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Child Welfare Waivers: The Stakes for Families

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In September 2011, Congress and President Obama restored the authority of the Department of Health and Human Services (HHS) to issue “waivers” from rules that limit the way states can spend federal aid under a program called Title IV-E. That authority had expired in 2006. HHS now has the authority to issue 10 child welfare waivers per year for the next 3 years.

Nationwide, states are expected to receive roughly \$7 billion in IV-E funds in 2012. Of that total, about \$2.5 billion goes to services related to adoption. These funds are not affected by waivers.

Most of the rest, about \$4.2 billion, is eligible for waiver. Without a waiver, this money can be spent only on foster care. In addition, the foster care funding is an open-ended entitlement. That is, for every eligible child, a state is reimbursed for anywhere from half to, in some years, 83% of the cost of holding that child in foster care, with poorer states receiving a higher reimbursement rate (U.S. Department of Health and Human Services, 2011). (The percentage received by each state is the same percentage it receives for its expenditures under the Medicaid program. That percentage can vary from year to year and even quarter to quarter. Rates for 2011 can be found [on the last page of this HHS document](#) [U.S. Department of Health and Human Services, 2010].)

In contrast, in 2009, the most recent year for which data are available, states were given only about \$527 million to spend on prevention, family preservation, and family reunification under another federal program, known as Title IV-B. And in fact, the states spent only about \$331 million of that money on services to keep families together. Much of the rest was diverted into child abuse investigations and other child protective services activities. Some funding even was funneled into foster care (Stoltzfus, 2011).

So for every federal dollar a state spends on prevention and family preservation under Title IV-B, it spends, on average, nearly 13 federal dollars on foster care and another 7 federal dollars on adoption through Title IV-E. (See the Method, Caution, and Caveats section below for a full discussion of this estimate.)

This skewed system creates a perverse incentive. Although safe, proven alternatives to foster care cost less in total dollars, it sometimes may cost a state or a county less to throw a child into foster care.

The Potential of Waivers

Waivers come in a variety of shapes and sizes. Some are quite limited; a state may want to experiment with only a small part of its IV-E funds and target them to a narrow purpose. But big, bold waivers have the most

potential to improve the lives of vulnerable children. Under these waivers a state agrees to take its entire share of that \$4.2 billion as a flat grant. The waivers usually last for five years. The state gets whatever it was expected to get under the entitlement, plus an adjustment for inflation. The state then gets the right to use the money not only for foster care but also for safe, proven alternatives to foster care, as well as for adoption.

There are several other advantages. Under the current entitlement program, if a state reduces needless foster care, it gets less federal IV-E money. Under a waiver, if a state reduces needless foster care, it gets to keep the savings, as long as those savings are plowed back into child welfare. In addition, waivers come with a “maintenance of effort” requirement. That means the state must agree not to use the federal money to replace existing state spending. In other words, budget-cutting state legislators, who normally might see child welfare as a tempting target, have to keep their hands off or see their state lose all of its Title IV-E foster care money as well.

Of course, some have worried about what would happen if a state rushes to tear apart more families after a waiver is in effect, since it would not get any more federal aid for those placements. The answer is that the state can opt out and return to the status quo, so it won't be penalized for the increase in placements.

That's not necessarily a good thing. It removes an incentive for putting the brakes on foster-care panics, sharp, sudden spikes in needless removals of children by child protective services agencies reacting to high-profile tragedies on the front page of a major newspaper, or demagogic grandstanding by politicians. The urge to harm children while protecting oneself by adopting a “take the child and run” approach would be tempered if top officials and political leaders knew that their state or local government would have to pick up the entire tab. But presumably HHS felt this would discourage too many states from applying for waivers.

But the waivers also come with another important requirement: states must arrange for independent evaluations—something which, of course, does not exist in any meaningful way under the status quo.

The Florida Experience

All of these advantages have been seen in Florida, the one state bold enough to accept one of these large-scale waivers when they were briefly offered to the states in 2006. Michigan initially accepted such a waiver but changed its mind at the last minute. (Smaller-scale waivers were available for the previous decade.)

Thanks to the waiver, Florida can take about \$140 million a year in IV-E foster care funds and use it for better options as well. The results:

- *Less needless foster care.* From 2006, the last year before the waiver began, through 2010, the number of children in foster care on any given day was reduced by 35%. The number of children taken from their parents over the course of a year also was cut by 35%.
- *No slash-and-burn budget cuts.* When the Florida Legislature considered slashing the state child welfare budget, lawmakers were reminded that such cuts would mean the end of federal IV-E funding. The legislators backed off.
- *No foster-care panic.* When one reckless journalist for a major newspaper tried to exploit the horrifying death of a child and near death of her brother in an effort to reverse the state's family preservation reforms and return to a take-the-child-and-run approach (something she tried to do even though the children were taken from their birth parents only to be horribly abused allegedly by their *adoptive* parents), the child welfare agency refused to cave into the pressure.

