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VIA ELECTRONIC MAIL

June 12, 2015

Senator Ron Wyden
221 Dirksen Senate Office Bldg.
Washington, D.C., 20510

RE: COMMENTS ON DRAFT CHILD WELFARE BILL

Dear Senator Wyden,

We appreciate the Discussion Draft of the Family Services & Foster Care Legislative Proposal you recently released. The Children's Advocacy Institute (CAI) has been working since 1989 to improve the status, health and well-being of children and youth in all areas of their lives, with special emphasis on improving the foster care system and ensuring that children in foster care have every opportunity to transition to successful adulthood. It is with this demonstrated commitment to foster youth that we provide comments on the Discussion Draft.

It is gratifying to see the growing interest in federal child welfare policy and finance reform. Such attention at the federal level is critical, after decades of disinterest and disinvestment have caused immeasurable harm to the children we are supposed to be protecting. We share your belief that this is an area deserving of increased federal investment, and we applaud your bold approach and commitment to the children and families who would benefit from your proposal. We have been disappointed with recent finance reform proposals which merely offer revenue-neutral options; while perhaps easier to gain political traction, such an approach simply will not fix the problems with the current formulas or adequately serve this most vulnerable population.

We were pleased to see that your Discussion Draft does not propose limiting resources to children who find themselves in foster care but, instead, proposes to use resources in a more cost-effective manner by expanding access to front-end, preventive, and post-permanency services. The targeted approach of increasing funding available through Title IV-B and creating access to new funding through Title IV-E for time-limited family services moves the debate in a positive direction by targeting specific needs left unmet by our current funding structure. In addition, we support the requirement to use the new funding for services that are evidence-based or evidence-informed while at the same time including requirements for ongoing data collection and evaluation on the effectiveness of these services over time.

We are also very pleased to see that the Discussion Draft recognizes the importance of delinking federal reimbursement for needed services from the archaic welfare standards as they existed in 1996 (nearly two decades ago). We recognize that this is a complicated issue to tackle in its entirety, and we applaud your efforts to chip away at it. As currently drafted, however, we are concerned that the Discussion Draft might unintentionally incentivize keeping children out of foster care. By delinking the front-end "time-limited family services" from the 1996 welfare standards, but then denying federal funding for foster care maintenance payments to those same children if they have to come into the system, states could have a perverse financial incentive to keep children out of foster care even when keeping them out may be contrary to their best interest. Although we recognize the challenges of doing so, we believe that the only way to eliminate this perverse incentive is to delink all foster care maintenance payments from the 1996 AFDC rules.

We are also concerned that another provision in the bill could unintentionally cause children harm. Defining a “candidate for foster care” as a child at “imminent risk of entering or re-entering” foster care may encourage states to keep children out of foster care even when doing so would compromise their safety. Caseworkers and investigators currently utilize an “imminent risk” of harm standard to determine whether safety concerns rise to a level that requires a child’s immediate removal. Creating a new “immediate risk” standard tied to providing front-end services may be too closely tied to the “imminent risk” standard, thus causing potential confusion among caseworkers and others making placement and removal decisions and placing children at risk of harm. Instead, we recommend that the term “candidate for foster care” be defined as a child who has been determined to be a victim of abuse or neglect and who is at risk of a reoccurrence of abuse or neglect if time-limited family services are not provided.

Further, and equally importantly, we believe that the proposals for time-limited family services and increased funding for prevention and post-permanency support found in the Discussion Draft would benefit from clear and strong enforcement mechanisms. Over the years, states have repeatedly failed to fulfill Congressional mandates when it comes to child welfare law and policy, and inadequate oversight and enforcement by the Department of Health and Human Services (DHHS) has failed to bring states into conformity with either the express mandates and/or intent of Title IV-B, Title IV-E, and CAPTA.¹ We therefore believe it is imperative to include language expressly stating that the time-limited family services and the funding for prevention and post-permanency support are intended to directly benefit children and families who do or should qualify for these programs — and that these families and children have a private right of enforcement with regard to the provisions of the bill. Without such language, we risk witnessing another well-intended reform fail to achieve results due to a lack of DHHS enforcement.

Additional enforcement language should be tied to the Maintenance of Effort requirement found on page 10 of the Discussion Draft. It is notoriously rare for states or child welfare agencies to supplement instead of supplant federal funds made available to provide services. Without adding a clause allowing for private enforcement of the Maintenance of Effort requirement, states and local agencies will likely see this requirement as an empty threat, and will quickly fall into the familiar habit of supplantation.

CAI applauds the effort that has gone into proposing the Discussion Draft — as well as your willingness to take a different approach to finance reform than that taken by other players in the field. While this Discussion Draft does not address child welfare financing head on, your willingness to propose meaningful policy reform, and backing it up with increased federal financial investment, has not gone unnoticed or unappreciated. CAI is also committed to being a part of the child welfare policy and finance reform discussions as they continue. Attached please find a copy of comments we submitted to the Senate Finance Committee last year. These comments contain what we believe to be the areas that should be of primary focus during discussions of broader child welfare finance reform and we would very much like to continue to discuss with you the highest priorities as the broader discussion gains more traction.

We applaud your work to move the U.S. toward better and more comprehensive child welfare policy that addresses the needs of children at risk of suffering further abuse and neglect. Please feel free to contact us if you have any questions regarding our comments. We look forward to continuing to work with you and your staff as you advance these proposals forward.

Sincerely,



Professor Robert C. Fellmeth
Executive Director, Children’s Advocacy Institute



Amy C. Harfeld
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¹ See Children’s Advocacy Institute’s *Shame on U.S., Failings by All Three Branches of Our Federal Government Leave Abused and Neglected Children Vulnerable to Further Harm*, “[w]ith regard to many areas where Congress has set minimal floors for state compliance, HHS is not monitoring, is not detecting violations, is not insisting that states meet the national floor and is virtually never imposing sanctions or penalties for chronic noncompliance,” p. iii, available at http://www.caichildlaw.org/Misc/Shame%20on%20U.S._FINAL.pdf.