

# ASPE ISSUE BRIEF

OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION  
OFFICE OF HUMAN SERVICES POLICY - U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

## FEDERAL FOSTER CARE FINANCING

### How and Why the Current Funding Structure Fails to Meet the Needs of the Child Welfare Field

*This Issue Brief provides an overview of the Title IV-E Federal foster care program's funding structure and documents several key weaknesses.*

#### Executive Summary

The Federal foster care program pays a portion of States' costs to provide care for children removed from welfare-eligible homes because of maltreatment. Authorized under Title IV-E of the Social Security Act, the program's funding (approximately \$5 billion per year) is structured as an uncapped entitlement, so any qualifying State expenditure will be partially reimbursed, or "matched," without limit. This paper provides an overview of the program's funding structure and documents several key weaknesses. It concludes with a discussion of the Administration's legislative proposal to establish a more flexible financing system.

**The program's documentation requirements are burdensome.** There are four categories of expenditures for which States may claim Federal funds, each matched at a different rate. In addition, there are several statutory eligibility rules that must be met in order to justify the Title IV-E claims made on a child's behalf. Some of these apply at the time a child enters foster care, while others must be documented on an ongoing basis. The time and costs involved in documenting and justifying claims is significant.

**Differing claiming practices result in wide variations in funding among States.** The average annual amount of Federal foster care funds received by States ranges from \$4,155 to \$41,456 per eligible child, based on three year average claims from FY2001 through FY2003. It is unlikely these disparities are the result of actual differences in the cost of operating foster care programs or reflect differential needs among foster children.

#### ABOUT THIS ISSUE BRIEF

*This ASPE Issue Brief on "How and Why the Current Funding Structure Fails to Meet the Needs of the Child Welfare Field" was written by Laura Radel with assistance from staff in the Administration for Children and Families.*

*The Issue Brief provides an overview of the financing of the Federal foster care program, documenting and explaining several key weaknesses in the current funding structure. It also discusses the Administration's alternative financing proposal, the creation of a Child Welfare Program Option, which would allow States to choose between financing options.*

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**The current funding structure has not resulted in high quality services.** Strengths and weaknesses of States' child welfare programs are identified through Federal monitoring visits called Child and Family Services Reviews. States reviewed have ranged from meeting standards in 1 to 9 of the 14 outcomes and systemic factors examined (the median was 6). Significant weaknesses are evident in programs across the nation, but many of the improvements needed cannot be funded through Title IV-E.

**States' Title IV-E claiming bears little relationship to service quality or outcomes.** There are States with both high and low levels of Federal Title IV-E claims at each level of performance on Child and Family Services Reviews. In addition, there is no relationship between the amounts States claim in Title IV-E funds and the proportion of children for whom timely permanency is achieved.

**The current funding structure is inflexible, emphasizing foster care.** Title IV-E funds foster care on an unlimited basis without providing for services that would either prevent the child's removal from the home or speed permanency. Foster care funding represents 65% of Federal funds dedicated to child welfare purposes, and adoption assistance makes up another 22%. Funding sources that may be used for preventive and reunification services represent only 11% of Federal child welfare program funds.

**The financing structure has not kept pace with a changing child welfare field.** The structure of the Title IV-E program has continued without major revision since it was created in 1961, despite major changes in child welfare practice. The result is a funding stream seriously mismatched to current program needs. It is driven towards process rather than outcomes and constrains agencies' efforts to achieve improved results for children.

**The proposed Child Welfare Program Option offers substantial benefits.** The Child Welfare Program Option, first proposed in HHS's Fiscal Year 2004 budget request and currently included in the President's Fiscal Year 2006 budget request, would allow States a choice between the current Title IV-E program and a five-year capped, flexible allocation of funds equivalent to anticipated Title IV-E program levels. It would allow innovative State and local child welfare agencies to eliminate eligibility determination and claiming functions and redirect funds toward services and activities that more directly achieve safety, permanency and well-being for children and families.

The combination of detailed eligibility requirements and complex but narrow definitions of allowable costs within the Federal Title IV-E foster care program force a focus on procedure rather than outcomes for children and families. The Administration's proposed Child Welfare Program Option is intended to introduce flexibility while maintaining a focus on outcomes, retaining existing child protections, and providing a financial safety net for States in the form of access to the TANF Contingency Fund during unanticipated and unavoidable crises. The result will be a stronger and more responsive child welfare system that achieves better results for vulnerable children and families.

## Introduction

The Federal Government currently spends approximately \$5 billion per year to reimburse States for a portion of their annual foster care expenditures. Foster care services are intended to provide temporary, safe alternative homes for children who have been abused or neglected until such time as they are able to return to their parents' care safely or can be placed in other permanent homes. Federal foster care funds, authorized under Title IV-E of the Social Security Act, are paid to States on an uncapped, "entitlement" basis, meaning any qualifying expenditure by a State will be partially reimbursed, or "matched," without limit. Definitions of which expenses qualify for reimbursement are laid out in regulations and policy interpretations that have developed, layer upon layer, over the course of many years. Each may have made sense individually, but cumulatively they represent a level of complexity and burden that fails to support the program's basic goals of safety, permanency, and child well-being.

This paper provides an overview of the current funding structure, and documents several key weaknesses. In essence, the paper shows that: (1) The current financing structure is connected to the old Aid to Families with Dependent Children program (AFDC) for historical, rather than programmatic reasons; (2) The administrative paperwork for claiming Federal funds under Title IV-E is burdensome; (3) Current funding is highly variable across States; (4) Child welfare systems claiming higher amounts of Federal funds per child do not perform substantially better or achieve better outcomes for children than those claiming less funding; (5) The current funding structure is inflexible and emphasizes foster care payments over preventive services; and (6) The financing structure has not kept pace with a changing child welfare field. The paper concludes with a discussion of the Administration's proposal to establish a Child Welfare Program Option, allowing States to receive their foster care funds in a fixed, flexible allocation as an alternative to the current mode of financing.

## Background and History of Title IV-E Foster Care

The Federal Government has, since 1961, shared the cost of foster care services with States. Prior to this time foster care was entirely a State responsibility. Since its very first days foster care funding was intimately linked to Federal welfare benefits, then known as the Aid to Dependent Children Program, or ADC. In fact, the Federal foster care program was created to settle a dispute with the States over welfare payments to single-parent households. At the time, some States routinely denied welfare payments to families with children born outside of marriage. These States had declared such homes to be morally “unsuitable” to receive welfare benefits. Following a particularly extreme incident in which 23,000 Louisiana children were expelled from ADC, the Federal Department of Health, Education, and Welfare (HEW), in what came to be known as the Flemming Rule after then-secretary Arthur Flemming, directed States to cease enforcement of the discriminatory suitable homes criteria unless households were actually unsafe for children. If homes were unsafe, States were required to pay families ADC while making efforts to improve home conditions, or place children in foster care. When States protested the added costs of protecting children in unsafe homes, Congress reacted by creating Federal foster care funding. In this way, the Federal Government ensured States would not be disadvantaged financially by protecting children (Frame 1999; Committee on Ways and Means 1992).

From 1961 until 1980, Federal foster care funding was part of the Federal welfare program, Aid to Families with Dependent Children (AFDC). Since 1980, however, foster care funds have been authorized separately, under Title IV-E of the Social Security Act. From 1980 through 1996, States could claim reimbursement for a portion of foster care expenditures on behalf of children removed from homes that were eligible for the pre-welfare reform AFDC program, so long as their placements in foster care met several procedural safeguards. While the underlying AFDC program was abolished in 1996 in favor of the Temporary Assistance for Needy Families Program (TANF), income eligibility criteria for Title IV-E foster care continues to follow the old AFDC criteria as they existed just before welfare reform was enacted. States are reimbursed on an unlimited basis for the Federal share of all eligible expenses.

It should be noted that while Title IV-E eligibility is often discussed as if it represents an entitlement of a particular child to particular benefits or services, it does not. Instead, a child's Title IV-E eligibility entitles a State to Federal reimbursement for a portion of the costs expended for that child's care.

