



JANUARY 2012

Child Protective Services in Texas: Buying What We Want

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Texas draws on a variety of different funding sources to pay for services that address child abuse and neglect. This report provides an overview of these funding sources and what they are used to buy. It also discusses why we spend most of our money on foster care and adoption when what we want is to keep children safe at home. Finally, it recommends ways to better align what we buy with what we want.

The State Budget of \$1.2 Billion¹ Buys a Continuum of Child Abuse and Neglect Services

Through its various divisions, the Department of Family and Protective Services (DFPS) provides a continuum of services to address child abuse and neglect. Prevention and Early Intervention (PEI) contracts with local community organizations that provide child abuse and neglect prevention services through "Texas Families: Together and Safe" and Community Based Child Abuse Prevention programs.² In 2010,³ these programs provided services to about 3,800 families.⁴

Statewide Intake processes child abuse and neglect reports which Child Protective Services (CPS) then investigates. In 2010, there were more than 264,000 child abuse and neglect reports and more than 231,000 reports assigned for investigation.

If an investigation reveals that a child needs ongoing services to be safe, CPS first looks to see if there are any services to keep the child safe in their own home, known as family-based safety services (FBSS).⁵ In an FBSS case, the parent retains legal custody so there is no court involvement or oversight. In 2010, CPS provided FBSS to more than 96,000 children.⁶

In some cases, however, the only way to keep children safe is to take legal action to remove them from their home. When a child is removed, CPS first tries to find a suitable relative to take care of the child.⁷ Generally, relative caregivers are not foster parents. Instead, CPS uses a separate process to assess and monitor the relative caregiver to ensure the home is appropriate and safe.⁸

If no appropriate relative is available, CPS places the child in foster care. For foster care, the Child Care Licensing division of DFPS licenses a Child Placing Agency (CPA) (usually a private, non-profit organization) who verifies that the foster homes meet specified state standards. Child Care Licensing then monitors

Only six cents of every dollar in the 2012 CPS budget is spent on keeping kids safe at home.

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the CPAs to ensure that they are in compliance with state requirements. In 2010, about 29,000 children in state custody lived in foster care at some point during the year.

After removal, absent certain egregious circumstances, CPS provides services to help the parents regain custody and safely care for the child.⁹ In 2010, CPS provided reunification services to more than 28,000 children and their families.¹⁰

When safe reunification is not possible, the first option is for a relative to take permanent legal custody as the child's permanent managing conservator (known in other states as a legal guardian) or adoptive parent.¹¹ When that's not possible or appropriate, CPS looks for other families willing to provide a permanent home through adoption. Once legal custody is transferred to a relative or adoptive family, the legal case is closed, and CPS no longer provides any direct services or supervision.

But CPS continues to provide financial assistance, or a subsidy, to most adoptive parents.¹² In 2010, CPS provided an adoption subsidy for more than 30,000 children. Starting in 2011, CPS has also been providing a subsidy to relatives who first become foster parents and then take permanent legal custody under the new Permanency Care Assistance (PCA) program.¹³

In some cases, safe reunification is not possible, and CPS is unable to find another permanent home for the child. In those cases, children remain in state custody until they turn 18 and age out of the system. Before they age out, however, CPS provides services to help them learn to take care of themselves and live on their own. After they turn 18, CPS provides services to support them and help them go to college, and in some cases, continues to provide a foster home where they can live until they turn 21. In 2010, CPS provided preparation for adult living services to more than 8,600 youth.

The 2012 state budget to support all these services is \$1.2 billion. In addition to state and federal funds, some local funding is included in this amount. Some counties want more caseworkers than are funded through state appropriations, so CPS has created a process whereby counties can augment their dedicated CPS staff resources. Through this program, a county pays CPS the general revenue cost of the additional caseworkers (which appears as appropriated receipts in the state budget) and then CPS hires them directly. Caseworkers supported with county funds are CPS employees but they are dedicated to a particular county pursuant to the contractual arrangement between CPS and the county.

In other instances, the local funds don't flow through CPS and so are not included in the state budget, but CPS uses the local spending to access federal funds which are included in its budget. The federal government will pay part of the cost of some services county child welfare boards provide to children in foster care and some part of the legal costs counties incur in representing CPS in court. CPS certifies that the costs are eligible and draws down federal funds. Since the federal funds flow through CPS, they are included in its budget even though money goes to the child welfare boards and the county. We have estimated the amount of local funds that child welfare boards and counties spend that are not included in the state budget but that will be used to draw down federal funds at \$6.3 million and have included this amount in as part of the \$1.2 billion.

Finally, non-governmental organizations are expected to spend an estimated \$4.7 million of their own funds as part of their contracts with CPS to provide prevention, adoption or aging out services. Although the \$4.7 million does not flow through CPS and is not included in the state budget, we have included the amount in the \$1.2 billion as it is being spent pursuant to CPS contracts. Unless otherwise noted, we will refer to the \$1.2 billion as the CPS budget since the vast majority of it is for CPS staff and services.

