One pager —
Summary of
issue.

Matt McLeary
OMB Contract
5-7760.

INDIANA CHILD WELFARE WAIVER REQUEST

Section 1130 of the Social Security Act authorizes the Secretary of HHS to permit up to 10 states to conduct child welfare demonstrations. Each State authorized for a demonstration waiver is required to evaluate the impact of the demonstration on service delivery and the outcomes for children and families. To date, the Secretary has approved six waivers.

Indiana's Waiver Request Indiana is requesting additional flexibility to spend Federal funds on services rather than per child maintenance payments, and hope that it will move children more rapidly to permanent placements and decrease foster care costs. Indiana proposes to focus on adolescents, particularly those with expensive, institutional placements (often out-of-state), to see whether spending on services produces better outcomes at lower costs (e.g., a foster care placement in a child's home community with services that support the foster family and make possible an earlier reunification with the child's own family). Indiana proposes to operate the demonstration state-wide, providing 4,000 enhanced service slots.

Legislative Requirements Foster Care authorizing language, unlike Medicaid or Food Stamps, specifically prohibits the Secretary from authorizing a demonstration unless she determines that the total amount of Federal funds that will be expended will not exceed spending in the absence of the project. All previously approved foster care waivers and virtually all welfare demonstrations have been designed to provide reliable comparison groups in order to evaluate the impact of the proposed changes and assess whether the demonstration was cost neutral. Medicaid uses a different approach, which compares the actual cost of a demonstration with previously projected estimates of program costs in the absence of a demonstration. Medicaid generally bases projections for future costs on national average projections.

Issues With Indiana's Request Indiana has proposed to run the demonstration state-wide. This makes it difficult to determine the impact of the demonstration on important program indicators: the number of children in foster care, the average length of stay, and the cost of providing services. The ability to assess the demonstration is further limited by the very unreliable historical program information on participation and costs in Indiana.

OMB first proposed to HHS that Indiana hold several counties outside the demonstration to serve as a basis for evaluating the demonstration and assessing cost neutrality. Indiana would not agree to this because of their desire to operate the demonstration State-wide. After extensive discussions with HHS, OMB proposed to HHS that Indiana use the Medicaid model for determining cost neutrality. HHS also rejected this alternative, because they felt that using national average figures for projected participation and costs was inappropriate for Indiana.

OMB has two additional concerns with Indiana's current proposal. First, it sets a dangerous precedent for future waivers, including pending requests from New York and California. Using Indiana's proposed methodology in could greatly increase Federal costs. Second, moving from performance based reimbursements to projected funding levels moves foster care in the direction of block grant funding. Given the tremendous efforts to keep foster care out of a block grant and the uncertain impact of TANF changes on foster care caseload, this seems unwise at this point.

FACSIMILE TRANSMISSION
Office of the Assistant Secretary
The Administration for Children and Families

DATE:

TO: Jen Klein

Telephone: 456-2599

Fax: ~~456-2878~~ 456-5542

Number of Pages (excluding cover): 8

FROM: **Samara Weinstein**
Special Assistant to the
Assistant Secretary for Children and Families

Telephone: (202)401-6953
Fax: (202)401-4678

MESSAGE:

Jen --

Thank you for your assistance on the **Indiana Child Welfare Waiver.** Carol Williams and I would be happy to walk through these with you. In addition we would appreciate your help in working with OMB to schedule a staff meeting to work through and resolve the Indiana Child Welfare Waiver impasse.

Attached please find two documents: A piece that Olivia sent to Ken last month which describes the issues and our proposals for resolution; and a draft chronology and description of the most recent exchanges and issues we have worked on with OMB.

Again, thank you for your assistance!!

Samara

Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447
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COST-NEUTRALITY FOR INDIANA CHILD WELFARE WAIVER

Current proposal:

- Unit cost set as actual cost per IV-E case in non-demo population
- Unit cost adjustment based on demonstrated reduction in caseload in institutional settings
- Caseload equal to the **greater** of:
  - the actual number of IV-E cases served by demo
  - the statewide caseload inflated by minimum growth minus the number of IV-E cases served outside the demo

OMB suggestions:

Set ceiling to caseload growth

Use straight projection for caseload growth

Set ceiling on growth of non-demo unit costs

Use straight projection for unit cost growth (similar to Medicaid)

Use national growth for projections or ceiling determination (similar to what Medicaid uses in negotiations with states)

Comparison counties

Some Chronology Notes related to cost neutrality for the Indiana Child Welfare Waiver Demonstration project:

August 1996:

After the substance of Indiana's proposal had been approved, HHS and OMB began focussing on cost neutrality. OMB requested and was provided with additional information from the state on mix of services provided, number of IV-E children in each type of service, and rates for each type of services.