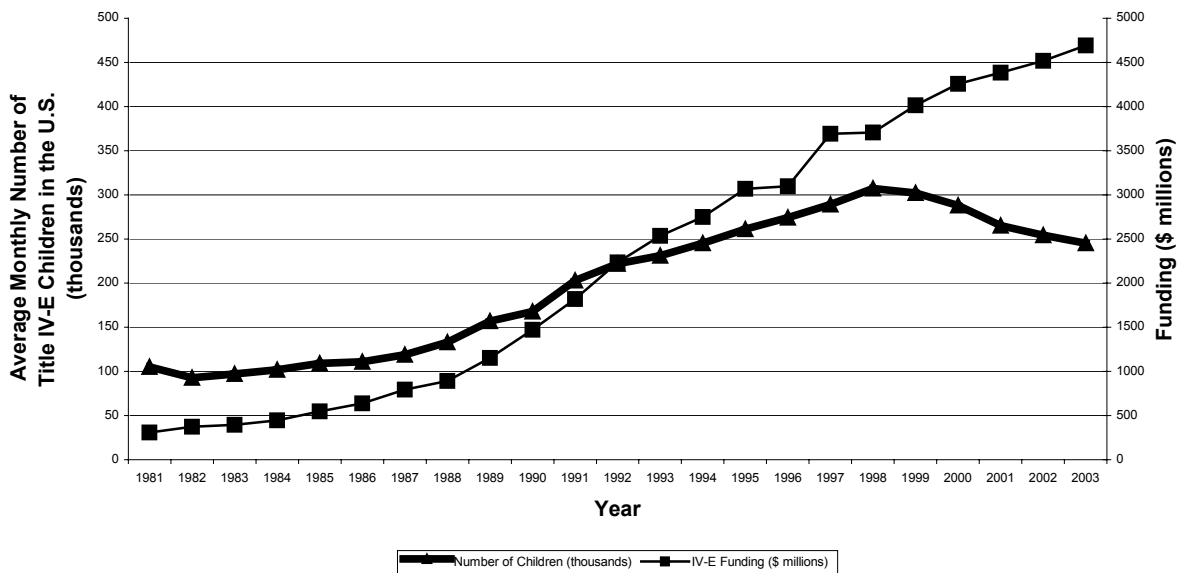
Title IV-E remained little changed from its inception in 1980 until the passage of the Adoption and Safe Families Act in 1997 (ASFA). With ASFA, Congress responded to concerns that children were too often left in unsafe situations while excessive and inappropriate rehabilitative efforts were made with the family. It also addressed what was at least a perceived reluctance on the part of child welfare agencies and judges to seek terminations of parental rights and adoption in a timely fashion when reunification efforts were unsuccessful. ASFA clarified the central importance of safety to child welfare decision making and

emphasized to States the need for prompt and continuous efforts to find permanent homes for children. These permanent homes might be with their birth families if that could be accomplished safely, or with adoptive families or permanent legal guardians if it could not. ASFA, together with related activity to improve adoption processes in many States, is widely credited with the rapid increases in adoptions from foster care in the years since the law was passed.

ASFA’s emphasis on permanency planning has contributed to increasing exits from foster care in recent years, both to adoptive placements and to other destinations including reunifications with parents and guardianships with relatives. Combined with relatively flat numbers of foster care entries, the number of children in foster care has begun to decline, the first sustained decrease since the program was established.

State claims under the Title IV-E foster care program have always grown more quickly than the population of children served. But the recent declines in the number of children in foster care have substantially curbed the tremendous growth the program experienced during the 1980s and 1990s. The number of children in foster care began declining slowly in 1999 after more than doubling in the preceding decade. Federal foster care program expenditures grew an average of 17 percent per year in the 16 years between the program’s establishment and the passage of the Adoption and Safe Families Act (ASFA) in 1997. During that period, in only 3 years did growth dip below 10 percent. However, in the five years since ASFA was enacted, program growth has averaged only 4 percent per year. While some of the growth through 1997 paralleled an increasing population of children in foster care, spending growth far outpaced growth in the number of children served. Improvements in States’ ability to claim reimbursement and expanded definitions of administrative expenses in the program also contributed to funding growth. Figure 1 displays the growth in foster care expenditures and the number of children in foster care funded by Title IV-E.

**Figure 1. Federal Claims and Caseload History for Title IV-E Foster Care**



The major appeal of the Title IV-E program has always been that, as an entitlement, funding levels were supposed to adjust automatically to respond to changes in “need,” as represented by State claims. Annual discretionary appropriations were unnecessary to accommodate changing circumstances such as a larger population of children in foster care. The automatic adjustment features of the entitlement structure remain a strength, however, only so long as they respond appropriately and equitably to factors that reflect true changes in need and that promote the well-being of the children and families served. There is little

reason to assume this is true at present. Figure 1 shows that funding levels and caseloads have not closely tracked one another for over a decade, and indeed since 1998 have been moving in opposite directions.

## Documenting Eligibility and Claiming Foster Care Funds is Burdensome

In order to receive Federal foster care funds, States are required to determine a child's eligibility, and must document expenditures made on behalf of eligible children. This documentation becomes the basis for expenditure reports that are filed quarterly with the Federal Government. The Federal share of eligible expenditures may then be "drawn down" (i.e. withdrawn from Federal accounts) by States. While good estimates of the time and costs involved in documenting and justifying claims are not available, such costs can be significant.

As laid out in law and regulations, there are four categories of expenditures for which States may claim Federal funds. Each of these is matched at a particular rate that varies from category to category. In addition, the match rate for foster care maintenance payments varies from State to State and may be adjusted from year to year. These categories are:

- **foster care maintenance payments** for eligible children (matched at the Medicaid rate which varies by State and by year, but currently ranges from 50 to 80%)
- **short- and long-term training** for State and local agency staff who administer the Title IV-E program, including those preparing for employment by the State agency, as well as for foster parents and staff of licensed child care institutions in which Title IV-E eligible children reside (75% Federal match)
- **administrative expenditures** necessary for the proper and efficient administration of the program (50% Federal match)
- **costs of required data collection systems** (50% Federal match)

With so many different categories of expenses, each matched at a different rate, States must accurately track spending in each of these categories and attribute how much of their efforts in each category are being made on behalf of eligible children. States report that doing so is cumbersome, prone to dispute, and does not accomplish program goals. Adding an additional layer of complexity, costs must be allocated to those programs which benefit from the expenditures, a standard practice in Federal programs. A State's cost allocation plan is approved by the Federal Government and distributes expenses that relate to multiple programs and functions.

The categories of administrative and training expenses are typically the most difficult to document and the most often disputed. Federal regulations (45 CFR 1356.60) provide the following examples of allowable administrative expenses:

- eligibility determination and re-determination, plus related fair hearings and appeals
- referral to services
- preparation for and participation in judicial determinations
- placement of the child
- development of the case plan
- case reviews
- case management and supervision
- recruitment and licensing of foster homes and institutions
- rate setting

- a proportionate share of agency overhead
- costs of data collection systems

There is an ambiguous dividing line between an administrative expense such as case management and ineligible service costs, such as counseling. Such activities may be performed by the same staff and sometimes in the same session with a client. This makes accurate claiming difficult and gives rise to frequent disputes about allowable expenditures. For this reason, administrative costs are much more frequently the subject of disallowances than are other funding categories.

The ability of States to claim Title IV-E funds spent on training activities is confounded by statutory and regulatory provisions that are mismatched with how State agencies currently operate their programs. For instance, while many States now contract with private service providers for administrative functions such as those listed above, they receive lower rates of Federal reimbursement of their costs for training these workers to perform these functions. Only costs incurred by the State in the training of State and local agency workers and those preparing for employment with the state agency can be reimbursed under Title IV-E at the enhanced, 75 percent match rate (rather than the 50 percent match rate for administrative expenses). Furthermore, only public funds or expenditures can be used to match Title IV-E training funds. It is common practice to consider the staff time and other resources of a state university as match for Federal funds when training child welfare agency employees. However, this practice disadvantages States that utilize private colleges and universities for training and limits the training resources available, particularly in rural States where the number of State universities and colleges are limited and at great distances from those people requiring the training.

Just as claiming rules are complex, requirements for children's Title IV-E eligibility are also cumbersome. Several eligibility requirements must be met in order to justify the Title IV-E claims made on a child's behalf. These are described in the text box below. Some of these apply at the time a child enters foster care, while others must be documented on an ongoing basis. Most of these are procedural requirements intended to protect children from potential harm caused by inattentive agencies and systems. It is unclear, however, that they function reliably as eligibility criteria. For example, the fact that judicial determinations routinely include "reasonable efforts" and "contrary to the welfare" determinations may represent a judge's careful consideration of these issues, or may simply appear because prescribed language has been automatically inserted into removal orders. These process requirements were essential when Federal oversight was limited to assuring the accuracy of eligibility determinations. However, now that the Child and Family Review process (discussed in some detail in a later section) provides comprehensive assessments of States' child welfare programs, some of what are currently individual eligibility criteria could be addressed more effectively as part of the systemic assessment process.

The eligibility criterion that is most routinely criticized by States and child welfare advocates is the financial need criteria as was in effect under the now-defunct AFDC program. As noted above, this requirement relates to the historical origins of the foster care program as part of the welfare system. However, there is no policy reason that the Federal Government should "care" (in monetary terms) more about children in imminent danger of maltreatment by parents who are poor than it does about children whose parents have higher incomes. The requirement is particularly peculiar because the AFDC program was eliminated in favor of Temporary Assistance for Needy Families in 1996. Therefore the means test used for Title IV-E no longer parallels the income and asset limits for existing welfare programs. And since this so-called "look back" provision did not index the 1996 income and asset limits for inflation, over time their value will be further eroded. Fewer children will be eligible for Title IV-E in the future as income limits for the program remain static while inflation raises both incomes and the poverty line.