Counties, child welfare boards, and non-governmental organizations also spend money to support families that is not included as part of our CPS budget (e.g., the cost of attorneys for children and parents) as there is no readily available way to accurately estimate the amount of this spending. Our CPS budget also does not include services other state agencies provide to families and children involved in CPS such as substance abuse and mental health treatment the Department of State Health Services (DSHS) provides to low-income individuals or health care provided to children in state custody under the STAR Health Medicaid program.¹⁴

Reliance on federal funds means that the federal government has a significant say in how the state CPS budget is spent.

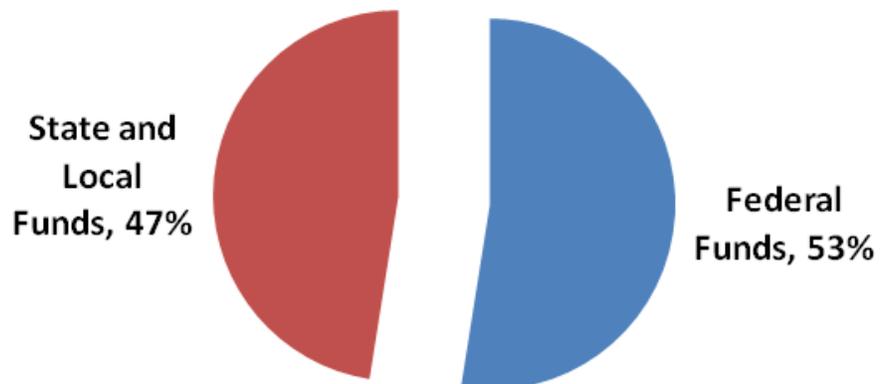
Where Does the Money for the State CPS Budget Come From?

About Half of the 2012 State CPS Budget is Supported with Federal Funding

In the United States, there are three primary sources of funding to address child abuse and neglect: federal funds, state funds, and local funds. Nationally, funding is split among the three sources, but there's wide variation among the individual states as to how.¹⁵ Some states invest a significant amount of state and local funding to address child maltreatment while other states rely primarily on federal funds.¹⁶

The 2012 Texas state CPS budget relies slightly more on federal funds with state and local funding accounting for 47 percent.¹⁷

Funds in 2012 State CPS Budget



Federal Funds Come from a Variety of Sources¹⁸

Texas draws on a variety of federal funds to pay for the state CPS budget. The current restrictions, limitations and requirements of each funding stream are discussed below.

Dedicated Federal Child Abuse and Neglect Funding

Most of the federal funding streams dedicated to child abuse and neglect are capped or fixed, meaning Congress appropriates a specified amount that is then split among the states according to various formulas.¹⁹ Most of the federal child abuse and neglect funding streams also require the state to provide "matching" funds, meaning that the state must pay a portion of the total costs with either state or local funding. There are varying limitations regarding what states can spend the federal child abuse and neglect funding on, and these spending restrictions apply to the state match funds as well.

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The following summarizes the federal child abuse and neglect funds included in the 2012 Texas state CPS budget.

- **Child Abuse Prevention Treatment Act (CAPTA):**

Community Based Child Abuse and Neglect Prevention (CBCAP) program:²⁰ Funding is fixed, requires a 20 percent state match and can only be spent on community based child abuse and neglect prevention programs.²¹

Basic State Grants:²² Funding is fixed but has no required state match. Funding can be spent on improving a state's CPS system as well as responding to reports of child abuse and neglect.

- **Title IV-B of the Social Security Act:**²³

Stephanie Tubbs Jones Child Welfare Services: Funding is fixed and requires a 25 percent state match. But it can be used for virtually any type of CPS service or support.

Promoting Safe and Stable Families Program: Funding is fixed and requires a 25 percent state match. At least 80 percent of total funding must be equally allocated among the following four areas: (1) family support services; (2) services to keep children safe at home; (3) time-limited reunification services; and (4) adoption services. The remaining 20 percent can be allocated to any of the four areas with up to 10 percent allowed for administrative costs. In Texas, for funds allocated to child abuse and neglect prevention and adoption services, local organizations contracting with PEI and CPS to provide the services are expected to supply the matching funds, although the local spending is not included in the state budget.

- **Title IV-E of the Social Security Act:**²⁴

Funding for Foster Care and Families Taking Permanent Legal Custody of a Child: Funding is not fixed. The federal government pays part of the costs for every child that meets federal eligibility requirements. But the funds can only be used for costs associated with foster care, adoption and relatives taking custody under the PCA program. The foster care funds cannot be used to pay for relative caregivers who are not verified foster parents. This distinction is important in Texas as very few relative caregivers currently get verified as foster parents and, instead, are assessed under a different process. Texas is required to pay, or match, about 40 percent of any foster care payments, adoption subsidies and PCA payments. The federal government also pays for part of the administrative costs related to foster care, adoption and PCA with a state match rate of 25 percent for training and 50 percent for administration.