September 1996:

HHS had several substantive discussions with Lester Cash at OMB about feasibility of a per capita unit cost with a growth projection. State provided additional information on growth rates and IV-E-12 (financial claim) reports were analyzed for trend information.

October-December 1996:

Conversations were held at least bi-weekly with OMB and the State on development of a cost neutrality formula. The State continued to request unit cost projections. OMB and HHS continued to question the adequacy of historical data available for such projections.

January 1997:

Meetings were held with Ken Apfel and Olivia Golden on the status of Ohio's proposal. Indiana was introduced as our next important proposal which also was presenting cost neutrality challenges. OMB staff agreed to continue working with us on developing a formula.

Following this meeting Lester Cash suggested using non-demonstration group unit costs and an adjustment for demonstrated reductions in caseload to resolve the problems with historical data available for projections. HHS agreed that this was a favorable solution. Initial conversations were held with state, but it was determined that a face to face meeting was needed.

February 1997:

Indiana sent Kathy Graham, Jim Mooney, and Mary Edmonds to D.C. on February 3 to discuss cost neutrality. They were taken aback to learn that we were not prepared to discuss their preferred approach -- projections -- but wanted instead to discuss the approach HHS and OMB had worked out (described above). Nevertheless the State officials entered into the discussions, though they felt unprepared to discuss the new approach. After a day of negotiations, they returned to Indiana with a better understanding of why projections of unit costs would be difficult. The State agreed to consider the proposal for using

non-demo unit costs that had been further refined with state input. OMB was invited to participate in these discussions with Indiana, but declined.

Indiana called later in the week to inform HHS that they could accept the proposal for using non-demonstration unit costs and the institutional adjustments. The only remaining problems were their need for considerable upfront funding and the fact that the proposal would only pay the State for title IV-E children currently in care, thus penalizing the State for reductions in length of stay and diverting children from foster care.

HHS developed the idea of a minimum growth rate to deal with disincentive to reduce caseload. The idea was presented to both OMB and Indiana.

March 1997:

David Nelson in Indiana developed an alternative model for using the non-demonstration population as a comparison group for length of stay and diversion. After several discussions it was determined that the data were not yet available that could validate this model as a basis for cost neutrality. Indiana and HHS agreed to return to the original idea of a minimum growth rate.

OMB objected strongly to the idea of allowing Indiana advance funding in excess of the proportion (5%) that had been allowed in the Ohio Demonstration waiver. Indiana offered the solution of using the State's own TANF funds to provide upfront funding. Discussions were held within ACF at the Central Office and regional Office levels to determine that this was acceptable to HHS. Indiana and HHS then agreed to limit upfront IV-E funding to 5% and the State will fund the remainder with TANF funds.

The State and HHS agreed at that point that the substance of the agreement was ready for the Terms and Conditions to be put into Departmental clearance, once OMB concurred in the cost neutrality formula. HHS' General Counsel has concluded that the approach developed at that point is legally consistent with the cost neutrality requirements of the statute.

April - present:

Governor O'Bannon wanted to announce the Child Welfare Waiver Demonstration during April, national Child Abuse Prevention Month. HHS officials believed that to be reasonable and achievable. However, OMB began raising some new questions about cost neutrality, and re-raising a number of questions which HHS thought had been settled.

Recent interactions with OMB include the following:

1) There was a re-examination of the formula, looking for ways to increase our confidence in its accuracy, and ways to reduce risk to the federal government. The conversations and exchanges of memos on this subject involved a fundamental mis-communication between HHS and OMB which still does not appear to be resolved -- OMB has characterized the minimum growth rate as a "one-way bet." HHS maintains that the minimum rate is intended to protect the State from being paid amounts that would be less than neutral if it succeeds in reducing the number of children in care and the length of time they are in care. This issue has tended to obscure the basic purposes of the formula.