That each child's eligibility depends on so many factors, some of which may change from time to time, makes Title IV-E a potentially error-prone program to which there is recurrent pressure for accuracy, close

procedural scrutiny, and the taking of disallowances. On the other hand, the potentially large sums involved mean that disallowances are met with procedural disputes, appeals, and protests from agency directors, legislators, and governors. Yet it is not at all clear that the time and effort spent tracking eligibility criteria results in better outcomes for children. For all the complexity of the eligibility process, the number of States out of compliance is actually quite low.

### *Eligibility Requirements for Title IV-E Foster Care*

**Contrary to the welfare determination.** A child's removal from the home must be the result of a judicial determination to the effect that continuation in the home would be contrary to the child's welfare, or that placement in foster care would be in the best interest of the child. Children in foster care as a result of a voluntary placement agreement are not subject to this requirement.

**Reasonable efforts determination.** The State agency must obtain a judicial determination within 60 days of a child's removal from the home that it has made reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from home, as long as the child's safety is ensured. In addition, there must be ongoing documentation that the State is making reasonable efforts to establish and finalize a permanency plan in a timely manner (every 12 months).

**State agency placement and care responsibility.** The State child welfare agency must have responsibility for placement and care of the child. Usually this means the child is in the State's custody. A tribal agency or other public agency may have responsibility for the child's placement and care if there is a written agreement to that effect with the child welfare agency.

**Pre-welfare reform AFDC eligibility.** The State must document that the child was financially needy and deprived of parental support at the time of the child's removal from home, using criteria in effect in its July 16, 1996 State plan for the Aid to Families with Dependent Children program. Income eligibility and deprivation must be re-determined annually.

**Licensed Foster Family Home or Child Care Institution.** The child must be placed in a home or facility that meets the standards for full licensure or approval that are established by the State.

**Criminal background checks or safety checks.** The State must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents and safety checks have been made regarding staff of child care institutions.

**Special Requirements in the Case of Voluntary Placements.** If a child is placed in foster care under a voluntary placement agreement, Title IV-E eligibility rules apply slightly differently. Determinations that remaining in the home is contrary to the child's welfare and that reasonable efforts have been made to prevent placement are not required in these cases. However, if the child is to remain in care beyond 180 days, a judicial determination is required by that time indicating that continued voluntary placement is in the child's best interests.

Compliance with eligibility rules is monitored through Title IV-E Eligibility Reviews that have been conducted since 2000. Fifteen of the forty-four States reviewed by the end of 2003, plus the District of Columbia and Puerto Rico, were found not to be in substantial compliance with IV-E eligibility rules. The remainder had minimal errors in their eligibility processes and were generally operating within program eligibility rules. Even among the States required to implement corrective action plans, several are not far from compliance levels.

Of those States not in substantial compliance, the pattern of errors varied. The most widespread problems relate to reasonable efforts to make and finalize permanency plans. Ten states had large numbers of errors in this category and 44% of all errors involved reasonable efforts violations. In most cases these are cases with late or absent permanency hearings; that is, States were not operating within the time frames laid out by the Adoption and Safe Families Act. Four States had frequent licensing problems, usually that children were placed in unlicensed foster homes (23% of all errors). Three States had significant errors related to the application of pre-welfare reform AFDC eligibility criteria (11% of all errors). Two States had quite a few missing criminal background checks on foster parents (8% of all errors). There were very few errors with respect to “contrary to the welfare” determinations, placement and care responsibility, or extended voluntary placements. A full listing of errors documented in eligibility reviews through Fiscal Year 2003 appears in Table 1.

## **Differing Claiming Practices Result in Wide Variations in Funding Among States**

States vary widely in their approaches to claiming Federal funds under Title IV-E. Some are quite conservative in their claims, counting only children in clearly eligible placements and defining administrative costs narrowly. Other States have become more skilled in the administrative processes necessary to justify more extensive Title IV-E claims. Further, not all States have the financial means or budgetary inclination to invest in the full array of foster care related services for which Federal financial participation might be available. The result of these different approaches is a complex pattern of Title IV-E claims covering a great range of funding levels. However, the disparities in Title IV-E claiming are so wide and so lacking in pattern as to undermine the rationale for the complex claiming rules.

Figure 2 shows the average amount of funds each State claimed from the Federal Government for Title IV-E foster care during FY2001 through FY2003, shown as dollars per Title IV-E eligible child so as to make the figures comparable across States. That is, for each State the three year average annual Federal share in each spending category is divided by the three year average monthly number of Title IV-E eligible children in foster care, to give an average, annualized cost per child. Three year averages are used to smooth out claiming anomalies that may occur in a single year because of extraordinary claims or disallowances.

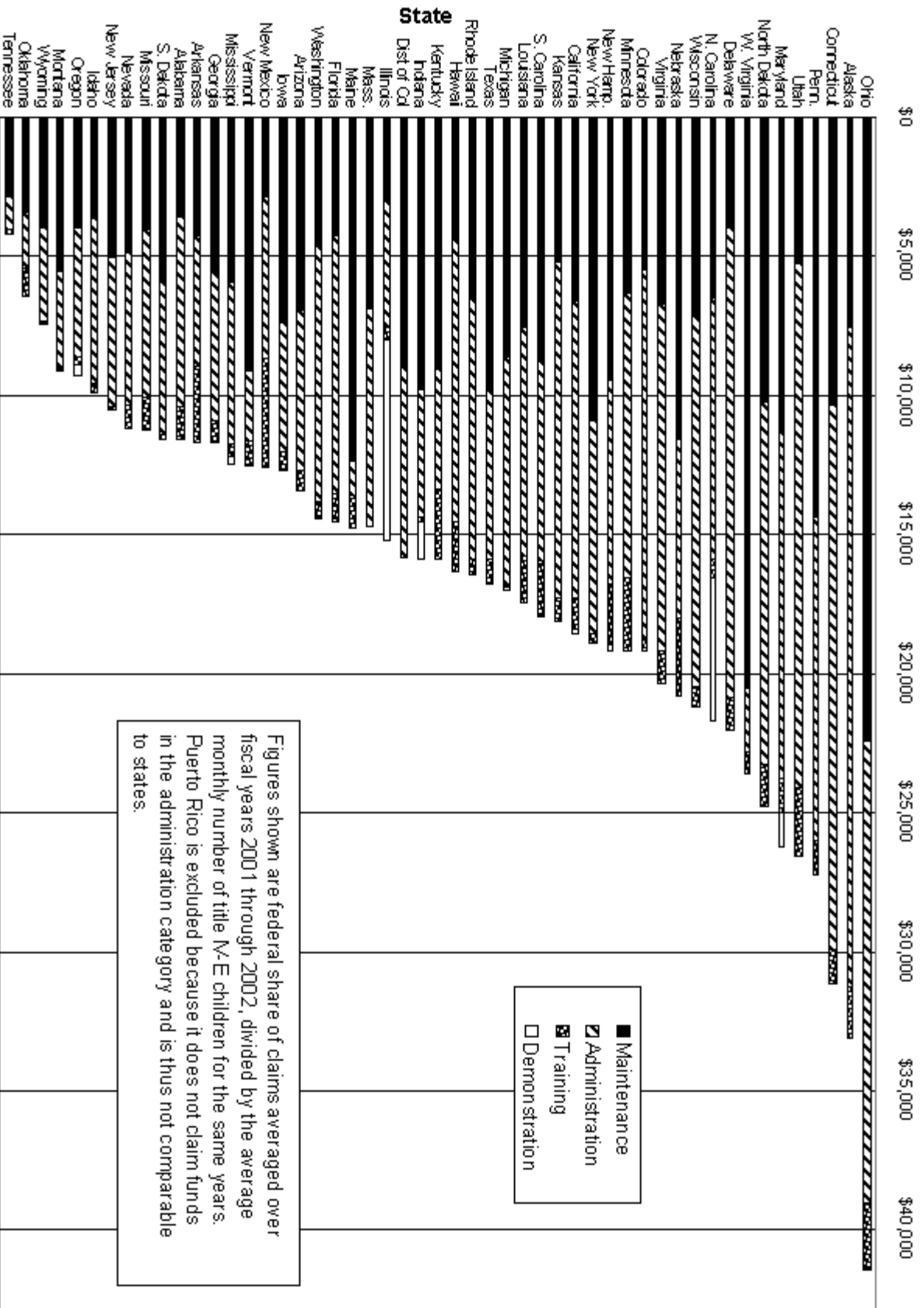
There is a wide range in the amounts claimed as well as in the division of claims between maintenance payments and the category that includes both child placement services and administration. These are the two principal claiming categories. The remaining categories, training and demonstrations, were relatively small in most States. Spending on State Automated Child Welfare Information Systems (SACWIS) has been excluded since these system development costs can vary substantially from year to year in ways unrelated (at least in the short term) to services for children.