Adoption Incentive Payments:²⁵ The Adoption Incentive Payments program has fixed funding based on Congressional appropriations. A baseline number of adoptions is created for each state, and then each state is paid a specified sum for each adoption that exceeds its established baseline. If the total amount due to all states exceeds the appropriated amounts, state awards are reduced on a pro-rata basis. There is no match requirement and the funds can be used to support a wide range of CPS services.

Chafee Foster Care Independence Program:²⁶ Funding is fixed, requires a 20 percent state match and can only be used to help youth aging out. In Texas, local organizations contracting with CPS to provide services are expected to supply the matching funds, although the local funds are not included in the state budget.

Other Federal Funds in the 2012 State CPS Budget

To pay for the 2012 state CPS budget, Texas also uses federal funds designated to help low-income families. Texas generally receives a fixed amount of these federal funds but has some flexibility in how it spends the money. Unlike federal child abuse and neglect funds, most of these programs do not require a state match.

But some of them do have a maintenance of effort (MOE) requirement. With an MOE, the federal government establishes a baseline amount that the state must continue to spend on services to be eligible for the federal funds. But unlike a state match, an MOE does not help reduce federal government costs. Instead, it ensures that the states use the federal funding in addition to, and not in lieu of, state spending. The required state funds for the MOE have some limitations but do not have to be spent on the same services as the federal funds.

The following summarizes the other federal funds included in the 2012 state CPS budget.

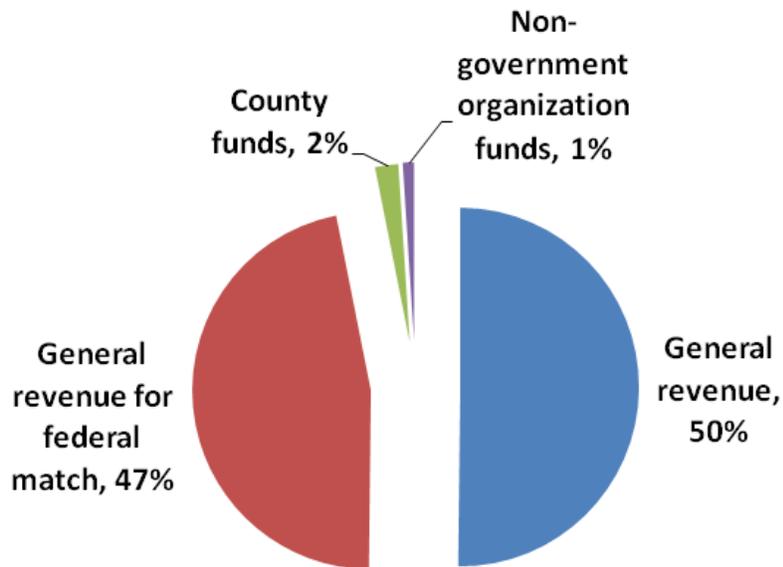
- **Temporary Assistance to Needy Families (TANF):**²⁷ Funding is fixed and has a required MOE. Funds generally support programs and services that help “needy” families. States have discretion as to how they define that term.
- **Child Care and Development Block Grant (CCDBG):** Funding is fixed and has a required MOE. Funds generally support child care services for low income working families and improving the quality and supply of child care.²⁸
- **Social Services Block Grant (SSBG):**²⁹ Funding is fixed and there is no required match or MOE. Funds can be spent on a wide variety of services for children, elderly and disabled individuals.
- **Medicaid:**³⁰ Funding is not fixed. The federal government pays part of the costs for every child that meets federal eligibility requirements. But funds must be used for medical assistance for low income individuals. For the funds in the 2012 state CPS budget, Texas is required to pay, or match, 50 percent of the costs.
- **Refugee and Entrant Assistance Program:** Funding is fixed but has no match or MOE requirement. It must be used for services to help recent immigrants. CPS uses it to help undocumented children in CPS custody to, among other things, pursue immigration options that allow them to establish legal residency.

The federal government allows Texas to spend these funds on families and children in CPS. But since funding is fixed or capped, any money used for the CPS budget means that there’s less available to help the millions of other low income Texans who are not involved with CPS.

State and Local Funding Consists Almost Entirely of General Revenue

Almost all of the state and local funding for the 2012 state CPS budget comes from general revenue which, in Texas, is largely generated through sales and other consumption taxes, and property taxes (in the case of local governments).

State and Local Funds in 2012 State CPS Budget



Almost half of the general revenue in the 2012 state CPS budget is required as a match for the various federal child abuse and neglect funding streams. As discussed above, federal spending restrictions apply to the state matching funds as well. For example, general revenue for the Title IV-E match must be spent on foster care, adoption and the PCA program.

General revenue in the CPS budget that is not required as a match or MOE can be appropriated however the Texas Legislature wants. But once it is appropriated to a particular program (e.g., protective day care), it generally has to be spent for that purpose unless the Governor and Legislative Budget Board agree otherwise.

