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The Privatization of Child Welfare Services: Issues and Efforts at the Federal Level

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Because approximately half of all funding for child welfare services in the U.S. flows from federal programs, several of the efforts described in this issue are federally funded. The authors of this article are the federal staff from the Children's Bureau, Administration for Children and Families, and the Office of the Assistant Secretary for Planning and Evaluation (ASPE), both components of the U.S. Department of Health and Human Services (HHS), whose staff responsibilities include oversight of existing federal grants and contracts exploring the possibilities that privatization of child welfare services may offer to the field.

In recent years there has been significant interest in privatization in child welfare, as in other sectors, from senior officials within the federal government and in a number of states. As efforts to privatize child welfare services are implemented, it is important to ensure that they are carried out within the confines of federal law and policy. In this article we identify several of the policy issues privatized child welfare systems raise within federal child welfare programs. We also describe two federal efforts underway to understand state and local child welfare privatization initiatives which will provide information to others who may be considering privatization as a path to child welfare systems reform. The ultimate purpose of these federal initiatives is to understand what works well and may usefully serve as a model and what does not produce intended results but may nonetheless provide useful insights.

Privatization of Child Welfare Services as a Federal Issue – The Forest

Federal law provides a national framework for child welfare services in the form of requirements imposed upon states that seek federal funds under any of several federal child welfare programs, most notably the foster care and adoption assistance programs authorized under title IV-E of the Social Security Act (the Act) and other child welfare services authorized under title IV-B of the Act (primarily the Child Welfare Services Program and the Promoting Safe and Stable Families Program). Under title IV-E, the federal government reimburses states for a portion of all qualifying foster care and adoption assistance costs, currently approximately \$6 billion for all states combined. In contrast, Title IV-B funds, approximately \$700 million in fiscal year 2007, are distributed to states, tribes, and territories by formula. In order to receive funds under these programs, states must adhere to a variety of program requirements.

As is typical within both entitlement programs like title IV-E, and formula grant programs like those authorized under title IV-B, federal statutes regarding these programs are written with respect to state responsibilities, and the primary federal relationship is with the state agency designated by the governor to administer these programs. While the state may, in turn, delegate responsibilities to private providers operating under contract, from the federal perspective the state remains the entity responsible for the funds and for carrying out its obligations under federal law.

The federal government generally leaves it to

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Note: *The views expressed here are those of the authors and do not necessarily reflect positions of the Administration for Children and Families, The Office of the Assistant Secretary for Planning and Evaluation, or the U.S. Department of Health and Human Services.*

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each state to organize service delivery in ways its leaders believe most appropriate to meet the state's statutory responsibilities. There has long been interest throughout the social services in using private providers both to provide specific services and, more recently, to operate service systems in their entirety (Smith and Lipsky, 1993; U. S. General Accounting Office, 1998; Freundlich and Gerstenzang, 2003). While usually treated as an innovation, in a sense these systems are a partial return to child welfare's origins. Private providers and state and local governments provided almost all social services to families in this country before 1935 when the Social Security Act made some federal funding available to support these activities. Although a few municipalities never entirely lost the public/private services connection, a number of states and county government agencies have begun experimenting with using private providers to carry out system-wide child welfare functions. When states choose to privatize, or to make other major changes to their service systems, the primary issue for the federal government is how those states will continue to meet their obligations under federal law through the new program structures. Within the child welfare arena, these program requirements include, for instance, conducting case reviews; meeting timelines for permanency established by the Adoption and Safe Families Act (ASFA); licensing foster homes; and complying with nondiscrimination requirements (i.e., that foster care and adoptive placements are not delayed or denied on the basis of race, color, or national origin, among others).

As states diversify their service delivery strategies, federal officials also seek to ensure federal programs incorporate sufficient flexibility to allow for state variation in both needs and administrative structures. Federal programs need to function in a variety of contexts. They must be workable in places with large caseloads and small ones, those with rural and urban infrastructures, county administered programs as well as state operated ones, and so forth. Similarly, it is important that federal programs function as intended in

places that decide to provide federally funded services through private contractors. Congress and federal agencies try to ensure that the federal government does not impose unnecessary constraints on how states rationally choose to administer programs. Ideally, any "strings" on funds relate to *what* is to be accomplished rather than *how*. As current Health and Human Services Secretary Michael Leavitt has framed it, the intent is "national standards, neighborhood solutions" (HHS, no date).