Total Federal claims per Title IV-E child (averaged across three years), excluding funds for the development of State Automated Child Welfare Information Systems (SACWIS), ranged from \$4,155 to \$41,456. The median value was \$15,914. The range in maintenance claims was \$2,829 to \$22,418 per Title IV-E child, with a median of \$6,546. Claims for child placement services and administration ranged from \$1,190 to \$23,724 per Title IV-E child, with a median value of \$6,909. These per-child amounts reflect only the Federal share of Title IV-E costs, which vary according to the match rates used for different categories of expenses. If one were to include the State share in such calculations, the expenditure figures would be substantially higher. This discussion has been framed in terms of the variation in Federal share so as to best illustrate and isolate issues related to the Federal funding rules.

**Table 1. Distribution of Errors Among States Found Not in Substantial Compliance with Title IV-E Eligibility Rules**

State Found Not in Compliance	Number Cases Found Ineligible	Licensing Problems	Lacking Criminal Background Checks	Reasonable Efforts Violations	Missing Contrary to the Welfare Determinations	Child Welfare Agency Lacks Placement and Care Responsibility	Extended Voluntary Placement w/out Court Approval	1996 AFDC Criteria Not Met	Disallowance Amount
New Jersey 2000 Initial Primary (IP)	44	33	0	14	0	4	3	3	\$269,903
Kansas 2000 IP	16	6	0	6	7	0	0	10	\$74,265
Maine 2001 IP	24	22	0	3	0	2	0	3	\$182,737
Hawaii 2001 IP	25	0	18	1	0	2	1	3	\$238,432
Iowa 2001 IP	22	0	3	6	6	0	0	15	\$156,915
Vermont 2002 IP	26	2	0	4	7	4	0	14	\$312,918
Maryland 2002 IP	37	3	1	36	1	0	0	1	\$601,820
Wisconsin 2002 IP	23	3	0	13	4	2	2	1	\$206,833
New York 2003 IP	31	0	0	26	7	4	2	5	\$806,811
New Jersey 2003 Secondary	56	27	4	36	5	6	7	1	\$6,220,853
District of Columbia 2003 IP	54	39	24	19	4	7	1	2	\$1,416,169
Puerto Rico 2003 IP	70	17	7	98	7	0	0	26	\$271,056
Montana 2003 Primary (P)	22	1	0	28	2	1	1	0	\$317,752
West Virginian 2003 P	25	4	0	20	0	0	1	0	\$451,305
Alabama 2003 P	23	2	2	19	1	0	1	1	\$174,856
Mississippi 2003 IP	10	9	0	3	1	0	0	0	\$8,133
Arkansas 2003 IP	10	6	3	0	0	0	0	1	\$67,067
<b>Total Cases with Errors</b>	<b>518</b>								<b>\$11,777,825</b>
<b>TOTAL ERRORS</b>	<b>757</b>	<b>174</b>	<b>62</b>	<b>332</b>	<b>52</b>	<b>32</b>	<b>19</b>	<b>86</b>	
<b>Percent of all errors</b>		<b>23%</b>	<b>8%</b>	<b>44%</b>	<b>7%</b>	<b>4%</b>	<b>3%</b>	<b>11%</b>	
During 2000 to 2003, 50 states plus the District of Columbia & Puerto Rico were reviewed; of these 35 were found to be in substantial compliance and 17 not in substantial compliance.									
Six states (PA, MA, FL, TN, MN, & MI) have not been reviewed.									
Six states (KS, NJ, WV, AL, TX, & MT) have had an initial primary plus a primary or secondary review.									
Substantial compliance is defined as less than 8 errors for an initial primary review or 4 errors in a primary review. In secondary reviews substantial compliance is calculated as a percentage of cases and/or dollars.									
Ineligible cases may have more than one error reason.									
Licensing errors were usually children placed in unlicensed homes. In Maine, most errors were foster homes that lacked a fire inspection. Most reasonable efforts violations were late/absent permanency hearings.									

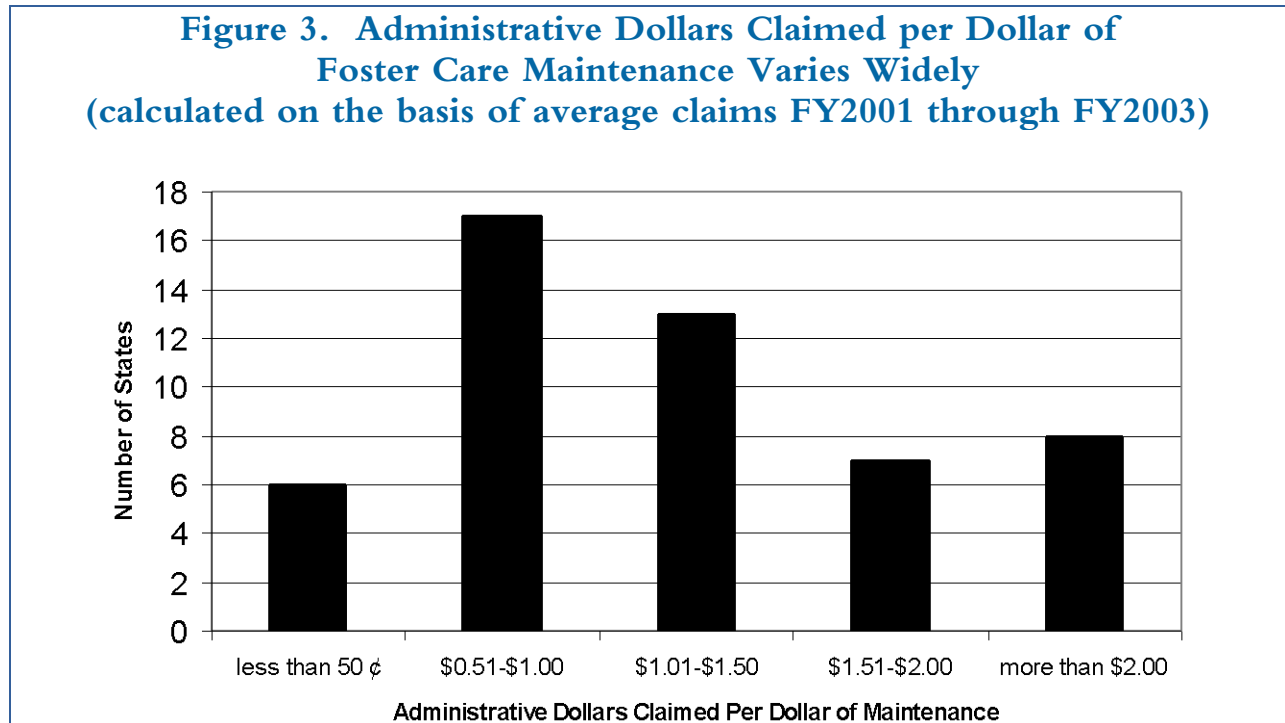
**Figure 2. States' Foster Care Claims -- Federal Funds (excluding SACWIS) per IV-E Child (average of fiscal years 2001 to 2003)**



Figures shown are federal share of claims averaged over fiscal years 2001 through 2002, divided by the average monthly number of title IV-E children for the same years. Puerto Rico is excluded because it does not claim funds in the administration category and is thus not comparable to states.

Maintenance  
 Administration  
 Training  
 Demonstration

As shown in figure 3, the balance between maintenance and administrative claims also varies considerably among the States. Claims for child placement and administration vary from 10 cents per dollar claimed of maintenance to \$4.34. Six States claim less than 50 cents in administration for every maintenance dollar claimed, while nine States claim more than \$2 in administration for every dollar of maintenance. These differences reflect the extent to which States use a wide or narrow definition of child placement and administrative costs. In addition, some States claim administrative expenses for non-IV-E children as “Title IV-E candidates” over extended periods of time, even if those children or the placement settings they reside in never qualify under eligibility rules. In such States this drives up administrative costs as a proportion of total Title IV-E payments. A Notice of Proposed Rulemaking published by HHS January 31, 2005 proposes to prohibit this practice except under limited circumstances.



Below, factors such as the quality of child welfare services are examined in relation to the funding differences across States. Here it is simply observed that the spread of claims is far wider than one would expect to see based on any funding formula one might rationally construct. It is unlikely that differences this large are the result of actual differences either in the cost of operating a foster care program or reflect actual differential needs among foster children across States.

### **The Current Funding Structure Has Not Resulted in High Quality Services**

If State and local child welfare systems were generally functioning well, most of those concerned might take the view that the approximately \$5 billion in Federal funds, and even more in State and local funds, was mostly well spent. In fact, however, knowledgeable observers are hard-pressed to name systems that are functioning well overall. Typically one aspect of an agency’s efforts may be lauded, while serious weaknesses are acknowledged in other areas. Even so, good evidence of system performance has, until recently, been hard to come by.