Texas Has Flexibility over Only about 46 Percent of the CPS Budget

Generally, funds in the CPS budget can be classified as either restricted funding or flexible funding. Restricted funds are federal funds and required state matching funds where the federal government limits the type of services, population or the part of the CPS system the money can be spent on and include: (1) CBCAP; (2) Promoting Safe and Stable Families; (3) Title IV-E funding for foster care and families taking permanent legal custody; (4) the Chafee program; (5) CCDBG; (6) Medicaid; and (7) the Refugee and Entrant Assistance program.

With the flexible funds, Texas has some discretion in what they are spent on and such funds include: (1) CAPTA basic state grants; (2) Stephanie Tubbs Jones Child Welfare Services (both federal and state matching funds); (3) the Adoption Incentive Payments; (4) TANF; (5) SSBG; and (6) general revenue and local funds not required for a federal match.

In 2012, restricted funding accounts for the majority of the CPS budget with flexible funds accounting only for 46 percent.

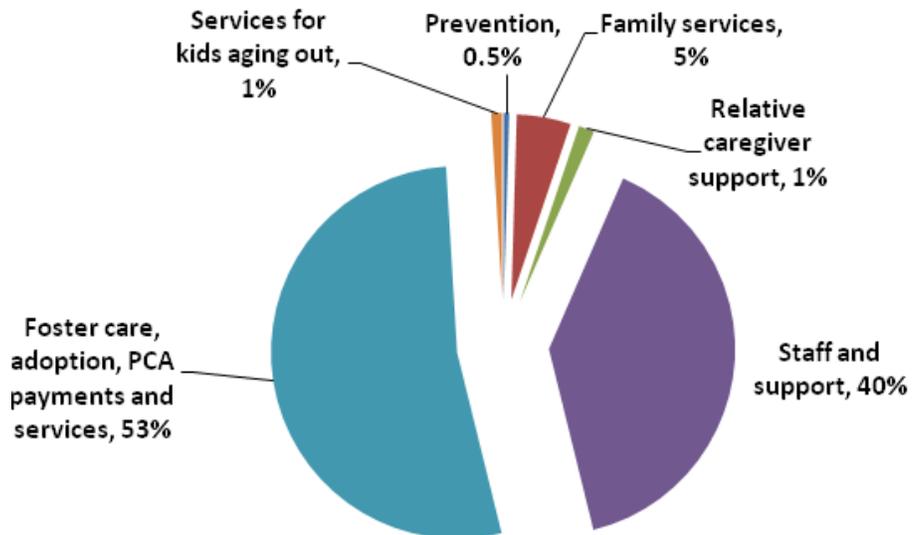
Although the federal government mandates that states focus on keeping children safe in their own homes, it actually requires states to spend almost all of their restricted funding on something else.

What Does the CPS Budget Buy?

Only 6 Cents of Every Dollar in the 2012 State CPS Budget Is Spent on Keeping Children Safe at Home

As discussed below, the majority of both the restricted funding and flexible funding is allocated to pay for foster care, families taking permanent legal custody of a child, staff and program support. As a result, only about 6 cents of every dollar is spent on keeping children safe in their own homes. Child abuse and neglect prevention programs account for less than 1 percent of the budget, and services to support families involved in the CPS system account for 5 percent.