Privatization of Child Welfare Services as a Federal Issue – The Trees

The federal Child and Family Services Reviews (CFSRs) have documented that there is considerable room for improvement in child welfare systems throughout the nation. These reviews, meeting requirements of the Adoption and Safe Families Act of 1997, are an outcomes-based monitoring system used by the Children's Bureau to assess whether state child welfare programs are meeting their obligations under federal law. As states address issues and improve outcomes for children and their families, they are also seeking increased efficiency in service delivery. Performances-based contracting and in some cases full-scale privatization have emerged as possible paths to systems reform. Yet previous explorations of various forms of privatization, for example managed cares, and public/private partnerships that go by many names, have not yielded the information needed about what privatization might accomplish and what can be done to overcome the challenges it poses.

There are a number of programmatic and structural factors in federal child welfare programs that may challenge state and local privatization efforts. These include determining what child welfare functions are "inherently governmental" and consequently may not be performed through contract; understanding how privatized systems are reviewed in federal child welfare monitoring efforts; answering important questions about the operations of child welfare information systems so as to balance functionality, access, and

confidentiality; assuring adequate training for private agency staff given restrictions on federal title IV-E training funds; and addressing the limitations federal funding streams impose on the flexibility that is central to the potential of privatization to improve service delivery.

A key concept in government contracting is the distinction between functions that are “inherently governmental” and therefore must be performed by government officials, and those that are “commercial” in nature and may be performed by private entities. However, these distinctions have blurred over time. In child welfare services, activities or practices once considered inherently governmental are now often performed by contractors operating at the behest of the responsible state agency. This trend may be observed at all government levels but within the federal government it has been particularly encouraged by the Bush Administration’s President’s Management Agenda (PMA), which provides a blueprint for some state privatization efforts because it promotes the competitive sourcing of many federal government jobs (Office of Management and Budget, 2001).

As states privatize child welfare services, they have sought assurances about whether the federal government considers certain functions inherently governmental. The federal government has provided minimal specific guidance to states about which functions it considers inherently governmental, preferring to rely on existing regulations regarding the role of the state agency administering the program. These regulations (at 45 CFR 205.100) provide for the establishment or designation of a single state agency with authority to administer or supervise the administration of the state’s plan for spending federal funds. That agency is required to have sole authority to exercise administrative discretion in the issuance and application of policies, rules, and regulations in program matters.

Another issue has been how to assess state performance in the Child and Family Services Reviews (CFSRs) when the case-manager function is handled by a private contractor. In 2000,

the Children's Bureau began conducting these innovative and rigorous reviews in order to determine whether positive outcomes for children and families were being achieved. These outcomes are defined under the broad goals of safety, permanency, and well-being of the children and families served. The review also looks at systemic factors, which include the effectiveness of the state's systems for child welfare information, case review, and quality assurance; training of child welfare staff, parents, and other stakeholders; the array of services that supports children and families; the agency's responsiveness to the community; and foster and adoptive parent licensing, recruitment, and retention. The CFSRs measure each state against national standards, using the state’s own data as well as case reviews. In on-site case reviews, many informants are interviewed to assess whether the child welfare system has taken adequate steps to meet the family’s needs and achieve safety, permanency, and improved well-being for the child. If private providers are involved with the family they are interviewed as part of this process, and in particular if the family’s case management is handled by a private agency that agency’s caseworker and case files are central to the review. A consideration for state or county agencies implementing privatized child welfare services systems is to ensure that contracts include requirements or standards for contractors that mirror those that the federal government expects of states.

Since 1993, the federal government has allowed states to implement a Statewide Automated Child Welfare Information System (SACWIS) if the state has determined that a comprehensive system supports its business process, program model, and expected outcomes. The SACWIS must be developed and operated with efficiency, effectiveness, and economy. Enhanced federal funding originally encouraged states to develop these information technology systems and twenty-seven states currently have operating SACWIS systems. These singular, statewide, comprehensive case management tools support child welfare practice in the state and include cur-

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rent and historical child and family information while the children are engaged in the child welfare system. If a state chooses to operate a SACWIS system, it must include data collection as a feature for the two federal reporting systems in order to maximize the reliability of the data reported. These two systems-- the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS) -- are the information systems from which the federal government receives information from all states. This information is used for analysis, reporting, and ultimately child welfare systems improvement proposals. Although conceived to include private providers as state staff for the purpose of receiving the equipment, training, and infrastructure necessary to use the system, private provider inclusion has been implemented unevenly in various states. Common problems include states' insufficient attention to private providers during design and development, changes in the state's business model to include private providers without the necessary input from the private providers to make the system easily accessible, and the implementation of privatization before the system changes have caught up with the change in practice. Also, private providers need to collect management information concerning their agency's performance, which is not a required feature of a state's SACWIS. Private providers may also prefer to utilize their own system to which they are already accustomed. Administration for Children and Families (ACF) is aware of the concerns of the private providers and has recently issued guidance suggesting a technological avenue for addressing the issue.¹