After several years of development and pilot testing, the Children’s Bureau in 2000 began conducting Child and Family Services Reviews (CFSRs) in each State. These reviews, which include a data-driven Statewide Assessment and an onsite review visit by Federal and State staff, are intended to identify systematically the strengths and weaknesses in State child welfare system performance. Once areas of weakness are identified, States are required to develop and implement Program Improvement Plans (PIPs) designed to address shortcomings. During onsite reviews, teams examine a sample of case files of children with open child welfare cases and interview families, caseworkers and others involved with these cases to determine whether Federal standards have been met. System stakeholders such as child advocates and judges are also interviewed. In addition to examining practice in specific cases, the reviews also examine systemic factors such as whether the States’ case review system, training, and service array are adequate to meet families’ needs. Overall, 47 specific factors are rated and then aggregated to assess whether or not “substantial conformity” with Federal requirements is achieved in seven child outcomes and seven systemic factors (shown in the text box below).

### *Outcomes and Systemic Factors Examined in Child and Family Services Reviews*

#### **Outcomes**

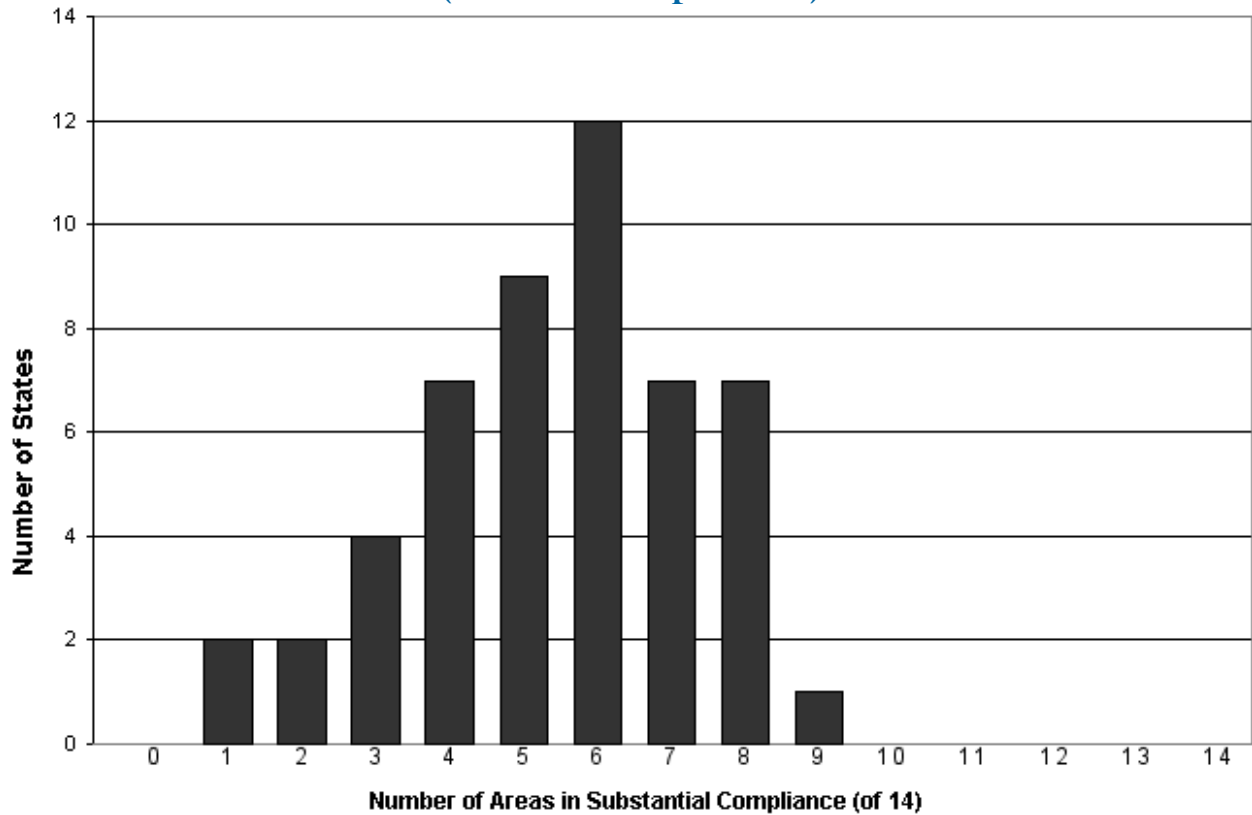
- Children are, first and foremost, protected from abuse and neglect.
- Children are safely maintained in their homes whenever possible and appropriate.
- Children have permanency and stability in their living situations.
- The continuity of family relationships and connections is preserved for children.
- Families have enhanced capacity to provide for their children’s needs.
- Children receive appropriate services to meet their educational needs.
- Children receive adequate services to meet their physical and mental health needs.

#### **Systemic Factors**

- Statewide Information System
- Case Review System
- Quality Assurance System
- Training
- Service Array
- Agency Responsiveness to the Community
- Foster and Adoptive Parenting Licensing, Recruitment, and Retention

As described above, there are 14 areas in which a State might be determined in or out of substantial compliance during its Child and Family Services Review. Figure 4 shows the distribution of State performance on initial reviews among all 50 States and the District of Columbia. Median State performance was to be in substantial compliance in 6 of 14 areas. States reviewed to date have ranged from meeting standards in 1 area to 9 areas. While simply counting the areas of compliance presents a very general, simplified, and broad-brush approach to evaluating child welfare system quality, the purpose here is not to analyze system performance in any detailed fashion. It is simply to recognize that most States achieved substantial compliance in fewer than half of areas examined, and that all systems reviewed have been in need of significant improvement. Indeed, in the area of permanency and stability in their living situations, an area of crucial importance to children in foster care, no State has yet met Federal standards although a few approach them. Clearly the current Federal funding structure has not, to date, resulted in a child welfare system that achieves outcomes with which we may be satisfied.

**Figure 4. Summary of Results for Child and Family Services Reviews (for 50 States plus DC)**



## States’ Title IV-E Claiming Bears Little Relationship to Service Quality or Outcomes

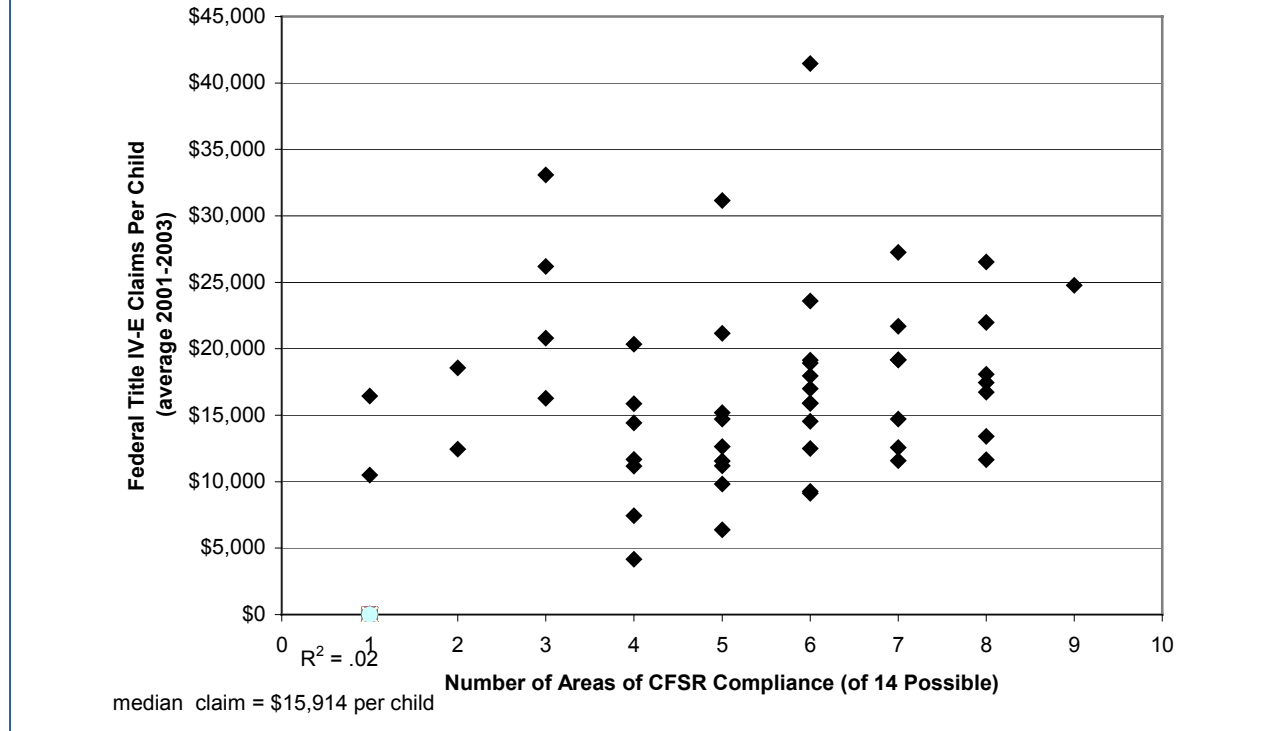
Even if not achieving high quality overall, one might expect and hope that spending variations among States might relate to the overall quality of child welfare systems as revealed in results of the Child and Family Services Reviews. Analyses presented below relate the variations in claiming patterns among States described above to child welfare system performance.