Overall Allocation of the 2012 CPS Budget³¹

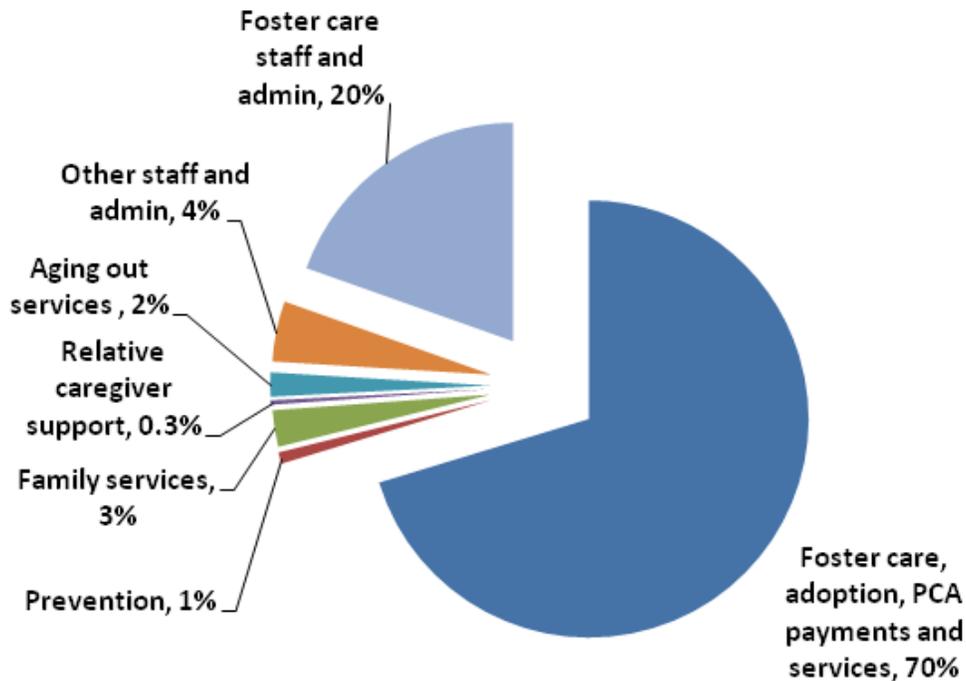


To a certain degree, the CPS budget does not fully reflect services provided to families. In addition to services CPS provides, through DSHS, some parents may be able to obtain substance abuse treatment (parents with children in foster care are one of its priority populations) or mental health treatment. But DSHS services are not available in every community and, after recent budget cuts, will be even more scarce. The Legislature cut both adult mental health services³² and funding for substance abuse treatment³³ by about 4 percent. Moreover, for mental health services, even when they are available, the parents in CPS have to compete for the limited resources with millions of other low-income and uninsured Texans.

Federal Requirements Dictate that Restricted Funds Be Used Primarily for Foster Care and Families Taking Permanent Legal Custody of a Child

Based on federal requirements, 90 percent of restricted funds are used for foster care, adoption and PCA related costs—70 percent for foster care payments and day care and adoption and PCA subsidies with another 20 percent paying for foster care related staff and program support.³⁴ The contradiction between what

Allocation of Restricted Funding in the 2012 CPS Budget



the federal government wants and what it allows funding to be spent on is largely a historical construct based on how the various funding streams evolved, and is something Congress has been grappling with since the 1970s.³⁵

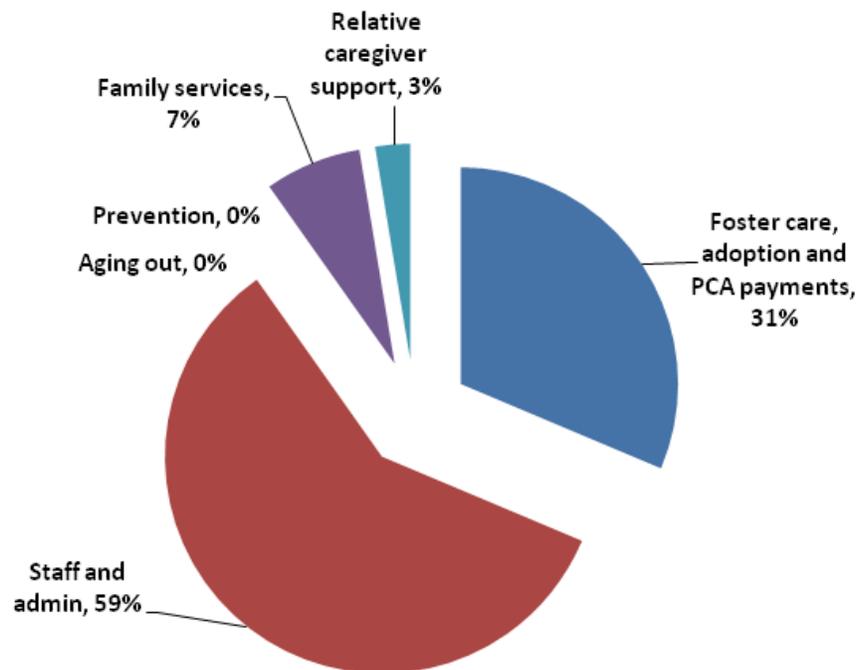
The Majority of the Flexible Funds Are Also Used to Pay for Foster Care and Families Taking Permanent Legal Custody of a Child Along with Staff and Program Support

While most of the restricted funding goes to cover foster care, adoption and PCA payments, there is still a part of these costs Texas has to cover with its flexible funding. To access the restricted funds for foster care, adoption or PCA under Title IV-E, the child must meet federal eligibility requirements. One of the requirements is that the child's family cannot have income above a specified level.³⁶ Because of the way Title IV-E funding evolved, the income level is set lower than the current poverty standard.³⁷ As a result of the low income level along with some of the other eligibility requirements, some children in foster care and receiving adoption subsidies do not meet federal standards. In 2010 in Texas, 29 percent of the children in foster care and 30 percent of the children receiving adoption subsidies did not meet federal eligibility standards, which means that Texas had to use flexible funds to cover all of their costs. In the 2012 state CPS budget, 32 percent of the flexible funds are allocated to pay for foster care payments and adoption subsidies for children who do not meet federal requirements.³⁸

The same is true for staff and program support. Under Title IV-E, the federal government will help pay for these costs only to the extent they are related to children living in a paid Title IV-E eligible foster care placement.³⁹ This particular formulation, however, puts Texas at a disadvantage as the majority of relative caregivers are not verified foster parents so children in these placements are not in Title IV-E eligible foster care. Essentially, Texas' increased use of relative caregivers means that the federal government pays for less and less of its staff and program support costs. And even for those costs that are covered under Title IV-E, the state still has to provide a match at the rates discussed above. With these limitations, restricted funds only cover about one-third of direct delivery staff and program support costs in 2012.⁴⁰ Fifty-eight percent of the 2012 flexible funds are used to pay for the rest.