2) OMB requested considerable information which effectively revisited a number of considerations which HHS and OMB (and HHS and Indiana) had worked through before. The State was patient and responsive to the renewed requests for data, but alarmed by the implications. OMB has been re-analyzing data which the State and HHS have supplied previously. This re-analysis has not yet resulted in any additional ideas for resolving the Indiana cost neutrality problem.

3) There was a series of proposals for alteration or revision of the cost neutrality formula. This included a suggestion to create both a ceiling and floor for the caseload growth rate (responding to the one-way bet misunderstanding), to which HHS and Indiana agreed. This did not resolve the problem for OMB, however.

HHS, with Indiana's reluctant agreement, then offered to negotiate a single rate, because OMB signalled at one point that might be preferable. That has not produced agreement or any apparent path to agreement, either.

4) There was also a series of suggestions involving concepts and language used for cost neutrality in Medicaid waivers. HHS worked on this, but concluded that it would be unwise to establish baselines or project total costs or average costs relying on Indiana's inadequate data base. Moreover, the child welfare Demo and its purposes are sufficiently different from most Medicaid waivers that this seems to HHS to be an inapplicable set of concepts.

HHS has not succeeded in getting OMB to agree to participate in discussions with the State, a practice associated with Medicaid waivers that HHS feels might have been helpful in the case of this child welfare Demonstration.

There were two efforts during this period to develop joint memos. HHS and OMB identified the areas in which we are in agreement and identified the issues that remain in dispute.

At present, HHS is unable to schedule a conference call with OMB

do not want to open the door this wide. We are worried that the effect of the precedent would be to make it very difficult to contain costs and produce solid evaluations in the other States with which HHS is negotiating (MI, NY, CA, and GA).

In summary, HHS prefers to move ahead with the alternative described at paragraph No. 2, above, because it is the best and fairest approach we can devise, it will protect important Federal interests, and it will enable Indiana to conduct a demonstration which has great importance for HHS.

FYI

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

DATE: April 22, 1997

TO: Ken Apfel
Associate Director
Office of Management and Budget

FROM: Olivia Golden
Acting Assistant Secretary for
Children and Families

Olivia A Golden

SUBJECT: Cost Neutrality Issues -- Indiana Child Welfare Waiver Demonstration Project

The Governor of Indiana wishes to announce the State's Child Welfare Waiver Demonstration project this month (April is National Child Abuse Prevention Month). Given the long process we have engaged in with the State and our substantive excitement over the proposal, we would like to accommodate him. HHS is ready to recommend to the Secretary that she approve this demonstration. Before we do so, however, we need to reach agreement with you about how we will determine cost neutrality. This memo lays out our proposal, which we believe protects Federal interests at the same time it allows the demonstration to proceed. Career OMB staff with whom we have been working tell us that they cannot make this decision because the proposed formula would require some reliance on projections. Therefore I am asking for your concurrence in the cost neutrality arrangement outlined in this memorandum.

As we expected when we met in your office in January to resolve our differences over the Ohio Child Welfare demonstration, the Indiana demonstration presents us with even greater challenges. You will recall that in that meeting we outlined the general purposes of the Indiana Demo -- to test the programmatic and fiscal benefits of creating a greater capacity at the community level to provide services for children who must be removed from their families, or who are at risk of removal.

While there was general agreement that such a Demo could be quite attractive, we were careful to make the point, with which OMB staff concurred, that it would be difficult to devise a cost neutrality formula for this project. We have now reached the point at which the programmatic issues and the evaluation questions are all resolved with the State and, we believe, with OMB staff. We also have a proposed framework for reaching agreement with the State on a cost neutrality formula, on which we have been working diligently with OMB staff since last August.

The formula, however, relies in part on a projection of costs over part of the five-year life of the Demo. We agreed in January that we would re-visit the Indiana cost neutrality problem once we reached this point, so I am bringing it back to you via this memo.

No doubt your staff (who have been very helpful throughout this process) have briefed you by now, so I will restrict this memo to the highlights, to let you know how much progress we have made just to get to this point of final decision-making.

Background

Indiana is proposing a demonstration strategy that enhances family preservation and family support services as it expands the uses of title IV-E funds. The project, which has a special focus on adolescents, would develop a new mix of services intended principally for a subset of children who are currently placed in residential care facilities. Indiana proposes to redirect funds currently expended for children in restrictive high-cost institutional placements (primarily out-of-State) to lower cost community-based services. Case decisions would be made collaboratively, at the local level, by the local judiciary and a community partnership council, with State guidance.