Figure 5 shows per child claims plotted against the number of areas measured in the CFSR in which the State was found to be in substantial compliance. The three states with the highest claims per child were in compliance with 6, 3 and 5 areas respectively of the 14 possible areas of compliance in their first Child and Family Services Review (CFSR). Average per-child claims did not differ appreciably between the highest and lowest performing states. The eight states that were in compliance in the fewest areas (1, 2 or 3 of 14) averaged \$19,293 in Federal funds per Title IV-E child, while the 12 highest performing states (in compliance with 8 or 9 of the 14 areas) averaged claims of \$19,824 per child. There are States with relatively high- and low-Federal claims at each level of CFSR performance.

Claiming levels similarly bear little relationship to States’ performance in achieving permanency for children in foster care. Figure 6 plots each State’s Federal claims for the Title IV-E foster care program per Title IV-E eligible child against the percentage of children in foster care for whom permanency is achieved. Permanency data, from the States’ Child and Family Services Reviews, shows that States’ success in either reunifying children with parents within one year or finalizing an adoption within two

years of foster care entry varies widely. Six States achieve permanency within these time frames for under one-third of children in foster care, while five either approach or exceed the national standard of 90 percent. Most perform somewhere in between. The wide disparities among States' performance on what is a key child welfare function seem unconnected to the amount of Federal funds claimed from the major source of Federal child welfare funding, the Title IV-E foster care program.

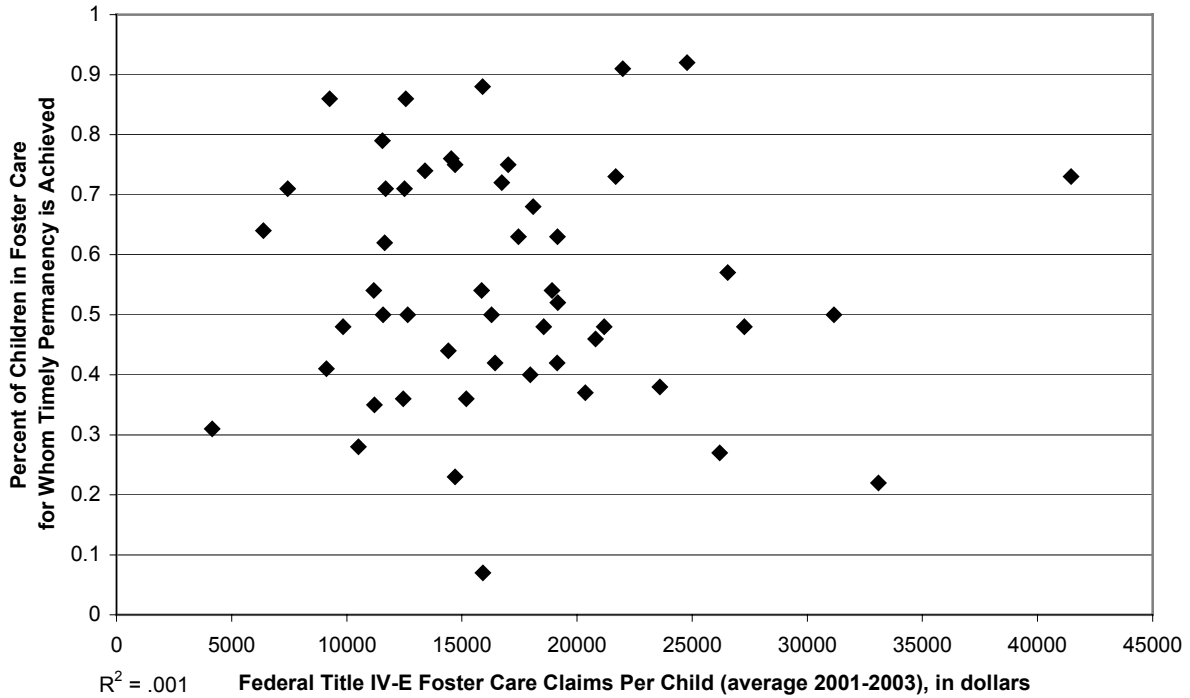
**Figure 5. Child and Family Services Review Compliance Is Only Weakly Related to Levels of Title IV-E Foster Care Funds Claimed Per Eligible Child (data shown for 50 States plus DC)**



If claims levels are not strongly related to child welfare system quality or outcomes, what other factors might be involved in determining spending? Variation among States in the actual foster care rates paid to families caring for children bears only a weak relationship to per-child foster care claims levels (figure 7). As an example, four of six States with basic maintenance payments in 2000 of less than \$300 per month for a young child had higher than median levels of claims per child. These four States also had higher Federal claims per child than did four of seven States which in 2000 paid basic maintenance rates of higher than \$500 per month for young children. Patterns of residential care use among States are similarly unrelated to claiming disparities.

Wide disparities in Federal claims might be viewed as positive if States were achieving better outcomes with higher spending. This argument does not hold up to scrutiny, however, in the face of Child and Family Services Review results. The findings of these reviews are disappointing even in States with relatively high costs. Of course, because Title IV-E is the focus here, this analysis only includes foster care costs. States' spending on other child welfare services may contribute to performance. The wide variety of these other potential funding sources and their variability among the States, however, makes it quite difficult to examine them in a consistent fashion.

**Figure 6. Permanency Outcomes are Unrelated to Levels of State Title IV-E Foster Care Claims (data shown for 50 States plus DC)**



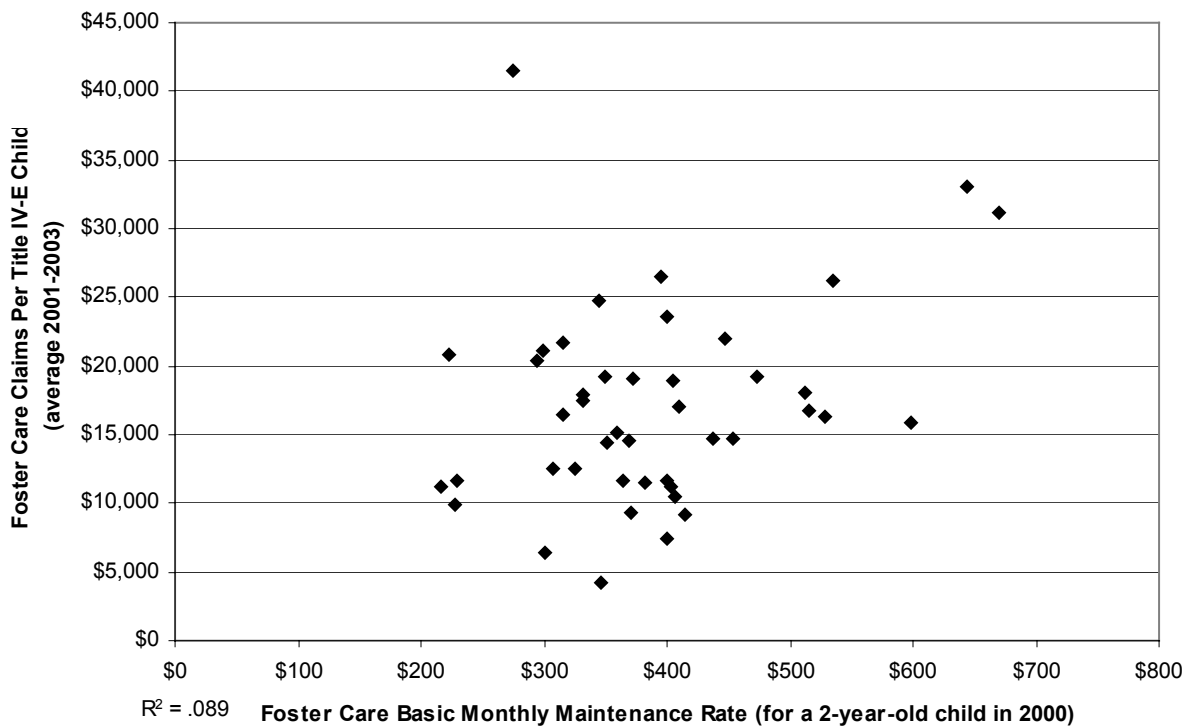
## The Current Funding Structure is Inflexible, Emphasizing Foster Care

Title IV-E has long been criticized because it funds foster care on an unlimited basis without providing for services that would either prevent the child’s removal from the home or speed permanency (see, for example, The Pew Commission on Children in Foster Care, 2004 and McDonald, Salyers and Shaver 2004). Funding sources for preventive and reunification services, primarily the Child Welfare Services Program and the Promoting Safe and Stable Families Program funded under title IV-B of the Social Security Act, are quite small in comparison with those dedicated to foster care and adoption. As shown in figure 8, foster care funding under Title IV-E made up nearly two-thirds (65%) of Federal funding dedicated to child welfare purposes in Fiscal Year 2004. Adoption Assistance funding (also authorized under Title IV-E) represents another 22%. Funding sources that may be used for preventive services (but which also fund some foster care and adoption related services), including funds from the title IV-B programs and the discretionary programs funded from authorizations in the Child Abuse Prevention and Treatment Act, represent 11% of Federal child welfare program funds.

