eight-year-old who's been in foster care for a year because a caseworker didn't like the conditions in the tiny apartment where Tommy was living with his parents. Tommy's case did not meet the eligibility requirements for federal aid.

That means the state or local child welfare agency is picking up the entire tab for foster care. (Don't feel too sorry for the agency, though. They're typically getting a huge subsidy for about half their foster care cases and, contrary to what CWLA likes to imply, those funds can be, indeed, must be spent equally on *all* cases, including Tommy's.)

Similarly, if the agency returns Tommy home, the federal government will provide almost no help paying for any services Tommy and his parents might need to remain together.

But, once the new law is fully in effect, the federal government will pay between 56 and 83 cents out of every dollar spent on an adoption subsidy for Tommy's adoptive parents.

So while reunification may be in Tommy's best interests, the caseworker's need for psychic satisfaction, her boss' need for good press and, most important, the lure of more money for the child welfare agency, all push the decision toward adoption.

When it comes to real reform of child welfare finance, the track record of Congress in recent years is frightening.

These agencies often have blue-chip boards of directors, larded with the business, civic and religious elite of their communities. They will make sure that the pressure remains on to take away at least as many children as before.

But making prevention an “add-on” entitlement is perfect for CWLA. Agencies with prevention programs get a huge new revenue source, but foster care agencies are not threatened; for them it still will be business as usual.

The only way to counter their power is to create an actual financial penalty for caving in to it. And that is exactly how the waivers work. Continue business as usual under Casey’s plan and there is no financial penalty; continue business as usual under a waiver like the one Florida has and the penalty is significant.

CWLA: Out to make things even worse?

The idea that you can just make Title IV-B an entitlement without a big increase in costs is so absurd that it’s almost certain to fail in Congress.

That would leave only one major proposed change standing, the one change that CWLA and the rest of the foster-care industrial complex really want, the one that goes by the name of “delinking.”

Read CWLA’s propaganda and one thing becomes clear right away: CWLA craves delinking the way Homer Simpson craves donuts. And both are bad for children.

So, what is delinking?

It all goes back to when a foster child’s case is eligible for federal reimbursement. Before 1996, eligibility was linked to whether the birth parents were eligible for Aid to Families with Dependent Children (AFDC). But in 1996, Congress ended AFDC. The link, however, remained. So today, for a child’s case to be eligible for federal reimbursement, the child’s birth parents need to be so poor that they would have

qualified for AFDC by the standards in place in 1996.

It says an enormous amount about the extent to which child welfare systems target the poor that, in spite of the fact that the income limits have not been adjusted for inflation since 1996, about half of all foster care cases still are eligible for federal aid.

CWLA craves delinking the way Homer Simpson craves donuts. And both are bad for children.

But because of that inflation, in theory, the proportion of cases eligible for federal reimbursement should decline ever so slightly every year, to the point where, in somewhere between 50 and 100 years, the federal government would be out of the foster care financing business. (In fact, as states get more aggressive about verifying eligibility, that may offset some of this decline).

Dealing with this “eligibility look-back” is time consuming, and it is cumbersome. It’s a bizarre way to put a brake on the otherwise unlimited “entitlement” to foster care funding. But it’s the only brake we’ve got.

If the only brake on a runaway train is a clumsy contraption that only Rube Goldberg could love, it’s still better than no brake at all.

Removing the brake is known as “delinking” – since the link between foster care eligibility and AFDC would be broken.

Of course the foster care-industrial complex wants the brake removed. For them, it would be a bonanza. Suddenly, federal aid for foster care would double. Indeed, they crave delinking so much that they would be willing to settle for an alternative: Eliminate the link but cut the amount

reimbursed for each case. That way, the change initially would be cost-neutral, though in future years it would cost far more than leaving the link in place.

(Notice how the same foster care-industrial complex which claimed that the original flexibility plan would jeopardize aid because it's supposedly so much harder to cut an entitlement than a so-called "block grant" now sees no problem at all with getting an entitlement cut.)

If the only brake on a runaway train is a clumsy contraption that only Rube Goldberg could love, it's still better than no brake at all.

The propaganda for delinking has been disheartening even by foster care industrial complex standards. CWLA repeatedly presents the issue this way:

*The impact of this lack of support is felt by tens of thousands of children who have experienced abuse and neglect but do not qualify for federal assistance because of this outdated eligibility requirement.*²²

The implication, of course, is that if a case is not eligible for federal reimbursement somehow the specific children in that case are getting less help than other children.

Any such implication is flat wrong.

