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

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“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 November 18th, 2005, the United States House of Representatives passed a budget bill that includes deep cuts in foster care. The Senate budget bill does not contain the foster care cuts contained in the House bill. The bill (now S. 1932, “The Deficit Reduction Act of 2005”²) goes to Conference Committee, which will attempt to reconcile the differences between the House and Senate versions. The differences in foster care funding will have to be addressed before the Committee crafts a final compromise bill. The final bill will then face a vote by both the House and Senate.

The House version would decrease federally funded foster care services by \$577 million over five years and \$1.3 billion over ten years. The provisions in the House budget bill 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 House budget provisions would, among other things:

- Eliminate federally funded foster care assistance for at least 4,000 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.

Many thousands of foster children will be hurt by the proposed cuts, with children of color being disproportionately affected.

The Provision Reduces Financial Support to Children Placed with Relatives

The House budget legislation would set aside a Circuit Court of Appeals decision, *Rosales v. Thompson*,³ that found that a policy issued by the U.S. Department of Health and Human

Services (HHS) illegally denied foster care assistance (also called “IV-E Maintenance” payments) to low-income abused and neglected children who qualify under the federal statute.⁴

Background. 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.⁵ 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 1996.⁶

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 the House Provision. Ultimately, the House provision 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 required by the Adoption and Safe Families Act and setting back state progress toward family placement goals.⁷

According to the Congressional Budget Office (CBO), the 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.⁸ If *Rosales* were extended nationwide, tens of thousands of abused and neglected children living with low-income relatives could receive foster care assistance.⁹

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.¹⁰ If there are appropriate safety checks, kinship care is the safest form of out-of-home care for children removed from their parent’s custody.¹¹ The advantages of relative foster care include fewer placement changes¹² and more frequent contact with birth parents and siblings.¹³

As a result of the positive outcomes associated with relative placements, most state child welfare agencies in recent years have preferred to place abused and neglected children with relatives, a preference which is specifically called for 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.¹⁴ As of 2003, 23 percent of U.S. foster children were in relative placements.¹⁵ In some states a majority of foster children are now placed in relatives' homes.¹⁶

Needs Among Relative Caregivers. 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.¹⁷ 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.¹⁸ Additionally, because relative care is more common among children of color, these families will be especially hard hit by the proposed changes.

The House Proposal Limits Funding For Casework, Jeopardizing Safe and Stable Placements for Children

In addition, the House budget legislation 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). The House budget bill would incorporate proposed HHS regulations that are inconsistent with existing statutes and almost universally opposed by states and child welfare advocates.¹⁹ 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 that state, whichever is shorter. In addition, the budget bill would restrict the availability of federal administrative funds to one month to help children transition from institutional care, and require child welfare agencies to implement a new costly review process. These restrictions on federal administrative funds would cut \$180 million over five years or \$411 million over ten years from the foster care program.

If the restrictions are enacted, states could lose funding for casework and services to help support relative placements and family reunification, to facilitate the transition from the juvenile justice system to the child welfare system, and to provide services to children and families at imminent risk of removal. Administrative funds pay for the casework that provides the "glue" for linking children and families to many important services—for example, meeting with families 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.²⁰

Limited Funds for Unlicensed Relative Placements. Children are often placed temporarily with relatives while attempts at family reunification take place. Often, these temporary relative

placements are not licensed. Although unlicensed, the homes are 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. Other children have special physical or emotional needs, but finding specialized placements can take time. There is evidence that a state's licensing procedures—for example minimum lighting or square footage requirements for a child's bedroom—do not necessarily increase the immediate safety of a child.²¹

Placing limits on the casework and other supports that can be provided to children placed with grandparents and other relatives is likely to discourage relative placements, with negative consequences for children. The funding limitations would make it more difficult for states to make placement decisions based solely on selecting the best home for the children, and provide the services children and families need.

Other Restrictions on Administrative Funds. 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 in these cases is critical to help these troubled children succeed. In addition, the budget bill requires states to implement a costly and duplicative six-month re-determination process in order to claim federal matching funds for children at imminent risk of removal and potentially eligible for federally funded foster care assistance.

Conclusion

Together, the foster care provisions in the House budget legislation would cut foster care funding to states by nearly \$577 million over five years and \$1.3 billion over ten years. Most of this money will come from reducing support to relatives caring for abused children who would otherwise end up in unrelated 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.

CLASP recommends that the Congress not include the House provisions in the final budget bill.

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 original House version that passed was H.R. 4241, which was subsequently amended onto the Senate version, S. 1932 (Engrossed Amendment as Agreed to by House).

³ *Rosales v. Thompson*, 321 F.3d 835 (9th Cir. 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 exp and their eligibility rules based on *Rosales*; New York and Pennsylvania have already initiated appeals.

⁴ 42 U.S.C. 672(a).

⁵ 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).

⁶ 42 U.S.C. 672(a)(4).

⁷ The Adoption and Safe Families Act (ASFA) explicitly requires states to consider “giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.” 42 U.S.C. § 671(a)(19).

⁸ California State Association of Counties, County Welfare Directors Association of California and Child Support Directors Association. Letter to California Congressional Delegation. October 28, 2005.

⁹ Using 2003 foster care estimates, the CWDA numbers indicate that over five 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 6,700 children affected in Ninth Circuit states. CLASP estimates that over 26,000 children nationwide who should be eligible for support under the *Rosales* interpretation (if universally adopted), stand to lose potential benefits under this provision, using the five percent figure. Several states were challenging HHS’s continued rejection of *Rosales* in non-Ninth Circuit states and a Federal District Court had recently applied *Rosales* to Georgia’s Adoption Assistance program. *See, Harris v. Martin*, F.Supp.2d, 2004 WL 1905331 (N.D.Ga. 2004) (Unpublished opinion).

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ http://www.futureofchildren.org/usr_doc/tfoc1401_115.pdf

¹⁵ <http://www.acf.hhs.gov/programs/cb/publications/afcars/report10.htm>

¹⁶ Barbara Needell et al., Report to the Legislature on the Kinship Guardianship Assistance Payment (Kin-Gap) Program at 7. 2002.

¹⁷ Jennifer Macomber et al. Kinship Foster Care: Custody, Hardships and Services. Available at Urban Institute; <http://www.urban.org/url.cfm?ID=310893>. 2003.

¹⁸ Terling-Watt, T. Op cit.

¹⁹ Notice of Proposed Rulemaking, *Administrative Costs for Children in Title IV-E Foster Care*, published in the Federal Register on January 31, 2005.

²⁰ 45 C.F.R. § 1356.60(c)(2).

²¹ The 2000 Report to the Congress on Kinship Foster Care, commissioned by the Children’s Bureau, (available at <http://aspe.hhs.gov/hsp/kinr2c00/full.pdf>) discusses the various studies about the safety of unlicensed relative placements at pp 44-46.