Other Federal social services programs such as the Social Services Block Grant (SSBG) and Temporary Assistance for Needy Families (TANF) also fund some services for families experiencing or at risk of child welfare involvement, as can Medicaid. These funding streams are not intended primarily for these purposes, however, and, with the exception of SSBG, available program data does not break out spending on child welfare related purposes. (The Fiscal Year 2002 annual expenditure report for the SSBG program (HHS, 2004) shows that states spent a total of \$634 million in SSBG funds for child welfare services that

year.) Surveys and analysis conducted by private research organizations indicate these funding sources provide considerable funding for child welfare services, though much of that is still concentrated on out-of-home care. Studies conducted by the Urban Institute found that in State Fiscal Year 2002 these “non-traditional” Federal child welfare funding sources (primarily SSBG, TANF, and Medicaid) paid for just over \$5 billion in child welfare services. Of this total, \$2.1 billion was spent on out-of-home placements, \$1.3 billion paid for other services including prevention and treatment, \$419 million went to administrative activities, and \$98 million funded adoption services. States were unable to categorize purposes on which the remainder of funds were spent, nearly \$700 million (Scarcella, Bess, Zielewski, Warner and Geen, 2004).

**Figure 7. Foster Care Maintenance Rates Are Weakly Related to Foster Care Claims**

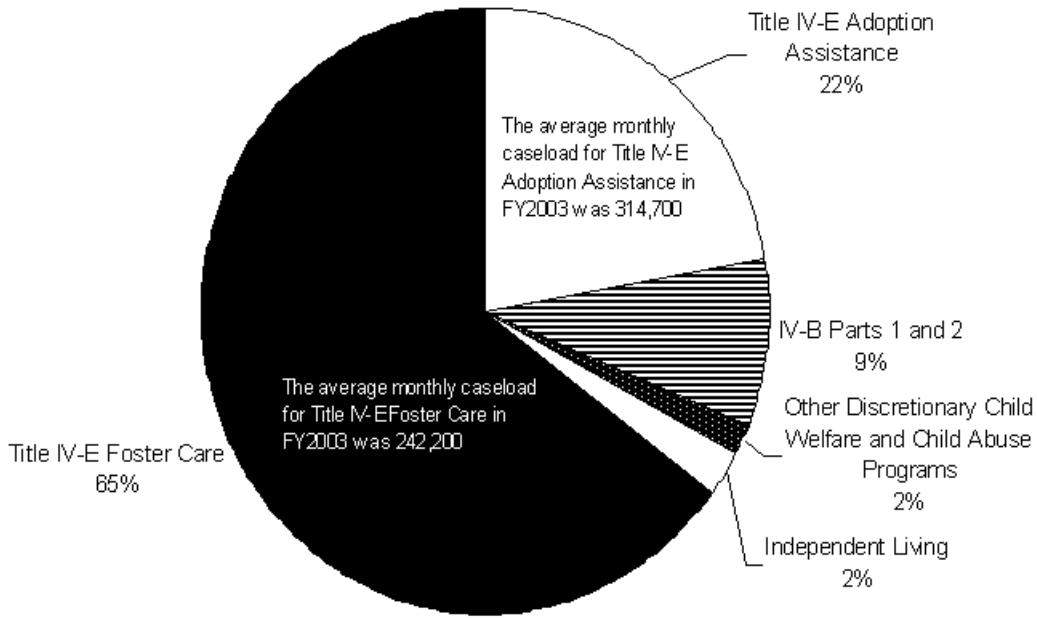


Some have argued that because foster care is an entitlement for eligible children while service funds are limited, Title IV-E encourages foster care placement. However, it seems unlikely that caseworkers make placement decisions on the basis of children’s Title IV-E eligibility, nor is it likely that judges use Title IV-E status as a significant factor in their placement rulings. Indeed, caseworkers and judges are often unaware of children’s eligibility status. A lack of available family services, however, could plausibly tip caseworkers’ decisions toward placement or delay a child’s discharge. Quantifying such effects is difficult, however.

Many in the child welfare field believe that with more flexibility in funding States would devote additional resources to preventive and reunification services, and that better outcomes for children and families could be achieved. Since 1996, Child Welfare Demonstration Projects in 17 States have generated evidence about the effects of allowing State and local agencies to use Federal foster care funds more flexibly, either for children not normally eligible for Title IV-E or for services Title IV-E would not otherwise cover. While most of the States tested a single, specific alternative use for foster care funds, such as guardianship subsidies or improved interventions for parents with substance abuse problems or children

with serious mental health conditions, four States are testing broader systems of flexible funding that resemble the Administration’s proposal for a Child Welfare Program Option. These demonstrations are operating in Indiana, North Carolina, Ohio, and Oregon. In each case, the State provides counties a fixed allotment of Title IV-E funds which then may be used to pay for services to prevent foster care placement, facilitate reunification, or otherwise ensure safe, permanent outcomes for children.

**Figure 8. Federal Child Welfare Funding, FY2004**



This chart includes only programs dedicated to child welfare functions. It does not include funding for programs with broader or other purposes of which portions may be used on child welfare functions. For most of these broader programs (such as TANF, Medicaid, and the Social Services Block Grant) federal data cannot reliably identify the portion spent on child welfare. Percentages are calculated from 2004 spending figures shown in the President's FY2006 budget request.

Evaluation results to date are encouraging. While the demonstrations did not always achieve their goals, in no case did outcomes for children deteriorate as a result of increased flexibility. North Carolina found flexible funding contributed to declines in the probability of out-of-home placement following a substantiated child abuse or neglect report. Demonstration counties in Ohio expressed increased support for prevention activities and were more likely than traditionally funded counties to create new or expanded prevention services. And in Oregon, the combination of demonstration funds and the State’s System of Care Initiative dramatically improved the likelihood that at-risk children could remain safely in their homes rather than being placed in foster care. It should be noted that demonstration projects did not provide any more Title IV-E funds than the State would have received in the absence of a demonstration. The projects were cost-neutral. States were granted only the flexibility to spend funds in broader ways than is normally allowed.

Flexible spending alone will not address the weaknesses in child welfare systems around the country. But such flexibility can allow strong local leaders to implement practice improvements more easily and thereby generate improved outcomes. Among the types of practice changes implemented in flexible funding demonstrations are strengthened family assessments; enhanced visitation; intensive family reunification services; family decision meetings; and improved access to substance abuse and mental health treatment. That nearly half of States have implemented waiver demonstrations indicates widespread interest in more flexible funding for State child welfare programs. Interest in flexible funding has grown now that many

States have successfully implemented new service models while enhancing, or at least not compromising, safety, permanency, and child well-being.

In recognition that flexibility can produce best results when accompanied by enhanced funding, the Bush Administration has consistently supported funding increases for child welfare. In particular, HHS budgets from FY2002 through FY2005 each included substantial proposed increases for the Promoting Safe and Stable Families Program, in the amount of \$1 billion over five years. However, Congress each year appropriated substantially less than the requested amount. For FY2005, the Administration also proposed substantial increases for several key child abuse prevention efforts authorized under the Child Abuse Prevention and Treatment Act, which again were not funded by Congress.

## **The Financing Structure Has Not Kept Pace with a Changing Child Welfare Field**

A great deal has changed in the world of child welfare since the Federal foster care program was established. The program initially created in 1961, however, has continued without major revision to its financing structure. The result is a funding stream seriously mismatched to current program needs. The goals of the child welfare system are to improve the safety, permanency, and well-being of children and families served. By requiring that the great majority of Federal funding for child welfare services be spent only on foster care, the financing system undermines the accomplishment of these goals.

Title IV-E funding was designed with the intention that the program funding would adjust automatically to changes in social need. However, it is difficult to conclude from claims levels that social need has been the driving force behind spending patterns that vary wildly from State to State. Service practices seem to have adjusted to the funding, rather than vice versa. Throughout the program's history, growth far outpaced changes in the population of children being served. And while current growth has slowed considerably, declines in the number of children in foster care have not yet translated into lower program claims. The recent stabilization of the program's funding, however, makes this a good time to re-examine the structure of Title IV-E and whether that funding structure continues to meet the needs of the child welfare field. Since the number of children in foster care is expected to be flat or declining for the foreseeable future, there is less short-term risk in potential financing system changes than is the case when needs are rapidly escalating.

Improved preventive and family support services for children and families at risk of foster care placement, therapeutic care and remediation of problems for families with children in foster care, and post-discharge services for families after children leave out of home care, are each essential to the achievement of the child welfare system's goals. Yet these are precisely the services that Title IV-E is least able to support. The result has been child welfare systems unable to achieve positive outcomes for children. This weak performance has been documented by Child and Family Services Reviews conducted across the nation. But as States develop and implement Program Improvement Plans, Title IV-E funds are largely unavailable to address the challenges.

From complex eligibility criteria based in part on a program that no longer exists, to intricate claiming rules that demand caseworkers' every action be documented and characterized, Title IV-E is a funding stream driven toward process rather than outcomes. With the advent of the Child and Family Services Reviews, and systemic improvements initiated in response to the Adoption and Safe Families Act, Congress and the Department of Health and Human Services have made significant strides toward re-orienting child welfare programs to be outcomes focused. Until the funding is structured to support these outcomes, however, improvements may be constrained.

## Proposed Child Welfare Program Option Described

The President's FY2006 budget once again proposes to create a Child Welfare Program Option (CWPO) which would allow States a choice between the current Title IV-E program and a five-year capped, flexible allocation of funds equivalent to anticipated Title IV-E program levels. This concept was first proposed by the President for FY 2004. While the last Congress did not complete work on child welfare financing, the Administration continues to call for consideration of financing reform. The President's proposal has a number of distinct advantages over both current law as well as in contrast to more traditional block grants that have been considered in the past.

The Child Welfare Program Option would allow States to use Title IV-E funds for foster care payments, prevention activities, training, and other service-related child welfare activities – a far broader range of uses than allowed under current law. Increased flexibility will empower States to develop child welfare systems that support a continuum of services for families in crisis and children at risk while being relieved of the administrative burden created by current Federal requirements, including the need to determine the child's eligibility for AFDC.

Child safety protections under current law would continue under the President's proposal. These include requirements for conducting criminal background checks and licensing foster care providers, obtaining judicial oversight of decisions related to a child's removal and permanency, meeting permanency time lines, developing case plans for all children in foster care, and prohibiting race-based discrimination in foster and adoptive placements.

In contrast to some previous flexible funding proposals, the President's Child Welfare Program Option would be an optional alternative to the current financing system. States desiring the flexibility it would afford could opt in during the initial program year for a five-year period. State allocations would be based on historic expenditure levels and would be calculated to be cost-neutral to the Federal Government over a five-year period. A State could choose to receive accelerated, up-front funding in the early years of the program in order to make investments in services that are likely to result in cost savings in later years. The proposal includes a maintenance of effort requirement to ensure that those States selecting the new option maintain their existing level of investment in the program. But those States unwilling to accept the risk and the promise of flexibility could choose to continue operating under current program rules.

To address fears that some future social crisis might create unexpected and unforeseeable child welfare needs, the President has also proposed to allow participating States access to the TANF Contingency Fund if unanticipated emergencies result in funding shortfalls. Specific criteria would govern the circumstances under which States could withdraw funds from this source. This feature, too, responds to concerns expressed in past child welfare financing discussions.

The proposal includes two set asides within the Child Welfare Program Option. The first would provide some Tribes direct access to Title IV-E funds. Under current law Tribes may only receive Title IV-E funds through agreements with States. Through a proposed \$30 million set aside in the CWPO, however, tribes demonstrating the capacity to operate foster care programs could receive direct funding to do so and would be subject to similar program requirements as States.

A second set aside would dedicate a relatively small amount of funds to facilitate program monitoring, technical assistance to support the efforts of State and tribal child welfare programs, and to conduct important child welfare research. These funds will ensure that sufficient resources are available to understand how the new option affects child welfare services and outcomes for children and families, and to support States in their efforts to reconfigure programs to achieve better results.

## Benefits of the Proposed Child Welfare Program Option

The Child Welfare Program Option would allow innovative State and local child welfare agencies to eliminate eligibility determination and drastically reduce the time now spent to document Federal claims. This effort could then be redirected toward services and activities that more directly achieve safety, permanency and well-being for children and families. Investments in preventive services and improved case planning could also reduce foster care needs. States taking child welfare funds through the Option would be held accountable for their programs through Child and Family Services Reviews and standard audit requirements. But these States would no longer be required to document expenditures in the level of detail now required to justify Federal matching funds. The flexibility afforded by the Option would allow agencies to direct funds to those activities most closely addressing families' needs. HHS could then focus more fully on partnerships with States to achieve positive outcomes for children and families.

The proposed Child Welfare Program Option:

- **Creates Structural Incentives for Better Outcomes.** The CWPO provides incentives for child welfare system improvement because it is through better outcomes that a State would “win” under the program. With a fixed funding level, States would be better off financially if children either stay at home safely, return home quickly, or are placed in adoptive homes (since Adoption Assistance would remain an entitlement). Since these are also the preferred outcomes for children, the program creates structural incentives that are in line with program goals.
- **Facilitates Quality Improvement.** The CWPO would encourage States to fund service improvements, particularly those called for in their Program Improvement Plans (PIPs) by allowing Federal funds to be used for the full range of activities contemplated under the PIPs. In contrast with current law, States operating under the CWPO that are successful in reducing the need for foster care will be able to reinvest their Title IV-E funds in other child welfare services rather than losing them to diminished foster care claims.
- **Reduces Burden.** Under the CWPO, the level of documentation required of States in order to receive Federal child welfare funds would be reduced dramatically. While States would still be required to spend funds on child welfare services, they would no longer need to justify to the Federal Government for funding purposes precisely which services were delivered to which children. State and local funding decisions could in turn be made more in line with the needs of children and families without respect to whether the specific activity were reimbursable under Title IV-E.
- **Increases Flexibility.** The restrictions in current law regarding which child welfare services may be provided with Federal funds constrain State and local decision making regarding service offerings. The increased flexibility afforded by the CWPO will provide officials closest to child welfare cases with additional funding options, potentially leading to a more comprehensive service array for children and families.
- **Promotes Ongoing Programmatic Adaptation and Innovation.** The current system for claiming Federal funds encourages status quo programming through its documentation requirements and close scrutiny of categories in which funding levels change significantly from year to year. States risk disallowances if they change how they claim or the services for which they claim Federal funds. Alternatively, under current law innovation may be implemented without Federal financial participation, a relatively costly option. The CWPO, on the other hand, would enable states to innovate using their Federal foster care funds. Funds could be shifted among child welfare functions without concern for artificial expenditure categories or differential matching rates. The result is likely

to be increased attention to outcomes for children and an improved ability to focus funding on strategies most likely to result in improved performance.

This paper has described the funding structure of the Title IV-E foster care program and documented a number of its key weaknesses. In particular, the combination of detailed eligibility requirements and complex but narrow definitions of allowable costs force a focus on procedure rather than outcomes for children and families. Rules which have built up over the years cumulatively fail to support the program's goals of safety, permanency and child well-being. In addition, the restrictiveness of the Federal foster care program prevents States from using these funds, by far the largest source of Federal funding dedicated to child welfare activities, to implement many important elements in their Program Improvement Plans. These plans have been required of all States to address weaknesses in their programs detected during Child and Family Services Reviews. The Administration's proposed Child Welfare Program Option is intended to introduce flexibility while maintaining a focus on outcomes, retaining existing child protections, and providing a financial safety net for states in the form of access to the TANF Contingency Fund during unanticipated and unavoidable crises. The result will be a stronger and more responsive child welfare system that achieves better results for vulnerable children and families.



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## Note on Data Sources:

Data presented in this report are derived primarily from HHS information sources. Most are publicly available as follows:

- Data on Title IV-E funding and caseload history (figure 1) are from the “2004 Green Book” published by the U.S. House of Representatives Committee on Ways and Means (tables 11-2 and 11-3). Years not included in the 2004 Green Book may be found in the equivalent table from previous editions. The 2004 Green Book is online at: <http://waysandmeans.house.gov/Documents.asp?section=813>.
- Data for 2002 Federal foster care claims is available in 2004 Green Book, table 11-8. Other years used in this report are unpublished HHS data. These data are used in figures 2, 3, 5, 6 and 7.
- Final Reports for Child and Family Services Reviews (which contain data used in figures 4, 5 and 6) and Title IV-E Eligibility Reviews (containing data used in table 1) are available online from the Children’s Bureau within HHS’s Administration for Children and Families at: <http://www.acf.dhhs.gov/programs/cb/cwrp/index.htm>.
- State foster care maintenance rates shown in figure 7 are those reported by the Child Welfare League of America. They are included in the 2004 Green Book, table 11-9.
- Data on child welfare funding in figure 8 are derived from 2004 actual figures shown in HHS’s FY2006 Budget. Available online at <http://www.hhs.gov/budget/docbudget.htm>.





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