All foster children placed in licensed foster homes receive exactly the same benefits and services regardless of the case's eligibility for federal reimbursement. Those benefits and services may not be very good, but they are equal. And all licensed foster parents receive the same reimbursement for a IV-E-eligible child as for a non-eligible child. Such equal treatment is required for

the state to get its IV-E money.*

The camel's nose already is in the tent

At one time, I thought straight delinking, with its huge price tag couldn't happen. But tragically for children, it's already begun.

Just as Title IV-E provides a huge open-ended entitlement for foster care, it also includes another huge, (though not *as* huge) open-ended entitlement for adoption.

In 2008, the foster care-industrial complex managed to get a clause into new legislation, the Fostering Connections to Success and Increasing Adoptions Act, that phases out the "link" for adoption subsidies.

In another words, they shoved into this law what ultimately will be at least a \$2.46 billion annual windfall for adoption, and the public and private agencies that place children in adoptive homes. The law includes absolutely nothing for prevention or family preservation.

Given the state of the federal budget, every dollar spent elsewhere is one dollar less that can be used for prevention or family preservation. And this provision of the fostering connections act creates still another financial incentive for child welfare agencies to prefer adoption of foster children to reuniting them with birth parents. (See *The Dismal Record to Date*, p.11.)

So there is a very real, very frightening prospect that all the talk of reforming child welfare financing not only won't increase funding for prevention and family preservation, it could result in nothing more

* -The irony is that the one group of foster children who *really* are cheated are those placed with relatives who cannot meet the often hypertechnical requirements for formal licensing – requirements that often have more to do with middle-class creature comforts than with health and safety.

States are free to reimburse these relatives at far less than the rate they pay strangers – often they get only the rate for Temporary Assistance for Needy Families, the program that replaced AFDC. Delinking won't affect that at all. And since many in the foster care-industrial complex tend to be hostile to kinship care, that suits them just fine.[23]

than delinking – in other words, nothing more than another \$4.7 billion per year, at least, for the foster care-industrial complex, and a greater incentive than ever for agencies to take the child and run.

Better alternatives, real solutions

The only really effective way to curb the gross misuse and overuse of foster care is to stop the financial incentives that encourage it. That means the open-ended entitlement for foster care must end.

The Florida approach must become the norm, not by waiver and not through a purely voluntary plan as the Bush Administration proposed. It has to be mandatory.

- All states should be required to take their current foster care entitlement funding as a flat grant. The amount should be what they are getting now, and then it should be indexed to inflation.

- States should be free to use these grant funds for foster care or for alternatives to keep families together. There must be a maintenance-of-effort requirement for fos-

ter care and family preservation and a requirement to plow any savings back into child welfare services

The open-ended entitlement for foster care must end.

- Funds provided this way should be available for any child who is in foster care or who the state believes is at risk of foster care – eliminating the “eligibility lookback.” In exchange for ending the entitlement, states should get delinking.

- Federal law also should be amended to prohibit the diversion of TANF surplus money into foster care with strangers, adoption, or child abuse investigations.

See the following pages for endnotes and a detailed discussion of why ending the open ended entitlement for foster care, and making such funding flexible is not a “block grant.”

DON'T BE AFRAID OF THE BLOCK GRANT BOGEYMAN

You hear it whenever anyone wants to change the way the federal government pays for child welfare services, with its huge open-ended entitlement for throwing children into foster care, and no comparable aid to keep children out of foster care: If you change our sacred “entitlement” to foster care money you’ll be creating a *block grant*...and we all know what *that* means...

It’s a great scare tactic. But it’s about as real as the bogeyman a child may think is under his bed.

So relax. Don’t let the foster care-industrial complex, that network of “providers” that lives off a steady supply of foster children, scare you. The plan proposed by the previous Administration to make foster care funding flexible was not a block grant. Neither are the flexible funding waivers now in effect. And no one is proposing a block grant. Here’s how they differ:

A Block Grant...

Flexible funding...

Combines several funding streams into one.	Takes just one funding stream, Title IV-E foster care funding, and allows states to use it for better alternatives as well as for foster care.
Cuts the total amount of funding on the theory that combining funding streams promotes efficiency.	Does not cut funding.
Is mandatory.	Is voluntary.* States that don’t want this option can stick with the current system. (What part of “voluntary” don’t opponents of flexibility understand?)
Is not adjusted for inflation.	Is adjusted for inflation.
Is set at whatever level Congress wants.	Is negotiated between the federal government and the states. If a state doesn’t like the deal it can walk away and stick with the current system.
Can be cut whenever Congress wants (just as an entitlement can be cut whenever Congress wants by reducing the formula).	Is a five-year contract between the federal government and states that volunteer for it. It can’t be cut during the term of the agreement. After the five years ends, the state can revert to the current system.

*NCCPR would prefer that the end of the foster care entitlement be mandatory. But opponents of flexibility are against even voluntary plans.