Although private agencies are expected to employ well-qualified child welfare workers, they and their employees need training in order to implement the state's specific policies and procedures and ongoing training to remain current in

the field. Federal law recognizes the value of a well-trained staff by providing a higher reimbursement rate for training expenses than for other administrative activities, and states see this higher rate as a funding resource. Seventy-five percent of states' expenses related to training that is connected to the title IV-E Foster Care and Adoption Assistance Program are reimbursed by the federal government, while other administrative activities are reimbursed at a 50 percent rate. (State or local governments fund the remainder.) Currently, however, the enhanced match rate for training costs is available only when public agency staff are trained on issues related to title IV-E. It is not available when private providers are trained. The unavailability of the enhanced training match rate is often seen as a disadvantage to funding private agency training.

Performance-based contracts for child welfare services may be based on case rates and/or include a wide variety of performance incentives. Yet when states claim reimbursement from the title IV-E foster care program, which provides the large majority of federal child welfare funding, they may claim only narrowly defined allowable costs for foster care maintenance payments and related administration. While one of the primary appeals of privatization and performance-based contracting is that private providers may be more creative and nimble than public agencies in designing service plans and meeting families' needs (Sanger, 2001; Freundlich and Gerstenzang, 2003), federal funds are not similarly flexible. When contractors are paid in ways that don't match how federal reimbursement is claimed, state revenue streams for child welfare become more difficult to manage even --and perhaps especially-- if they are successful in improving child and family outcomes. While there is widespread agreement that the lack of flexibility in the title IV-E foster care program hinders innovation and systems reform, it has proven difficult to

¹Information Memorandum ACYF-CB-IM-07-03 (located on the internet at: http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2007/im0703.htm) allows for the use of SACWIS funds to design, develop, install and operate a SACWIS based on Service Oriented Architecture (SOA) applications.

forge a consensus on changes that would improve the program's ability to meet the current needs of the field. Some agencies have turned to more flexible funding sources outside the child welfare system to finance systems innovations while others have used child welfare demonstration waivers, although these are no longer available since the legislative authority to grant new waivers expired in 2006.

This discussion has covered the most prominent of the current issues arising from the interactions between privatized child welfare systems and federal child welfare programs. The major federal child welfare programs were designed with the model of state or county operated child welfare systems in mind and do not always provide a comfortable fit with the ways privatized systems operate. This is not an exhaustive list of these issues, however, and a variety of new issues will undoubtedly arise as current privatization efforts mature and new initiatives are developed.

Current Federal Activities on Child Welfare Privatization

Children's Bureau

The Children's Bureau within the Department of Health and Human Service's Administration for Children and Families administers most federal child welfare programs. Most of the agency's budget funds foster care and adoption services administered at the state and county level. However, the agency also administers several small discretionary research and demonstration grant programs that are intended to promote knowledge development. These include the Abandoned Infants Assistance Program, the Adoption Opportunities Program, and a portion of the Promoting Safe and Stable Families Program and the Child Abuse Prevention and Treatment Act (CAPTA) funds. Through these programs, the Children's Bureau seeks innovations that will improve child welfare services.

The Children's Bureau developed the Quality Improvement Center (QIC) model to improve its ability to target and provide oversight to the re-

search and demonstration efforts it funds. The model was begun on a small scale with a regional reach, but has worked well enough to expand it to a national effort. For each QIC, the Children's Bureau announces and competes a type of grant called a cooperative agreement on the question to be researched. The successful grant recipient takes on the tasks of (1) researching the topic, including assessing needs and resources; (2) planning and implementing research and demonstration activities, including monitoring and evaluating the projects that test a variety of models or hypotheses at multiple sites; (3) providing technical assistance and oversight to its sub grantees; and (4) reporting the findings back to the field. The process usually takes place over a five-year period.

The first national QIC is the Quality Improvement Center on the Privatization of Child Welfare Services (QIC PCW). The QIC PCW is expected to perform the following functions: (a) develop knowledge about improving outcomes for children and families in the child welfare system through privatization; (b) develop and implement privatization research and demonstration projects to promote innovation, evidence-based practice improvements, and advancement of knowledge about privatization of child welfare services; (c) promote collaborative problem solving among sub-grantees; (d) establish an information-sharing network to disseminate information on promising practices and provide technical assistance to interested parties; and (e) evaluate the impact of privatization on the quality, availability, cost-effectiveness and overall effectiveness of child welfare services (HHS, 2005).