And most important of all:

- ***Children are safer.*** The independent evaluations of Florida's waiver concluded that child safety improved. That's not surprising. With fewer needless removals, workers had more time to find children in real danger (Armstrong et al., 2010).

Indeed, the transformation in Florida was so remarkable that it was the subject of a major story in *The New York Times* (Eckholm, 2009). There's more about the Florida waiver in this post to the *NCCPR Child Welfare Blog*. (NCCPR Child Welfare Blog, 2010).

Method, Cautions, and Caveats

The tables that follow are a guide to how much each state is likely to be able to spend flexibly if that state applies for and receives a waiver from Title IV-E foster care funding restrictions. That figure is compared to the amount the state actually spends now in federal dollars under the Title IV-B program.

Table 1 provides just that information; Tables 2 and 3 break down child welfare spending in more detail.

Table 1 uses the higher of two estimates concerning each state's Title IV-E foster care expenditures—an estimate for 2012 based on President Obama's budget proposal. The lower figure is the actual amount states will spend in 2011.

Why is the higher figure closer to the mark? Because IV-E is an entitlement program, and most of the spending increase, though not all, is built into the entitlement formula. So while the total is likely to be closer to the 2012 figure, it may fall somewhere between that figure and the 2011 figure. For most states, there is not a great deal of difference.

Although Title IV-B involves a lot less money, it's more complicated and requires a bit more explanation.

Title IV-B commonly is referred to as the federal funding stream for prevention and family preservation. But that's only partially true. Unfortunately, a lot of Title IV-B money legally can be diverted to other purposes, and it is.

Title IV-B has two major components: the Promoting Safe and Stable Families part (PSSF) and the Child Welfare Services part.

States are required to spend 9% of their PSSF funds on family support, family preservation, family reunification, and adoption promotion and support. States are required to spend no less than 20% of their PSSF funds on any one category.

This means that, as a practical matter, roughly 25% of all PSSF money is off-limits to family preservation, family reunification, and prevention. So while states received \$336 million in PSSF money in 2009, only about \$252 million was available for keeping families together.

The other program, called Child Welfare Services (CWS), has almost no strings attached. States spent nearly \$275 million in these funds in 2009, and all of it *could* have been used for keeping families together if states wanted to do it.

But states diverted a huge part of their limited CWS funds into child protective services—things like child abuse investigations and related work. Though this is shameful, it's entirely legal. Some funding even was diverted into foster care maintenance payments. (Some of the money diverted to foster care may have been for a morally legitimate reason as well. It may have been used to help grandparents and other relatives who provide kinship foster care. When such relatives can't meet what often are page after page of hypertechnical foster-parent licensing requirements, the case usually isn't eligible for reimbursement under Title IV-E.)

The diverted funds are listed in Table 2.

As a result, as noted above, while we estimate states could have spent \$527 million on safe, proven alternatives to foster care under Title IV-B in 2009, they actually spent only \$331 million.

Other caveats:

- The IV-E data in the tables are for 2011 and 2012, but for IV-B the most recent figures we could get are for 2009. However, funds under Title IV-B are not an entitlement, so the total doesn't usually change much from year to year.
- Even if a state gets a waiver, not all of the money listed in the IV-E columns in the charts could be used for alternatives to foster care. Although NCCPR believes far too many children are in foster care, there are some children for whom it is genuinely necessary, so states still will have to use some of this money for foster care.
- Titles IV-B and IV-E are not the only federal programs that can be used to fund child welfare. Temporary Assistance for Needy Families (TANF), Medicaid, and the Social Services Block Grant also can be used. But Medicaid funds largely services for children already in foster care, and using the other two funding streams means taking money from other programs helping impoverished families. (Indeed, the use of TANF as a child welfare slush fund is a scandal in itself, as is discussed in our [overview of child welfare finance issues](#) [National Coalition for Child Protection Reform, 2010].) For good discussion of these other funding streams and how they can be used, [see this analysis from ChildTrends](#) (DeVooght, Allen, & Geen, 2008).
So the best source of federal funding for prevention and family preservation, by far, is the huge amount now spent on foster care.
- The impact of waivers may be different in the 13 states in which individual counties run child welfare systems. The interplay of federal and state financial incentives may change the calculus concerning whether a waiver would work for a given county. But waivers already have been implemented successfully in some counties in Ohio and California.

