



STATEMENT FOR THE RECORD

United States Senate Committee on Finance Hearing

Innovations in Child Welfare Waivers: Starting on the Pathway to Reform

Thursday, March 10, 2011

Chairman Baucus, Ranking Member Hatch and members of the Senate Committee on Finance, thank you for this opportunity to submit a statement for the record regarding the March 10, 2011 hearing on “*Innovations in Child Welfare Waivers: Starting on the Pathway to Reform.*”

First Focus is a bipartisan advocacy organization committed to making children and their families a priority in federal policy and budget decisions. Our organization is dedicated to the long-term goal of substantially reducing the number of children entering foster care, and working to ensure that our existing system of care protects children and adequately meets the needs of families in the child welfare system. We are especially concerned with increasing our federal investments in prevention efforts and providing supports and services for at-risk families to ensure that they never enter the child welfare system in the first place.

Since the authorization of the very first federal grants for child welfare services in the 1930s, states have made considerable strides in addressing the needs of children and families entering the system, but we need to do more. A critical first step would be to make improvements to the existing child welfare financing structure to ensure flexibility in the use of the primary source of federal dollars dedicated to child welfare services – SSA Title IV-E. Currently, restrictions in the allowable use of funds result in the larger portion of federal funding being dedicated to foster care. States should be able to directly access Title IV-E funds for investments in a broad continuum of services for children and families, including prevention, early intervention, and post-permanency services. Doing so will ensure that states have the resources they need to adequately care for the countless children and families that walk through their agency doors each day. Furthermore, changes to the eligibility policy for Title IV-E foster care payments are long overdue.

As it stands, eligibility for federal foster care assistance remains tied to the defunct Aid to Families with Dependent Children (AFDC) program. As a result, the federal commitment to foster care has followed a steady downward trend, each year shifting a greater share of the burden on to states to provide for children in care. As such, states are forced to compensate by drawing funds from other programs such as Temporary Assistance to Needy Families (TANF) and the Social Security Block Grant (SSBG) to provide for children in care.



Such critical limitations of the existing federal child welfare financing structure limit the ability of states to provide a diverse array of services to families in need and call attention to the need for a comprehensive reform of the fiscal system. While reform is needed, it may take time for Congress to pass comprehensive child welfare financing legislation. Absent a broader reform of the financing structure, states are now in need of greater flexibility in the use of available federal child welfare funds. Child welfare waiver demonstration projects are a critical vehicle for promoting flexibility and fostering innovation in practice at the state level.

Demonstration waivers, available for some time in programs including Medicaid and AFDC, were first authorized for child welfare in 1994. The Social Security Act (SSA) child welfare demonstration waivers (Section 1130) allowed states to develop and implement innovative approaches to the delivery of child welfare services, and the subsequent 1997 Adoption and Safe Families Act (ASFA) (P.L. 105-89) permitted the Secretary of Health and Human Services (HHS) to approve ten new waiver demonstration projects each year. The legislative authority to approve new waivers expired on March 31, 2006. States with projects approved before that date could continue to implement their waivers, and, the Secretary retained the authority to consider and approve requests to extend demonstrations beyond the original period. First Focus urges Congress to reinstitute and expand child welfare demonstration waivers. In reauthorizing title IV-E waivers, we ask Congress to consider the following modifications to the waiver program:

Modify Title IV-E Foster Care and Adoption Assistance Demonstration Waivers by Adopting Successful Elements of SSA Section 1115 Waivers for Medicaid and CHIP. Section 1115 provides the Secretary of HHS the authority to waive provisions of major health programs, including certain requirements of Medicaid and CHIP. Under Section 1115, the Secretary can allow states to use federal funds for Medicaid and CHIP to test new coverage approaches, and in doing so, foster innovation at the state level. This waiver authority has served several key functions. It has allowed states and the federal government to test new, innovative, and more cost-effective approaches to delivering and financing health care services and helped to advance an administration's policy priorities. It has also given Congress an opportunity to direct HHS to test promising new approaches to service delivery and payment. First Focus recommends modifying title IV-E foster care and adoption assistance waivers to include elements that have been critical to the success of Section 1115 waivers. Our recommendation is driven by the demonstrated success of Medicaid and CHIP waivers. Specifically, we ask Congress to consider the following changes to the IV-E waiver program:

Permit Negotiations around the Terms of a Waiver. Unlike 1130 waivers, the Secretary's waiver authority under 1115 is rather broad. Section 1115 waivers are essentially approved through a series of negotiations between a state and HHS, including around the waiver's financing – a key element of the waiver. Under 1115 waivers, each state develops a negotiated budget neutrality agreement with Centers for Medicare and Medicaid Services (CMS) by projecting costs for a demonstration based on its existing Medicaid program without the demonstration. In negotiating with CMS, a



state can leverage flexibility in the Medicaid program to boost federal support for demonstrations and make a case for federal support beyond that provided by their historical spending. HHS may permit a state to use a higher-than-benchmark growth rate so long as the state can argue that available data fail to accurately depict anticipated growth in its Medicaid program. *First Focus recommends broadening the Secretary's waiver authority under section 1130, to allow for negotiations around key elements of the program. Such an effort can be modeled after section 1115 waivers.*

Eliminate the Cap on IV-E Waivers. Section 1115 waivers are uncapped and open to all states. In contrast, child welfare demonstrations are capped at ten per year, thereby limiting the opportunity for innovation to just a few states. Section 1115 waivers have not had to contend with a limit on the number of demonstrations allowed per year and as a result, Medicaid and CHIP programs have been able to implement change throughout the entire country. In Medicaid, most states are essentially replicating promising or proven practice. In order to learn whether promising demonstrations can be taken to scale, they must be replicated. *Rather than limiting waivers to ten per year, more states should be allowed to replicate promising waiver models. First Focus recommends opening the IV-E waiver program to all states.*

Streamline Waiver Extensions. One of the key issues faced by waiver states is a difficulty in renewing demonstration projects after the initial five-year period. At present, in order to extend an existing IV-E waiver, a state must submit a letter requesting an extension no later than 6 months before the termination date of the demonstration project. In addition, the state must complete the final evaluation report on an expiring waiver. In the interim, HHS grants short-term “bridge” extensions. This process is very different from the renewal of 1115 waivers, which can be and often are negotiated before the end of a waiver period and create a more seamless transition to a new waiver. *It is critical that we streamline the process for renewal of demonstrations. A state should not have to wait until after a final evaluation report is out to renew its waiver. The IV-E waiver program should streamline the process for renewing demonstrations, especially if a program is proving to be effective and showing growth and development.*

Modify Title IV-E Waiver Evaluation Requirements. Currently, states must obtain an evaluation from an independent contractor, comparing the existing state program (control group) to the waiver project (experimental group). Conducting experimental designs in community settings can be problematic for a number of reasons, and according to state reports, the evaluation requirement has presented a few challenges. States have reported that evaluation findings were limited by a variety of factors: inclusion of a wide range of child characteristics and target populations in study design that may wash out effects; small sample sizes (e.g., comparison across counties); limited availability of data; the provision of services to children and families in the comparison group that were similar to those provided to the “treatment” group; difficulty capturing meaningful changes in child welfare outcomes in a relatively short time frame; and the challenge of parceling out findings that may be uniquely attributed to the demonstration in an environment of co-occurring reforms. In addition, states have reported the potential for a selection bias in cases where a limited number of counties participated in the demonstration. *Given the challenges states*



have identified in utilizing experimental designs, moving forward, First Focus recommends that states be given the flexibility to determine the most appropriate evaluation design for their program. Although fewer states will likely utilize an experimental design, one approach to encouraging a pseudo-experimental design is to allow a state to replicate a promising waiver model.

Foster Innovation Using New Waiver Models. Waivers are intended to foster innovation. While the types of projects supported by IV-E waivers to date have been critical to increasing our knowledge base and informing best practices, First Focus believes that IV-E waiver authority could be broadened to support new areas. *First Focus recommends expanding IV-E waivers to support projects that address the needs of youth aging out of care, foster family resiliency and address poverty, test approaches to financing reform, and coordinate services between Medicaid and title IV-E.*

Identifying what works for Youth Aging Out of Care. States should be able to develop demonstrations to address the needs of youth aging out of the foster care system. For instance, waivers could allow states to use independent living dollars to develop and implement an “enhanced” independent living program rather than the standard model, or to use TANF funds - in limited amounts – to provide a broad range of support services for teens aging out of care. A waiver could allow a percentage of TANF funds (e.g., 5 or 10 percent) to be transferred to title IV-E or IV-B to support youth transitioning to adulthood and independence – while maintaining the global limit of 30% cap on TANF transfers. These funds could augment available resources and support a more robust package of services for teens transitioning to independence.

Fostering Family Resiliency and Addressing Poverty. IV-E waivers could be a valuable tool for addressing poverty-related issues for families at risk of entering the child welfare system. Waivers could be used to move people out of poverty and to keep kids at home. Specifically, waivers could support front-end services for families impacted by poverty and at risk for neglect, and help to address the needs of families and children in their own homes. For instance, a waiver could be used to provide child care, which has been viewed as an important service for at-risk families and effective in reducing the risk for maltreatment.

Another approach to fostering resiliency is to use waivers to help youth exiting foster care improve their future prospects and gain financial independence by saving money through an individual development account (IDA). The federal government could utilize title IV-E funds to establish IDA accounts and the state could draw down the federal funds and provide a match. The federal IDA program and participants would also contribute to the account.

Fixing the Look-Back Provision. Waivers could be used in several ways to address the look-back provision. One way to begin testing approaches to fixing the look-back is to create a separate waiver authority on financing reform and allow a limited number of waivers to modify current eligibility requirements for title IV-E foster care payments. HHS could allow for partial waivers for a limited number of states and counties to implement initiatives to address the look-back



provision. This would allow states to test a budget neutral approach to eliminating the look-back. For instance, the waiver could allow states to ignore the look-back for a brief period of time (e.g., first 3 months). The waiver could also allow states to test approaches to streamlining or simplifying eligibility or implementing “presumptive eligibility” policies. One example is to allow states presumptive eligibility for IV-E based on eligibility for food stamps or Medicaid. Savings resulting from reduced administrative services could be reinvested into the system.

Linking Title IV-E and Medicaid. A waiver providing limited authority to link title IV-E and Medicaid could be used to enhance health-related services - including mental and behavioral health care - for children and families. A proposal to coordinate services under title IV-E and Medicaid would offer states the local flexibility to implement demonstrations that coordinate the two programs, for the purpose of promoting child health and well-being. It could be used to transfer money from one program to another, modify eligibility requirements, and implement new initiatives among others while maintaining critical program requirements (e.g., budget neutrality, rigorous evaluation, accountability). It would be feasible to link title IV-E and Medicaid given that both use the Federal Medical Assistance Percentage (FMAP) and both are open-ended entitlements. Rather than using limited title IV-E dollars for critical health-related services, such a waiver could be used to provide these vital services, including behavioral health care for children and parents. Moreover, programs could be tailored to provide substance abuse and mental health treatment or other needed health-related services while keeping in mind the goal of making permanency planning more expedient.

To date, child welfare demonstration waivers have been a critical vehicle for promoting flexibility and fostering innovation in child welfare practice as the state level. By reauthorizing the program, Congress can see to it that waivers continue to drive needed change in child welfare practice for years to come. In doing so, we urge Congress to consider modifying title IV-E waivers to incorporate elements of SSA Section 1115 waivers, improving the waiver evaluation requirements and allowing for the implementation of new waiver models.

In closing, Mr. Chairman and members of the committee, First Focus stands prepared to work with you to ensure that child welfare waiver demonstration projects are reauthorized and remain a critical vehicle for promoting flexibility and fostering innovation in practice. We thank you for your leadership in addressing this critical issue, and look forward to working with you to ensure better care for our nation’s most vulnerable children. If you have any additional questions, please contact Shadi Houshyar, VP for child welfare policy at First Focus, at (202) 657-0678.