There was general agreement in our January meeting that it is desirable to learn such lessons as Indiana offers, and confirm the experience of a State which wishes to make such a serious, statewide effort. Indiana's proposal is unique: it provides our best opportunity to learn about services for adolescents, and our only opportunity to learn about the relative costs and benefits of institutional facilities, an issue of great concern to States and policy-makers. We expect to be able to test the following important propositions:

1.) Children and their families will be better served when children are placed in the most appropriate and least restrictive environment;

2.) Outcomes for children and families will be better when, providing first for the safety of each child, services are provided while the families remain together and children are maintained in their homes or returned home more quickly; and

3.) The State, its counties, and the federal government will derive significant economic benefit from the first two propositions. Placement of children in the most appropriate setting will mean, in Indiana, far less reliance on expensive institutional placements. Preventing the need for out-of-home care and reducing the time children spend in

care can also lead to substantial reductions in State and county expenditures. HHS would share directly in these economic benefits, because they will reduce the claiming of FFP under title IV-E. In addition, the State expects to see economic benefit from its inclusion in this project of some children in the juvenile justice system, and non-IV-E eligible children in the child welfare system. The federal government may also benefit from this aspect of the Demo through reduced charges to or better use of certain Justice Department funds, and non-IV-E HHS expenditures for mental health, child protection, and similar purposes. We will look to the cost-benefit analysis portion of the evaluation to confirm and measure such benefits.

Cost Neutrality

The challenge has been to develop a cost neutrality formula which will give us a reasonable basis for determining how much to pay the State in IV-E funds during the demonstration, despite the fact that we do not have either random assignment of cases or comparison counties available to us. The State's original proposal was that cost neutrality would be determined entirely on the basis of projections. As the result of extensive discussions with the State, and frequent consultation with OMB staff, an alternative cost neutrality framework has been developed which relies on projections only for one portion of the formula.

Indiana's proposal appears on its face to offer a plausibly cost neutral demonstration. The problem arises in analyzing the structure of the demonstration and its evaluation in order to determine how, accurately, to calculate the amount of title IV-E funding to provide the State during the course of the demonstration; that is, how much would the State have received in the absence of a child welfare waiver demonstration project? It is in constructing this payment formula that we have encountered the need to rely, to a limited extent, on projection.

The methods used in most of the other child welfare Demos to determine cost neutrality are not available to us here. Because of the nature of this project we long ago agreed with the State that random assignment of cases was not the appropriate method for evaluating this Demo. That is true for a number of reasons, chief among them the fact that assignments to placement are approved and heavily influenced by judges, (and under the Demo by judges in collaboration with some others) and removal decisions are made by judges. We do not believe we can get a random assignment design to operate in that environment, and the county judges (who have become supporters of this project) confirm that random assignment would interfere with the judicial discretion required for the child safety decisions they make. Because the State intends to conduct its demonstration project on a statewide

basis, comparison counties are not available to us, either.

The cost neutrality problem in Indiana is compounded by the fact that the State has inadequate historical data on which to base projections, and no consistent patterns emerge in the data that are available. (The new SACWIS, which is intended to change that, is about to become operational in Indiana.) However, we were able to devise a cost neutrality formula -- which HHS regards as still open to any refinement that can further improve our confidence -- which limits projections to a single element. That element was chosen in part because it can be based on State data which appear to be both reliable and consistent over the past several years.

Three elements determine a State's foster care payments under title IV-E: number of children in care (caseload); cost per child; and proportion of children who are IV-E eligible. Of these three elements, the latter two can be known in real time as the demo progresses. Indiana will determine the IV-E eligibility of every child in care, whether they're in the demo or not, and the State will derive an average cost from the actual costs of children in care who are not in the Demo (in effect making a control group for this purpose of all the other children in the State). The third element, caseload, is specifically intended to be affected by the demo, and therefore requires special treatment.

Component 2 of the formula outlined below: a.) projects the rate of growth of the foster care caseload, to determine what the State's basis would have been for IV-E claiming in the absence of the Demo; and b.) takes into account the effects on caseload by setting a floor under the caseload calculation, in acknowledgement that the caseload is expected to drop as a result of the Demo, and if it does we will only allow it to drop so far. In this way Indiana will not pay too great a financial penalty if the number of cases in care is reduced. Similarly, the third component of the formula acknowledges that as the State succeeds in reducing the proportion of children who are in expensive, high-cost residential placements, the average cost per child will drop below what the State would have been claiming in the absence of this Demo.