Table 1
The Basics

State	Here are the federal funds your state actually spent on prevention, family preservation and family reunification under Title IV-B in 2009	This is an estimate of the total amount of <u>additional</u> federal aid that could be used for prevention and family preservation (as well as foster care) if your state got a waiver in 2012
Alabama	\$5,686,000	\$34,264,001
Alaska	779,000	12,911,911
Arizona	4,611,000	83,061,619
Arkansas	5,758,000	36,173,624
California	35,907,000	1,168,911,586
Colorado	2,340,000	59,196,099
Connecticut	1,727,000	59,437,294
Delaware	778,000	3,475,659
DC	1,083,000	20,992,247
Florida	19,236,000	149,856,473
Georgia	13,210,000	81,357,107
Hawaii	1,930,000	18,296,601
Idaho	2,393,000	9,580,399
Illinois	22,806,000	205,758,474
Indiana	4,260,000	94,487,529
Iowa	2,137,000	24,140,284
Kansas	4,044,000	22,218,976
Kentucky	3,936,000	47,229,911
Louisiana	6,637,000	46,496,368
Maine	1,073,000	13,204,429
Maryland	4,995,000	85,803,910
Massachusetts	3,604,000	51,969,303
Michigan	13,155,000	85,693,340
Minnesota	4,108,000	49,463,199

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Table 1 (continued)
The Basics

State	Here are the federal funds your state actually spent on prevention, family preservation and family reunification under Title IV-B in 2009	This is an estimate of the total amount of <u>additional</u> federal aid that could be used for prevention and family preservation (as well as foster care) if your state got a waiver in 2012
Mississippi	\$3,726,000	\$10,261,932
Missouri	15,751,000	55,842,944
Montana	624,000	10,035,225
Nebraska	1,278,000	18,985,949
Nevada	2,655,000	28,557,864
New Hampshire	615,000	14,434,566
New Jersey	5,892,000	78,294,654
New Mexico	2,353,000	22,283,193
New York	15,885,000	395,830,255
North Carolina	10,091,000	74,500,670
North Dakota	688,000	10,255,336
Ohio	8,774,000	196,805,342
Oklahoma	3,548,000	36,573,811
Oregon	4,196,000	90,974,665
Pennsylvania	8,047,000	131,773,943
Rhode Island	1,228,000	14,385,021
South Carolina	5,928,000	34,007,614
South Dakota	514,000	5,241,873
Tennessee	13,288,000	39,677,414
Texas	29,106,000	221,833,436
Utah	3,430,000	17,492,157
Vermont	336,000	10,768,697
Virginia	4,167,000	65,945,221
Washington	6,561,000	90,419,589
West Virginia	1,785,000	32,099,592
Wisconsin	6,856,000	49,022,872
Wyoming	208,000	2,715,822
TOTAL:	331,422,000	4,223,000,000

Table 2
The Details: Title IV-E Foster Care

State	This is the <u>minimum</u> in funds now limited to foster care that your state also could use for prevention and family preservation if your state got a waiver	This is the <u>maximum</u> in funds now limited to foster care that your state also could use for prevention and family preservation if your state got a waiver
	<i>2011 actual</i>	<i>2012 projected</i>
Alabama	\$31,439,878	\$34,264,001
Alaska	11,847,679	12,911,911
Arizona	76,215,477	83,061,619
Arkansas	33,192,105	36,173,624
California	1,072,567,036	1,168,911,586
Colorado	54,317,011	59,196,099
Connecticut	54,538,326	59,437,294
Delaware	3,189,187	3,475,659
DC	19,262,014	20,992,247
Florida	137,504,936	149,856,473
Georgia	74,651,455	81,357,107
Hawaii	16,788,551	18,296,601
Idaho	8,790,759	9,580,399
Illinois	188,799,356	205,758,474
Indiana	86,699,635	94,487,529
Iowa	22,150,583	24,140,284
Kansas	20,387,634	22,218,976
Kentucky	43,337,106	47,229,911
Louisiana	42,664,023	46,496,368
Maine	12,116,087	13,204,429
Maryland	78,731,742	85,803,910
Massachusetts	47,685,866	51,969,303
Michigan	78,630,285	85,693,340
Minnesota	45,386,321	49,463,199
Mississippi	9,416,118	10,261,932
Missouri	51,240,232	55,842,944

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State	This is the <u>minimum</u> in funds now limited to foster care that your state also could use for prevention and family preservation if your state got a waiver	This is the <u>maximum</u> in funds now limited to foster care that your state also could use for prevention and family preservation if your state got a waiver
	<i>2011 actual</i>	<i>2012 projected</i>
Montana	\$9,208,097	\$10,035,225
Nebraska	17,421,081	18,985,949
Nevada	26,204,055	28,557,864
New Hampshire	13,244,833	14,434,566
New Jersey	71,841,417	78,294,654
New Mexico	20,446,557	22,283,193
New York	363,204,956	395,830,255
North Carolina	68,360,143	74,500,670
North Dakota	9,410,066	10,255,336
Ohio	180,584,164	196,805,342
Oklahoma	33,559,308	36,573,811
Oregon	83,476,310	90,974,665
Pennsylvania	120,912,812	131,773,943
Rhode Island	13,199,372	14,385,021
South Carolina	31,204,623	34,007,614
South Dakota	4,809,825	5,241,873
Tennessee	36,407,104	39,677,414
Texas	203,549,381	221,833,436
Utah	16,050,411	17,492,157
Vermont	9,881,114	10,768,697
Virginia	60,509,855	65,945,221
Washington	82,966,985	90,419,589
West Virginia	29,453,865	32,099,592
Wisconsin	44,982,287	49,022,872
Wyoming	2,491,977	2,715,822
TOTAL	3,874,930,000	4,223,000,000

Table 3
Title IV-B Child Welfare Funding, 2009

State	Promoting Safe and Stable families funds to be used for family support, family preservation, reunification and adoption	Child Welfare Services	TOTAL available for various child welfare services	Actually spent on prevention or family preservation	Diverted to child protective services	Diverted to foster care	Other, including adoption
Alabama	\$7,108,000	\$4,829,000	\$11,937,000	\$5,686,000	\$1,766,000	\$1,201,000	\$3,284,000
Alaska	\$693,000	\$294,000	\$987,000	\$779,000	\$0	\$0	\$208,000
Arizona	\$7,683,000	\$5,944,000	\$13,627,000	\$4,611,000	\$5,349,000	\$0	\$3,667,000
Arkansas	\$4,644,000	\$3,154,000	\$7,798,000	\$5,758,000	\$788,000	\$0	\$1,252,000
California	\$33,895,000	\$32,523,000	\$66,418,000	\$35,907,000	\$20,343,000	\$0	\$10,168,000
Colorado	\$3,310,000	\$3,650,000	\$6,960,000	\$2,340,000	\$0	\$3,500,000	\$1,120,000
Connecticut	\$2,141,000	\$2,419,000	\$4,560,000	\$1,727,000	\$48,000	\$1,984,000	\$801,000
Delaware	\$858,000	\$802,000	\$1,660,000	\$778,000	\$564,000	\$0	\$318,000
DC	\$1,082,000	\$327,000	\$1,409,000	\$1,083,000	\$109,000	\$0	\$217,000
Florida	\$14,481,000	\$15,348,000	\$29,829,000	\$19,236,000	\$4,365,000	\$0	\$6,228,000
Georgia	\$12,447,000	\$9,797,000	\$22,244,000	\$13,210,000	\$3,483,000	\$1,486,000	\$4,065,000
Hawaii	\$966,000	\$1,157,000	\$2,123,000	\$1,930,000	\$0	\$0	\$193,000
Idaho	\$1,217,000	\$1,749,000	\$2,966,000	\$2,393,000	\$0	\$318,000	\$255,000
Illinois	\$15,191,000	\$11,109,000	\$26,300,000	\$22,806,000	\$0	\$0	\$3,494,000
Indiana	\$7,101,000	\$6,331,000	\$13,432,000	\$4,260,000	\$3,595,000	\$0	\$5,577,000
Iowa	\$2,650,000	\$2,461,000	\$5,111,000	\$2,137,000	\$192,000	\$1,092,000	\$1,690,000
Kansas	\$2,245,000	\$2,783,000	\$5,028,000	\$4,044,000	\$0	\$0	\$984,000
Kentucky	\$6,398,000	\$4,297,000	\$10,695,000	\$3,936,000	\$2,815,000	\$1,052,000	\$2,892,000
Louisiana	\$8,522,000	\$4,727,000	\$13,249,000	\$6,637,000	\$2,067,000	\$1,301,000	\$3,244,000
Maine	\$1,527,000	\$1,176,000	\$2,703,000	\$1,073,000	\$212,000	\$0	\$1,418,000
Maryland	\$3,737,000	\$4,303,000	\$8,040,000	\$4,995,000	\$1,549,000	\$0	\$1,496,000
Mass.	\$4,737,000	\$4,182,000	\$8,919,000	\$3,604,000	\$3,772,000	\$0	\$1,543,000
Michigan	\$13,174,000	\$9,117,000	\$22,291,000	\$13,155,000	\$35,000	\$2,169,000	\$6,932,000
Minnesota	\$3,379,000	\$4,301,000	\$7,680,000	\$4,108,000	\$2,454,000	\$256,000	\$862,000
Mississippi	\$5,322,000	\$3,522,000	\$8,844,000	\$3,726,000	\$1,372,000	\$424,000	\$3,322,000
Missouri	\$10,544,000	\$5,660,000	\$16,204,000	\$15,751,000	\$0	\$0	\$453,000