As discussed above, very little of the restricted funding can be spent on prevention, in-home or reunification services or on support for relative caregivers who are not verified foster parents, so these must be funded primarily with flexible funds. Unfortunately, however, after paying for foster care, adoption, staff and program support costs not covered by the restricted funds, there is not much left over. In the 2012 state CPS budget, none of the flexible funds are allocated to prevention, 7 percent are used for family services and 3 percent are used for relative caregiver support. No flexible funds are allocated for aging-out services.

Allocation of Flexible Funds in the 2012 State CPS Budget



Why Don't We Buy What We Want?

Although keeping children safe in their own homes is better for the child and cheaper for the state, Texas spends the majority of its CPS budget on the exact opposite.

To a certain degree, the disconnect between what we want and what we buy is unavoidable. Even with the best efforts, some children will need foster care placements and some children won't be able to go back home and so someone else will have to step in and take custody. And paying someone else to care for a child is expensive. In 2012, the average annual foster care cost (includes payment to the family and the CPA) will be more than \$22,000.⁴¹ The average annual payment to adoptive families or to relatives who take permanent custody under the new PCA program will be more than \$5,000 and will continue until the child turns 18 or, in some cases, until age 21.⁴² As a result, paying for foster care and for other families to take permanent custody of a child will always be a large share of any CPS budget.

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Changes over time to the federal government's approach to funding social services, including CPS, play a part as well.⁴³ From the inception of the Social Security Act in 1935 through the 1970's, the federal government used federal funding as a way to encourage states to support struggling families. It provided money to help states create a social service infrastructure and paid part of the costs states incurred in providing assistance. But to help curb discriminatory practices and ensure equal access to benefits, the federal government also created standards governing who should be eligible for assistance and on what states could spend the money.

With respect to child abuse and neglect, funding under the Stephanie Jones Tubbs Child Welfare Services program (evolved from 1935 Act) and CAPTA (enacted in 1974) supported the creation and expansion of state CPS systems and infrastructure. And from 1962 through the 1970's, the federal government paid part of the costs states incurred in providing services and assistance to families and children involved with CPS, along with part of the costs for foster care.

In the 1980's and the 1990's, however, the federal government's approach changed. With the growth in social service caseloads in the 1960's and 1970's, paying for part of the costs had become expensive and was seen as allowing and even encouraging long-term reliance on public assistance. The federal spending restrictions were viewed as inhibiting states' ability to experiment with innovative approaches to helping low income families succeed. So the federal government started changing its funding structure for social services. To help control costs and encourage states to move people off of public assistance, the federal government no longer paid for part of the costs the states incurred. Instead, funding was transformed into fixed amounts allotted among the states, with states allowed flexibility in how the money was spent. The idea was that with capped but flexible funding, states would be motivated to find ways to contain and reduce the number of people needing services.

As a social service, funding for child abuse and neglect got caught up in this wave of reform. In 1981, Congress turned funding under Title XX of the Social Security Act into the Social Services Block Grant. Under the new structure, the federal government no longer paid part of the cost for CPS family support services but, instead, provided states with a fixed amount to cover a wide range of services for children, the elderly, and people with a disability. Other federal funding for CPS family support services created thereafter (the precursor to the CBCAP program in 1985 and Promoting Safe and Stable Families in 1993) followed the same structure with fixed funding allocated among the states.

In 1996, funding for foster care and adoption under Title IV-E changed as well. Although funding was not fixed at a specific amount, Congress tied access to the funds to income standards as they existed in 1996. This meant that, over time, fewer and fewer families would meet the income standard, reducing the population of children eligible for Title IV-E funds, effectively controlling federal government costs. Nationally, in 1998, 53 percent of children in foster care were eligible for Title IV-E and by 2005, it had dropped to 46 percent.⁴⁴ But because Title IV-E funding technically remained uncapped, federal restrictions regarding the use of the funds remained.

Since 1996, the federal government's approach to social service funding, including child abuse and neglect, has remained largely unchanged. With this limited structure, federal funding for CPS has not kept up with need, especially with respect to CPS family support services. From 2005 to 2010 in Texas, the number of children needing CPS family support services⁴⁵ increased by 41 percent.⁴⁶ Promoting Safe and Stable Families is the primary federal funding stream dedicated to help pay for these services and during this same time, the amount allotted to Texas remained virtually unchanged.⁴⁷ And things are not getting any better as Congress recently reauthorized the program for another five years with no increase in funding. In 2012, federal child abuse and neglect funds will cover only about 26 percent of the costs for CPS family support services.⁴⁸

If the federal government wants states to keep children safe at home, federal financing for child abuse and neglect must be reconfigured to help make this happen.

