

## **EXECUTIVE SUMMARY**

Foster care placements for children who are victims of abuse and neglect have historically been managed by a combination of private and public resources. However, the need for specialized foster care services and a shortage of foster care homes in recent years has led to the privatization of many core foster care services. Today, both non-profit and for-profit private agencies contract with and provide foster care services on behalf of State agencies. In 2015, 671,000 children in the United States were provided out-of-home foster care services. There are no official statistics on what proportion of these children received contracted foster care, case management, or other services. State child welfare agencies report they have procedures in place to monitor child welfare providers' performance and outcomes. But this investigation conducted by the bipartisan staff of the U.S. Senate Finance Committee shows that these policies are not always followed; exceptions are made, waivers are granted, profits are prioritized over children's well-being, and sometimes those charged with keeping children safe look the other way. High turnover among staff sometimes makes it impossible to develop case plans to ensure that children are "on-track." Foster parents with questionable backgrounds, who lack the skills to provide care to vulnerable children, are given licenses to parent challenging children, and these children are then inadequately monitored. The outcome of this investigation shows that the child welfare system does not always protect children. The data collection and oversight structures at both the State and Federal levels make it difficult and sometimes impossible to monitor the operations of the child welfare system, as well as its private contractors.

A recent bout of national media attention concerning questionable behavior by private for-profit agencies, abuse and neglect by foster parents working for those providers, and in some instances, abuse and neglect which caused children's deaths, led the Finance Committee to investigate this issue. As the Finance Committee has primary jurisdiction over Federal child welfare and foster care funding and policy (largely through the Social Security Act), the Committee launched an investigation in April 2015 to examine the privatization of foster care services. One specific private company, The MENTOR Network, one of the largest for-profit providers of foster care services in the United States, was used as a case study to highlight the problems that exist with the privatization of human services. This report documents the findings of this investigation and reveals problems with child welfare contracting practices as well as public agency oversight of such contracts and services.

The investigation was conducted by collecting information from public child welfare agencies across the Nation concerning their general policies and practices, including how they contract with

and monitor private agencies. The Committee also gathered information from The MENTOR Network, specifically, by reviewing incident reports about the deaths of children in the company's care, an internal "mortality report," legal settlements, case notes, foster parent applications, and other related documentation.

The Committee staff concluded that children who are under the legal authority of their State, yet receive services from private for-profit agencies, have been abused, neglected, and denied services. The very agencies charged with and paid to keep foster children safe too often failed to provide even the most basic protections, or to take steps to prevent the occurrence of tragedies. In MENTOR's case in particular, investigations into fatalities were never followed up after the fact; autopsy reports which were pending years ago were excluded from files; and the vast majority of children who died were not the subject of internal investigations, even when their deaths were unexpected. The MENTOR Network issued a report which falsely claimed that its death rates are in line with national death rates and the rates of death among all children in the foster care system. Moreover, families of these and other victims of inadequate care have received millions of dollars in financial settlements, significant enough for The MENTOR Network to receive less favorable terms from its insurer.

As the role of private for-profit and non-profit providers of foster care services has grown, oversight of these entities by State agencies—as well as Federal oversight of the States—has been inadequate. The Finance Committee staff has made recommendations to HHS, the States, and to Congress addressing these shortcomings.

## **RECOMMENDATIONS**

### **Recommendations for States and Tribes**

- Improve outreach, customer service, and support services for those interested in becoming foster parents to attract and retain high-quality foster families.
- Support enhanced oversight of foster families to ensure robust background checks, home study assessments, and ongoing placement oversight.
- Frequently review performance of child welfare service providers/contractors to ensure child safety, permanency, and well-being standards are being met.
- Track child safety and well-being related outcomes at the individual provider level, including whether children served by specific providers have higher than average needs (*e.g.*, are medically fragile, have special needs, or require therapeutic foster care placement, etc.).
- Set standards for maximum caseload size for child welfare workers, which may include differentiated standards based on variations in case type (*e.g.*, medically fragile children, children in therapeutic foster care placements, etc.) or activity (*e.g.*, investigations of abuse or neglect, case planning for children in foster care).