The formula has three components:

1. Actual average costs.

   The actual average title IV-E cost per child outside of the demonstration is applied to the number of title IV-E eligible children in the demonstration. This average cost will be determined annually during the demonstration based on actual costs incurred for IV-E eligible children not

receiving services from the demonstration.

2. Caseload adjustment when caseload growth falls below a minimum growth rate.

   Caseload growth has averaged around 18% each year for the past 5 years. While the reasons for this growth are several and difficult to distinguish, we believe that we can and should agree on a minimum level of caseload growth below which the State would be underpaid absent the demonstration. This is because the Demo, once it starts to operate, should be keeping children from coming into foster care at all, and returning children home faster. Either effect of the Demo would reduce the number of children for which the State would otherwise be claiming FFP, and would result in paying the State less in federal IV-E funds than would have been paid absent this demonstration. The adjustment factor would be applied only if the overall IV-E caseload in the State falls below this agreed upon minimum.

   The current HHS proposal is a growth rate of 10.89%, which would in effect freeze the growth rate at FY '96 levels. Growth rates averaged 18.42% over the period FY '91 -'96, and 10.89% is the lowest annual rate in that period. However, since the growth rates are trending downward, we discussed with OMB staff an improvement in the formula that would enable us to take into consideration several more quarters of data, which would both increase our confidence in the projection and reduce the period of time over which HHS is exposed to the operation of the minimum growth rate element of the formula. We believe we could get the State to agree to a modification such as that.

3. Adjustment for demonstrated reductions in residential placements.

   The formula further provides the State an adjustment to federal funding when it can demonstrate an actual reduction in the percentage of the foster care caseload being served in higher-cost residential placements. Again, this is a measure of an effect of the Demo which reduces the State's FFP below the level to which Indiana would have been entitled absent the demonstration. This percentage has been stable over the last five years and can be measured in real time.

One other serious cost neutrality issue has been solved by the State on its own initiative and using its own resources. This demonstration relies heavily on initial investments both for developing local capacity and for including in the service population children who are not IV-E eligible. Except for a

small amount of advance funding HHS will make available (a limit of 5% over cost neutrality in the early quarters) the State will provide the advance funding using local and State resources.

Precedents

ASMB staff in the Department, in reviewing this memo, have reminded us that the cost neutrality formula for every Medicaid waiver has involved projections. This is consistent with what OMB staff told us at the January meeting in your office.

Your staff have been concerned about whether the terms required to approve one State's demonstration project become a precedent for other States. This was a concern in the Ohio case, and in fact Indiana did ask to be approved for a very large amount of advance funding above cost neutrality. However, HHS negotiators declined to agree, offering only a time-limited advance in the range of the 5% approved for Ohio. It was in response to this decision that Indiana re-considered and, to the State's credit, devised a solution using State and local funds.

Of the States pending approval, we think that none will present a persuasive case for basing cost neutrality on projections. We already have agreement with California to use random assignment, we expect Georgia to use random assignment, and none of the other possible waiver States (Michigan, New York, California, Georgia) is proposing a statewide demonstration. We can therefore expect to base cost neutrality formulae on comparison counties (as in the NC, OR, and OH Demos) or on random assignment in some of the remaining States.

Decision-Making

Your staff have the complete set of Draft Terms and Conditions for Indiana. While they and HHS staff might find some marginal improvements to make in the formula, we have reached the point at which your staff need an indication from you that the approach we have laid out is acceptable at the conceptual level, in order to complete the review and comment process. We would like to resolve this matter this week. Carol Williams has been in touch with you and with your staff to alert you that we need to move fast, and to suggest that we schedule a meeting right away, if you think we will need a meeting or a conference call to resolve the issue.

FACSIMILE TRANSMISSION
Office of the Assistant Secretary
The Administration for Children and Families

DATE:

TO: Jennifer Klein

Telephone: 456-2599

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Number of Pages (excluding cover):

FROM: **Samara Weinstein**
Special Assistant to the
Assistant Secretary for Children and Families

Telephone: (202)401-6953
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MESSAGE

Attached please find earlier memo from Olivia to Ken on the Indiana Child Welfare waiver.

Thanks for your help!! Samara

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