Options to Better Align What We Want with What We Buy

Restructuring Federal Child Abuse and Neglect Funding for Family Services

One of the primary reasons for implementing a fixed funding structure for social services was a belief that with capped resources, states would be motivated to find ways to contain and reduce the number of people needing the services. That reasoning, however, does not make sense in the context of CPS because the state agency cannot control how many children will be abused or neglected and need services. State CPS agencies are bound by the same constitutional provisions and protections as law enforcement. They generally cannot take action to address a family's particular problem until after the abuse or neglect has occurred or when the child is in immediate danger.

As the demand for CPS services is largely out of the state agency's control, a fixed funding structure for services simply means that some child abuse and neglect will not be addressed. As resources dwindle from inflation and population growth, state agencies are forced to selectively spend their limited resources on fewer cases. Since the Great Recession began in 2008, many state agencies have faced budget cuts. And since then, across the country, CPS agencies are investigating fewer reports of child abuse and neglect and are less likely to provide services to identified victims.

National Data from the Annual Federal Child Maltreatment Reports

	2008	2010
Reports screened in for further action	62.5%	61.0%
Victims who receive post-investigation services	63.3%	61.2%

If the federal government wants states to provide services to keep children safe at home, it has to create a federal financing structure that will help make this happen.

One option is to transform Promoting Safe and Stable Families into a funding stream similar to the original Title XX structure where the federal government pays for part of all eligible CPS family support services.

Even though CPS family support services funding would not be fixed under this structure, there are ways to control costs. Congress could limit the use of Promoting Safe and Stable Families funding to pay for services that the parents would be otherwise unable to obtain. For example, Texas would only use the funds to pay for substance abuse treatment or testing if a parent was unable to obtain these services through DSHS or some other program. Congress could also limit the time frame in which Promoting Safe and Stable Families funding could be used. For example, the federal government could pay part of the costs of eligible CPS family support services for a specified period of time with states bearing the full cost of such services thereafter. Alternatively, the federal government could pay more of eligible CPS family support service costs initially, and then decrease federal participation over time.

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Not only would such a structure ensure that the federal government pays its fair share of keeping children safe at home, it would help reinforce current federal law regarding time limitations on family support services.

Restructuring federal funding for CPS family support services will increase costs to the federal government in the short-term. But over time, as a larger share of children are able to safely stay at or return to home, fewer children will be in the expensive option of foster care so that, in the long-term, the federal government ends up saving money and improving outcomes.

New Title IV-E Waiver Option⁴⁹

Restructuring federal financing for CPS family support services is essential for ensuring we spend our money on getting the outcomes we want. As a stop-gap measure until this can be accomplished, Congress recently enacted a program that would allow states to shift federal child abuse and neglect funding within current budget constraints. Under the 2011 federal Child and Family Services Improvement and Innovation Act, states can now apply for a time-limited waiver that would allow them to take restricted Title IV-E funding for foster care and spend it on something else.

With a waiver, the federal government estimates how much Title IV-E foster care funding a state would have been entitled to under its current structure. The state can then spend those funds on programs that help get children out of foster care such as services to keep children safe in their own home. In essence, a waiver turns Title IV-E funding into a time-limited block grant.

To keep this option cost neutral for both the federal government (a requirement under the Title IV-E waiver program) and the state, any additional spending on family services would have to result in an almost immediate reduction in foster care. This may be difficult to achieve as it might take some time for investments in up-front services to start reducing the number or length of time in foster care. Other states have experimented with shifting funds from foster care to family services. But evaluations of such programs have been unable to establish that simply shifting funds without increasing the overall budget actually results in a foster care reduction.⁵⁰ As a result, even if CPS found a more cost effective way to spend its Title IV-E foster care funds, it would probably require an increase in state funding for CPS, at least in the short-term.

Moreover, as with all block grants, the Title IV-E waiver option shifts financial risk to the state. Funding is fixed and based on an estimated number of children in foster care. If that projection turns out to be wrong, the state bears the full cost. For example, as the result of several high profile cases in 2004, there were more child abuse and neglect reports in Texas,⁵¹ significantly increasing the number of children coming into care. The number of new children needing ongoing CPS services increased by more than 50 percent from 2004 to 2007. During that same time, with reform efforts and additional investments in CPS, Texas was able to keep an ever-increasing share of children out of foster care. The percentage of children receiving ongoing CPS services who were in foster care dropped from 32 percent in 2005 to 27 percent in 2007.⁵² But as the number of children needing CPS services increased so dramatically, the number of children in foster care in 2007 was actually higher.⁵³ Ironically, this means that additional investments in family services can help keep children out of foster care and, at the same time, overall costs for foster care may still increase. If Texas had been operating under a Title IV-E waiver at the time, it would have borne the entire cost for the additional children in foster care, despite its additional investments and success in keeping more children safe at home.