- Provide greater funding for the training of front-end staff charged with making removal and placement setting decisions for children entering foster care or at risk of entry.
- Revoke contracts from child welfare service providers who are unable to demonstrate the capacity to provide safe foster care placements for children.
- Provide subsidized guardianship payments to relatives willing and able to provide safe placements for children who can no longer remain at home.
- Ensure child death review teams are transparent, timely, and well-staffed. Require the timely publication of the results of child death reviews while ensuring appropriate and robust privacy protection of sensitive data.
- Make placement setting decisions based on the assessed strengths and needs of children entering foster care using an age-appropriate, evidence-based, validated, functional assessment tool to ensure children receive the appropriate level of care in the least restrictive, most family-like environment.
- Establish child welfare ombudsman offices through which children in care, family members, child welfare workers, foster parents, whistleblowers, and members of the public at large can submit comments and concerns about misconduct within the child welfare system.

#### **Recommendations for the Department of Health and Human Services (HHS)**

- Work to engage States, Congress, and the broader child welfare community in understanding the purpose and State-specific relevance of the Child and Family Services Review (CFSRs) and ensure this process contributes to meaningful improvement and reform.
- Seek and provide clarification on how States and Tribes are defining, using, and overseeing the delivery of Therapeutic Foster Care (TFC) and establish a common definition of TFC for the purposes of Medicaid and title IV–E.
- Develop a uniform definition of “child abuse and neglect fatality” and provide guidance related to determining and reporting such fatalities and ensure States and Tribes are using this new definition when reporting data via the National Child Abuse and Neglect Data System (NCANDS).
- Aid States in developing the means and mechanisms to accurately collect provider-specific outcomes data, consistent with the metrics and definitions associated with the Adoption and Foster Care Analysis and Reporting System (AFCARS), NCANDS, and the CFSRs.
- Establish maximum caseload guidelines to promote manageable caseload sizes for the child welfare workforce.

#### **Recommendations for Congress**

- Support both funding and oversight for States and Tribes to enhance foster parent recruitment and retention activities to ensure robust background checks, home studies, ongoing placement oversight, and strong support services for foster parents.

- Support both funding and oversight for States and Tribes to enhance caseworker recruitment and retention activities to ensure child welfare caseworkers are both prepared to enter the field and given the support services necessary to carry out their jobs effectively.
- Allow States and Tribes to use title IV–E funds to support evidence-based services aimed at safely preventing foster care entries.
- Consider de-linking subsidized guardianship payments from the Aid to Families with Dependent Children (AFDC) income standard so that States and Tribes can receive a Federal match on behalf of all children placed in subsidized guardianship placements and promote equity in the payment rate for kinship placements.
- Require all States to report to the National Child Abuse and Neglect Data System (NCANDS) using standard definitions and provide support for this data collection and reporting.
- Consider legislation creating an explicit private right of action for children and youth in foster care tied to components of the case plan and case review requirements defined under section 475 of the Social Security Act.<sup>1</sup>
- Consider statutory changes requiring HHS to assess fiscal penalties on States for failing to meet CFSR outcomes or system requirements and develop a penalty reinvestment structure under which assessed penalties must be used by the State to address the key identified deficiencies (rather than be deposited into the Federal Treasury).
- Consider amending section 479A of the Social Security Act to require States to collect, and HHS to audit, provider-specific child outcomes data in addition to State-specific data on outcomes such as: child fatalities, maltreatment in care, recurrence of maltreatment within 6 months, exits from foster care by reason for the exit (adoption or guardianship, reunification, emancipation), time to reunification, re-entry rates, and the average number of placements. Ensure this performance data is available to the public and considered by States or Tribes before making or renewing a contract with the provider.
- Consider prohibiting Federal title IV–E reimbursements for providers who consistently perform poorly on key safety, permanency, and well-being indicators. Charge HHS with auditing States and providers to determine which providers shall be excluded from Federal title IV–E reimbursement.
- Require States to make their contracts with private child welfare service providers publicly available and include details on whether such providers are private not-for-profit or private for-profit.

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<sup>1</sup>“Compilation of the Social Security Laws,” Social Security Act, section 475, [https://www.ssa.gov/OP\\_Home/ssact/title04/0475.htm](https://www.ssa.gov/OP_Home/ssact/title04/0475.htm).