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Table 3 (continued)
Title IV-B Child Welfare Funding, 2009

State	Promoting Safe and Stable families funds to be used for family support, family preservation, reunification and adoption	Child Welfare Services	TOTAL available for various child welfare services	Actually spent on prevention or family preservation	Diverted to child protective services	Diverted to foster care	Other, including adoption
Montana	\$925,000	\$713,000	\$1,638,000	\$624,000	\$713,000	\$0	\$301,000
Nebraska	\$1,545,000	\$1,752,000	\$3,297,000	\$1,278,000	\$197,000	\$1,183,000	\$639,000
Nevada	\$1,533,000	\$2,399,000	\$3,932,000	\$2,655,000	\$0	\$0	\$1,277,000
New Hampshire	\$625,000	\$1,076,000	\$1,701,000	\$615,000	\$20,000	\$425,000	\$641,000
New Jersey	\$5,107,000	\$5,772,000	\$10,879,000	\$5,892,000	\$2,373,000	\$0	\$2,614,000
New Mexico	\$3,267,000	\$1,664,000	\$4,931,000	\$2,353,000	\$439,000	\$455,000	\$1,684,000
New York	\$19,086,000	\$14,344,000	\$33,430,000	\$15,885,000	\$13,344,000	\$0	\$4,201,000
North Carolina	\$10,970,000	\$8,878,000	\$19,848,000	\$10,091,000	\$1,343,000	\$0	\$8,414,000
North Dakota	\$517,000	\$570,000	\$1,087,000	\$688,000	\$0	\$0	\$399,000
Ohio	\$12,679,000	\$10,678,000	\$23,357,000	\$8,774,000	\$6,035,000	\$225,000	\$8,323,000
Oklahoma	\$5,242,000	\$1,762,000	\$7,004,000	\$3,548,000	\$359,000	\$340,000	\$2,757,000
Oregon	\$4,733,000	\$3,335,000	\$8,068,000	\$4,196,000	\$1,000,000	\$0	\$2,872,000
Pennsylvania	\$12,328,000	\$10,495,000	\$22,823,000	\$8,047,000	\$0	\$5,456,000	\$9,320,000
Rhode Island	\$934,000	\$954,000	\$1,888,000	\$1,228,000	\$0	\$0	\$660,000
South Carolina	\$6,529,000	\$4,604,000	\$11,133,000	\$5,928,000	\$588,000	\$951,000	\$3,666,000
South Dakota	\$756,000	\$569,000	\$1,325,000	\$514,000	\$123,000	\$61,000	\$627,000
Tennessee	\$9,951,000	\$5,920,000	\$15,871,000	\$13,288,000	\$0	\$0	\$2,583,000
Texas	\$35,971,000	\$25,294,000	\$61,265,000	\$29,106,000	\$18,596,000	\$0	\$13,563,000
Utah	\$1,771,000	\$3,495,000	\$5,266,000	\$3,430,000	\$981,000	\$0	\$855,000
Vermont	\$481,000	\$590,000	\$1,071,000	\$336,000	\$590,000	\$0	\$145,000
Virginia	\$6,110,000	\$6,412,000	\$12,522,000	\$4,167,000	\$5,771,000	\$0	\$2,584,000
Washington	\$5,614,000	\$5,468,000	\$11,082,000	\$6,561,000	\$2,734,000	\$0	\$1,787,000
West Virginia	\$2,760,000	\$1,823,000	\$4,583,000	\$1,785,000	\$1,640,000	\$0	\$1,158,000
Wisconsin	\$4,925,000	\$4,920,000	\$9,845,000	\$6,856,000	\$1,150,000	\$0	\$1,839,000
Wyoming	\$307,000	\$467,000	\$774,000	\$208,000	\$0	\$270,000	\$296,000
TOTAL	\$335,971,000	\$274,847,000	\$610,818,000	\$331,422,000	\$112,876,000	\$24,150,000	\$142,370,000

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