NOTES

¹ Child Welfare League of America, *Ten Years of Leaving Foster Children Behind*, July, 2006.

² Lea Rae and Shawn Cohen, "Issa's Story," *The Journal News*, Oct. 28, 2002.

³ For details, and full citations, on the research concerning residential treatment, see our briefing paper available here: <http://www.nccpr.org/reports/residentialtreatment.pdf>

⁴ The Kaiser Family Foundation lists the rate for each state here:

<http://www.statehealthfacts.org/comparetable.jsp?ind=184&cat=4#notes-1>

⁵ For details and sources, see NCCPR's first report on Michigan child welfare, available here:

<http://www.nccpr.org/reports/michigan1976.pdf>

⁶ Colin Poitras, "Child Care Funds Lacking: State's Restrictions Mean Many Poor Parents Get No Help" *Hartford Courant*, March 25, 2006.

⁷ For full details and sources on how Ohio, Texas and Michigan divert TANF funds to these purposes, see NCCPR's reports on these states, available here: <http://nccpr.info/state-and-local-reports/>

⁸ Child Welfare League of America, *The President's FY 2010 Budget and Children*, available online at www.cwla.org/advocacy/FY2010_PresidentBudget_analysis.pdf

⁹ U.S. Department of Health and Human Services, Administration for Children and Families, *Justification of Estimates for Appropriations Committees, Programs to States for Foster Care and Adoption Assistance*, pp. C-12 to C-15, undated copy faxed to NCCPR Feb. 4, 2003.

¹⁰ Children's Defense Fund, *The Child SAFE Act (H.R. 4856) Fails to Guarantee the Safety and Services that Abused and Neglected Children Need*, July 29, 2004.

¹¹ Kendra Hurley, "The Crack Legacy: Ditch the low expectations for 'meth babies'" *Newsday*, April 14, 2004; Mariah Blake, "The Damage Done: 'Crack Babies' Talk Back," *Columbia Journalism Review*, September/October 2004.

¹² Kathleen Wobie, Marylou Behnke et. al., *To Have and To Hold: A Descriptive Study of Custody Status Following Prenatal Exposure to Cocaine*, paper presented at joint annual meeting of the American Pediatric Society and the Society for Pediatric Research, May 3, 1998.

¹³ Marian Wright Edelman, "Progress and Peril," *Foundation News and Commentary*, Sept./Oct. 2003, available online at <http://www.foundationnews.org/CME/article.cfm?ID=2645>

¹⁴ Children's Defense Fund, note 10, supra.

¹⁵ See, Fight Crime: Invest in Kids, *Abandoning Oregon's Most Vulnerable Kids*. See also *Abandoning Iowa's Most Vulnerable Kids* and *Abandoning Ohio's Vulnerable Kids*, all conveniently available here:

<http://www.fightcrime.org/search/node/Abandoning>

¹⁶ NCCPR issued reports chronicling Florida's failure in 2000, 2001 and 2002. They're available online at <http://nccpr.info/nccpr-florida-reports/>

¹⁷ The evaluations are discussed on this post to the NCCPR Blog: <http://nccpr.blogspot.com/2010/01/foster-care-family-preservation-and.html>. The Blog post includes a link to the actual evaluation reports.

¹⁸ For details, see NCCPR's reports on Michigan child welfare, available here: <http://nccpr.info/nccpr-michigan-reports/>

¹⁹ For examples of how the waiver is helping in Los Angeles, see Casey Family Programs, *Stories of Prevention in Los Angeles County: DCFS and Community Agencies Join Hands to Support Families and Children: The Prevention Initiative Demonstration Project*, July, 2009, available online at <http://www.casey.org/Resources/Publications/pdf/StoriesOfPreventionLA.pdf>

²⁰ The CEO of Casey Family Programs, William Bell, formerly ran the child welfare system in New York City. The state imposed a funding formula that, unlike the plans under discussion here, actually cut funding. Bell remained so upset by this that, years later, I saw him become agitated and upset at even the mention of the federal proposals when I asked him about them. While this did not stop Bell from hiring the former head of the Los Angeles County child welfare agency who obtained L.A.'s waiver, Casey Family Programs still can't bring itself to endorse letting every state have the same opportunity.

²¹ Casey Family Programs, *Ending Our Nation's Overreliance on Foster Care*, October, 2009, p.9. Available online at <http://www.dcf.state.fl.us/admin/childSafety/docs/121809/EndingOverrelianceonFosterCare.pdf>

²² Child Welfare League of America, note 1, supra.

²³ For much more on kinship care, the attitude of the foster care-industrial complex, and the licensing issue, see NCCPR's first report on Michigan child welfare, available here: <http://www.nccpr.org/reports/michigan1976.pdf>