As this article is being prepared for publication, the QIC PCW is beginning its third year. Since its inception, the project team has conducted and published a literature review, a knowledge-gaps analysis, and a national needs assessment and other documents synthesizing its exploratory activities. It has also developed and competed a series of sub-grants related to performance-based contracting and has devised instruments for data collection. These activities are

described in detail in “Knowledge Development and Transfer on Public/Private Partnerships in Child Welfare Service Provision: Using Multi-Site Research to Expand the Evidence Base” available in this edition of this publication. Although the tasks undertaken by this QIC are difficult and demanding, the QIC team is on target with its activities, is especially dedicated to disseminating knowledge as it is learned, and should add significantly to the knowledge base on privatization in the child welfare field.

Office of the Assistant Secretary for Planning and Evaluation

Within the Department of Health and Human Services, the Office of the Assistant Secretary for Planning and Evaluation (ASPE) serves as the principal policy advisor to the Secretary, and its staff represents the Secretary’s interests in departmental decision making. ASPE also plays an important role in research and evaluation, looking beyond individual program issues to ensure that information is available to meet the Department’s current and future policy needs. ASPE is often involved in research and evaluation that cuts across program areas or relates to anticipated rather than current programmatic issues.

ASPE’s current work on child welfare privatization, begun in 2006, reflects that of senior leaders who were involved in one state’s child welfare privatization efforts. Reflecting leadership interest in privatization as systems reform, ASPE’s work emphasizes capturing the broader lessons of those states that have privatized all or most of their child welfare systems, and in particular those that have privatized the case management and day-to-day case decision making for children in foster care. ASPE’s interest in privatization is longstanding and predates individual leaders. In our current work we build on past efforts to understand the roles of private providers in welfare programs (Winston, Burwick, McConnell, and Roper, 2002; McConnell, Burwick, Perez-Johnson, and Winston, 2003). Privatized child welfare services were also touched on tangentially in earlier ASPE studies of child welfare sys-

tems change (Westat and Chapin Hall Center for Children, 2002; U.S. Department of Health and Human Services, 2003).

ASPE’s current work builds on the foundation laid by the Children’s Bureau’s QIC PCW and was planned in cooperation with Children’s Bureau leadership and staff to ensure unduplicated efforts. ASPE’s initiative incorporates two components. First is the development of a series of topical papers on key aspects of child welfare privatization initiatives; the second component will generate options for future federal research on this topic. The project takes advantage of the QIC’s national needs assessment and literature review as a starting point for identifying research needs, and will use the networks and web resources built by the QIC as a distribution channel for the materials developed through our initiative.

The topical papers will capture the experiences of states or counties that have fundamentally restructured how business is done in child welfare by delegating case management and day-to-day decision making authority to private agencies that are held accountable for the outcomes they achieve with and for children and families. These papers will also incorporate lessons learned as states have privatized other service systems such as financial welfare programs. They are intended to present issues that early privatization efforts have struggled with in order to inform states or communities that may consider privatizing these services in the future. At least six papers will be produced during 2007 and 2008 on the following topics:

1. Assessing Site Readiness
2. Models of Privatization Reform
3. Evolving Roles of Public and Private Agencies
4. Developing Effective Contracts
5. Contract Monitoring and Accountability
6. Evaluating Privatization Initiatives

Through these papers we hope to produce information for states and communities that have been

interested in exploring the idea of privatization but that have held back, waiting for more information to be available about the experiences of those who have pioneered this approach.

Options for future research will be developed through an analysis of existing literature, from ideas generated during a research roundtable held in April 2007, and through follow-up discussions with experts to flesh out themes that emerged through other aspects of this work. Among these themes are incorporating additional rigor into process/implementation studies of privatization initiatives, and better articulating and testing theories of change through which program officials expect privatization to affect client-level outcomes.

Synergy and Future Federal Efforts

The Children's Bureau and ASPE are both interested in increasing knowledge about ways of improving child welfare service systems and of the potential role of private providers and privatization more generally in this process. We believe that there is a synergy between the QIC PCW and ASPE efforts to study privatization and produce concrete information on its usefulness as a system reform. We are eager to determine if child welfare services can be improved from this overall approach, what factors are necessary to make it work, and what questions remain to be answered.

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