Finally, under any scenario, a waiver program will require CPS to expend additional administrative resources and obtain an independent evaluation. As the federal government does not provide any funding to cover these costs, Texas will have to pay for them out of its own resources.

Conclusion

We want CPS to keep children safe at home whenever possible—it's better for the child and cheaper for the state and federal government. Identifying services that are proven to help struggling families address their problems so they can safely care for their children, and then making sure families have access to such services is the simplest way to get what we want.

The reality, however, is that Texas (and every other state) spends most of the CPS budget on foster care and adoption. To a certain degree, this disconnect is unavoidable. Even with the best system, foster care and adoption will be necessary and expensive and, thus, will always be a large share of any CPS budget.

The federal funding structure for child abuse and neglect plays a part as well, primarily due to changes in the 1980's and 1990's. During that time, Congress transformed funding for CPS family support services into a fixed structure in which states receive a capped amount that is not modified for inflation, population growth or an increased need for services. Since state CPS agencies have no control over the number of children who are abused or neglected, however, a fixed funding structure will not help them find ways to reduce the number of children and families who need CPS services. Instead, absent significant additional state investments, state agencies are simply forced to selectively spend their ever-dwindling resources on fewer cases. This problem is especially acute in Texas with its fast growing child population, a large share of who live in poverty.

While the increased flexibility under the new Title IV-E waiver option may be helpful in some limited circumstances, it is not enough. Simply moving money around within the same insufficient funding structure is not a long-term solution. If the federal government wants states to keep children safe at home, it has to reconfigure federal financing for child abuse and neglect to make this happen.

Appendix A

THE HISTORY OF FEDERAL FUNDING STREAMS SUPPORTING TEXAS' CPS SYSTEM

Most of the funding for state CPS systems evolved under the Social Security Act.

The original 1935 Act created a program, which eventually became Title IV-B, Part 1 (the Stephanie Tubbs Jones Child Welfare Services program), that provided funding to states so they could provide services to vulnerable populations including neglected children. The funding was a fixed amount split among the participating states and helped states establish social service agencies.⁵⁴ The 1935 Act also created a program, which eventually became known as Aid to Families with Dependent Children (AFDC), that provided financial assistance to poor families. To encourage states to adopt the program, the federal government agreed to pay part of any assistance the state provided to families, subject to certain limitations. To help hold down the federal government's costs and encourage states to administer the program effectively, the states had to "match" or pay part of the cost as well.

Federal funding for foster care started much later in large part to address discriminatory state practices under AFDC. In administering AFDC in the 1950's, some states were routinely denying financial assistance to families (usually those of color) with children born outside of marriage or who engaged in other behavior the state found immoral, finding that such homes were "unsuitable."⁵⁵ Generally, however, the finding of unsuitability did not prompt removal or the involvement of the state CPS system.⁵⁶ Instead, states left the children in the home and simply refused to provide any assistance.

To fix this problem, in 1960, the federal government issued a rule that any evaluation of the home under AFDC had to look to whether it was unsafe rather than unsuitable. And even if it was unsafe, the state still had to provide assistance to the child⁵⁷ and either: (1) keep the child in the home, provide financial assistance and work with the family to ameliorate the unsafe conditions; or (2) remove the child from the home and place them in foster care.⁵⁸

In 1961 Congress codified the rule, essentially creating a federal mandate for states to evaluate the condition of poor families' homes and intervene when a child's safety was at risk. To ensure that states had sufficient resources to work with families and keep children safe, AFDC was expanded so that any federal funding that the child would have been eligible for if they had remained at home could essentially follow them into foster care.⁵⁹ Congress also allowed states to use federal funds earmarked to help adults move off of public assistance to also to address the welfare of the child, improve home conditions, and assist families in caring for their children. This funding eventually evolved into Title XX of the Social Security Act and was originally structured like AFDC with the federal government paying part of all eligible costs with no cap on total funding.⁶⁰

Shortly thereafter, in 1962, the landmark "Battered Child Syndrome" article was published.⁶¹ Written by two pediatricians, it highlighted the problem of physical abuse, garnering significant and extensive nationwide media attention for the first time on the issue of child abuse.

In 1965, Congress created Medicaid under Title XIX of the Social Security Act to help states provide medical assistance to needy individuals. Medicaid was structured like AFDC with the federal government paying part of all eligible costs with no cap on total funding.⁶²

With the growing recognition of child abuse as a problem, in 1974, Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA) which required states to establish child abuse reporting procedures and investigation systems and provided funds to support state CPS systems (this eventually evolved into the Basic State Grants program).⁶³

Around this same time, Congress became concerned about the growing number of children in foster care, beginning debate about whether the funding structure encouraged states to unnecessarily place and keep children in foster care.⁶⁴

To address the concern about the growing number of children in foster care, in 1978, Congress created the

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Adoption Opportunities Act under CAPTA to fund demonstration projects to eliminate barriers to adoption. In 1980, