

CLASP

CENTER FOR LAW AND SOCIAL POLICY

Congressional Cuts to Foster Care Funding would Jeopardize Children Living with Grandparents and Other Relatives

by Casey Trupin and Vicki Turetsky

“Why would we want to do anything to discourage a family member from taking in a child who has been abused or neglected by his birth parent?”—Rep. Heather Wilson (R-NM)¹

On February 1, the U.S. House of Representatives is scheduled to vote a second time on the budget reconciliation conference agreement, S. 1932, (“budget bill”)² that would decrease federally funded foster care services by at least \$343 million over five years and \$835 million over ten years. The budget bill was originally passed by the House on December 19, 2005 by a 212 to 206 vote and by the Senate on December 22, 2005 by a vote of 51 to 50. However, because the House and Senate passed slightly different versions of the legislation, it must go back to the House for another vote. The budget bill contains child welfare provisions that would discourage states from placing abused and neglected children with grandparents and other relatives, impede state efforts to reunify children with their parents, and make it more difficult to provide critical services to children and families.

The budget bill would, among other things:

- Eliminate federally funded foster care assistance for thousands of children who live in low-income homes with their grandparents or other relatives.
- Place time limitations on federal matching funds for costs to serve children in safe but unlicensed relative placements, and other limitations on child placement and administrative funds.

The budget bill also makes changes to states’ ability to claim funds for Medicaid’s Targeted Case Management (TCM) services. Through TCM, foster children receive support from health navigators and case workers who work on accessing needed services. The CBO estimate does not identify the federal savings related specifically to foster children. However, the provision is significant and is expected to reduce total federal funding of TCM by \$760 million over five years and \$2.1 billion over ten years—more than the total reduction in other child welfare programs. (This brief does not include an analysis of the impact of the loss of TCM services.)

Many thousands of foster children will be hurt by the proposed cuts to child welfare funds, with children of color being disproportionately affected. The foster care cuts reflect the wrong budget priorities. The House should reconsider its priorities, and defeat the budget bill.

The Provision Reduces Financial Support to Children Placed with Relatives

The budget bill would reduce federal funding for both the IV-E Foster Care Program and for IV-E Administrative funds, used for casework in child welfare cases. Both provisions would have a significant effect on relatives caring for abused and neglected children. The budget bill would set aside a federal Court of Appeals decision, *Rosales v. Thompson*,³ which found that the U.S. Department of Health and Human Services (HHS) had interpreted Title IV-E in such a way that it illegally denied foster care assistance (also called “IV-E Maintenance” payments) to certain low-income abused and neglected children.⁴ The proposal in the budget bill would change the statute to fit HHS’ interpretation of the law. The immediate impact of the proposal would be to limit the ability of the nine states in the Ninth Circuit to access maintenance payments for children placed with relatives. Additionally, the proposal would eliminate other states’ ability to offer support to relative caregivers under the analysis of *Rosales*.

Separate from the *Rosales* provision, the bill would reduce states’ ability to access funds for casework when children are placed with unlicensed relatives or are transitioning out of institutions, such as hospitals or detention centers.

Effectiveness of Relative Placement. Numerous studies have shown that there are significant benefits to placing an abused or neglected child with grandparents or other relatives rather than with unrelated foster parents, whenever possible and appropriate. Children placed with relatives have demonstrated greater placement stability and improved child outcomes than those placed in the homes of strangers.⁵ Among the advantages of relative foster care are fewer placement changes⁶ and more frequent contact with birth parents and siblings.⁷ When appropriate safety checks are included, kinship care can be the most appropriate form of out-of-home care for children who must be removed from the custody of parents.⁸

As a result of the positive outcomes associated with relative placements, many state child welfare agencies in recent years have preferred to place abused and neglected children with relatives, a preference which is suggested by federal law. The trend has also resulted from a growing desire to respect family ties and the difficulty in recruiting foster parents, especially in urban, low-income neighborhoods. Relatives are now the fastest-growing source of permanent adoptive homes for foster children.⁹ As of 2003, 23 percent of U.S. foster children were in relative placements.¹⁰ In some states, a majority of foster children are now placed in relatives’ homes.¹¹

Relative Caregivers’ Needs. At the same time, relatives are likely to need more financial assistance from the child welfare agency than non-relative foster care parents. According to the Urban Institute, children placed with relatives by the court are more than twice as likely as children living with non-kin foster parents to live in families with incomes below 200 percent of the federal poverty threshold.¹² In 2005, 200 percent of the poverty line was \$32,180 for a family of three. Other studies indicate that inadequate financial support can undermine the stability of kinship care.¹³ Additionally, because relative care is more common among children of color, these families will be especially hard hit by the proposed changes in the budget bill.

Federal Foster Care Funds for Families. Title IV-E of the Social Security Act authorizes state child welfare agencies to provide assistance to low-income children in foster care to help meet food, clothing, shelter, child care, and other critical needs.¹⁴ In order to qualify for federal foster care assistance under the statute, a child must meet the stringent income standards in place under the old Aid to Families with Dependent Children (AFDC) program, even though AFDC was replaced by the Temporary Assistance to Needy Families (TANF) program in 1996.¹⁵

In *Rosales*, the court held that the state may consider the relative's income in determining the child's eligibility for foster care assistance, provided the child is placed within six months of court-ordered removal from the parent's home. *Rosales* involved an abused child who was placed in his grandmother's home to avoid further maltreatment by his mother. The grandchild would not have been eligible for federally funded foster care assistance based on his mother's income, but would have been eligible based on his grandmother's income. The court determined that the grandson was eligible, based on his grandmother's income. Since *Rosales*, more children living with relatives qualify for federal foster care assistance.

Impact of Overturning *Rosales* on Relative Placements. Ultimately, the budget bill would make it less likely that states would place children with relatives and more likely that they place children with unrelated foster parents—undercutting a preference for placement of children with relatives suggested by federal law and setting back state progress toward family placement goals.

According to the Congressional Budget Office (CBO), the *Rosales* budget provision would cut federal spending on foster care by \$397 million over five years and \$879 million over ten years. The CBO projections are based on HHS estimates that the provision would reduce foster care assistance to 4,000 children each month. However, many states and advocates believe the HHS estimates significantly undercount the number of children that would be directly impacted by the provision. The *Rosales* decision directly impacts nine states: California, Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The County Welfare Directors Association of California recently estimated that there would be between 4,000 and 5,000 affected children in California alone.¹⁶ If *Rosales* were extended nationwide, tens of thousands of abused and neglected children living with low-income relatives could receive foster care assistance.¹⁷

The Bill Also Limits Funding for Casework, Jeopardizing Safe and Stable Placements for Children

The budget bill would seriously weaken state efforts to provide critical case management for foster children by placing time restrictions on the use of federal administrative match funds (also called "IV-E Administrative" funds) for foster children in relative placements awaiting licensure. In addition, the budget bill would restrict the availability of federal administrative funds to one month to help children transition from institutional care.

The budget bill would incorporate proposed HHS regulations that are inconsistent with existing statutes and almost universally opposed by states and child welfare advocates.¹⁸ Under the proposed legislation, states would be prevented from claiming a federal match for managing these cases beyond 12 months or the average time it takes to license a family in the state, whichever is shorter. Children are often placed temporarily with relatives while attempts at family reunification take place. Such temporary relative placements may not be licensed; however, these homes are generally assessed before placement to determine that the child will be safe. Many children are reunified with the parents before a licensure process is completed but beyond the limited time that administrative funds would be available without such a license. Other children have special physical or emotional needs; finding specialized placements can take time.

Additionally, under the budget bill, federal matching funds would not be made available for more than one month of casework provided to children transitioning into foster care from a medical or psychiatric hospital, juvenile detention center, or other institutional setting. Ongoing casework is critical to help these children move out of psychiatric hospitals, detention facilities or other institutions and back into more family like foster care settings. The budget bill would cut critical funds that would help children succeed.

These restrictions on federal administrative funds would **cut \$180 million over five years and \$411 million over ten years from the foster care program.** Administrative funds pay for the casework that is the “glue” linking children and families to many important services—for example, meeting with caseworkers to discuss what needs to be done to achieve safety and permanency for the children; assisting foster parents with the problems of children in their care; referring children to needed services; advocating for children in their schools; searching for placements; and preparing for and attending court hearings related to foster children.¹⁹ In addition, limiting federal funding for casework and other critical supports that can be provided to children placed with grandparents and other relatives is likely to discourage relative placements, with negative consequences for children. Funding limitations would make it more difficult for states to make placement decisions based solely on selecting the best home for the children.

Two Modest Improvements to “Promoting Safe and Stable Families” Title IV-B Funding

The budget bill does make two improvements to child welfare funding. First, it authorizes a \$40 million increase in the 2006 federal funding level for the Promoting Safe and Stable Families program (PSSF), which funds services to families in crisis, foster youth awaiting adoption, and other vulnerable families. PSSF is funded with both mandatory and discretionary funds. Congress is currently authorized to fund up to \$305 million in mandatory funds and \$200 million in discretionary funds per year. The budget bill would increase the level of mandatory funding in PSSF by \$40 million to \$345 million in 2006. However, Congress had previously reduced allocation of discretionary funds by \$8.5 million in 2006 to \$90 million per year (the 2005 funding allocation level was \$98.5 million). This continues to be less than one-half of the \$200 million in discretionary funds authorized by statute. PSSF is subject to reauthorization after 2006.

Second, the budget bill modestly increases the amount set aside for the Court Improvement Grant funds, which are used to improve how courts handle child welfare cases. The budget bill would earmark \$20 million of the mandatory funding for PSSF for two different grant programs for each of the five years between 2006 and 2010.

Conclusion

Together, the foster care provisions in the House budget bill would cut foster care funding to states by at least \$343 million over five years and \$835 million over ten years. Most of this money will come from reducing support to relatives who care for abused children who would otherwise end up in non-relative foster homes. States will be left scrambling to find money in their budgets to support relative placements, often the best home for children. Without funding for relative placements, children are more likely to be unnecessarily placed with strangers, reducing their chances of long-term stability and positive child outcomes. In addition, the budget bill would cut critical services to children in foster care with disabilities and special needs by limiting their access to targeted case management services. This would result in another significant loss of funding for vulnerable children.

CLASP recommends that the House defeat the budget bill with the child welfare cuts when the bill comes to the floor on or around February 1.

¹ Quoted in Weisman, Jonathan. "Food Stamps Cuts Are Proposed: House Plan Would Affect 300,000." *Washington Post*, 1-A. Nov. 3, 2005.

² The agreement, S. 1932, is also called the Deficit Reduction Act of 2005.

³ *Rosales v. Thompson*, 321 F.3d 835 (Ninth Circuit 2003). The decision is directly binding on nine states (California, Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington), Guam and the Mariana Islands. Other states outside the Ninth Circuit were planning to expand their eligibility rules based on *Rosales*; New York and Pennsylvania have already initiated appeals.

⁴ 42 U.S.C. 672(a).

⁵ Testa, M. "Kinship Care and Permanency." *Journal of Social Service Research*, 28(1), 25-43. 2002.; Webster, D., Barth, R.P., & Needell, B. "Placement Stability for Children in Out-of-Home Care: A Longitudinal Analysis." *Child Welfare*, 79(5), 614-632. 2000.

⁶ Terling-Watt, T. "Permanency in Kinship Care: an Exploration of Disruption Rates and Factors Associated with Placement Disruption." *Children & Youth Services Review*, 23(2), 111-126. 2000.

⁷ Chipungu, Sandra, Joyce Everett, Mary Jeanne Verdieck, and Hudith Jones. *Children Placed in Foster Care with Relatives: A Multi-State Study*. Washington, D.C.: Department of Health and Human Services, Administration on Children, Youth, and Families. 1998.

⁸ Garnier, P.C. and J. Poertner. "Using Administrative Data to Assess Child Safety in Out-of-Home Care." *Child Welfare*, 79(5), 597-613. 2000.

⁹ http://www.futureofchildren.org/usr_doc/tfoc1401_115.pdf

¹⁰ <http://www.acf.hhs.gov/programs/cb/publications/afcars/report10.htm>

¹¹ Barbara Needell et al. *Report to the Legislature on the Kinship Guardianship Assistance Payment (Kin-Gap) Program 2002*, at 7. **Child Welfare Research Center**. Available online at <http://cssr.berkeley.edu/childwelfare/pdfs/KinGAPRpt.pdf>.

¹² Jennifer Macomber et al. *Kinship Foster Care: Custody, Hardships and Services*. 2003. Available at Urban Institute: <http://www.urban.org/url.cfm?ID=310893>.

¹³ Terling-Watt, T. Op cit.

¹⁴ Specifically, IV-E maintenance payments “cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.” 42 U.S.C. § 675(4)(A).

¹⁵ 42 U.S.C. 672(a)(4).

¹⁶ California State Association of Counties, County Welfare Directors Association of California and Child Support Directors Association. *Letter to California Congressional Delegation*. October 28, 2005.

¹⁷ Using 2003 foster care estimates, the CWDA numbers indicate that over 8.7 percent of foster children in California will lose federal financial support because of this provision. Applying this percentage to Ninth Circuit states would result in over 6,300 children affected in Ninth Circuit states. A total of 45,500 children who should be eligible for support under the *Rosales* interpretation (if universally adopted), stand to lose potential benefits under this provision, using the 8.7 percent figure. Several states were challenging HHS’s continued rejection of *Rosales* in non-Ninth Circuit states.

¹⁸ Notice of Proposed Rulemaking, “Administrative Costs for Children in Title IV-E Foster Care.” *Federal Register*. January 31, 2005.

¹⁹ 45 C.F.R. § 1356.60(c)(2).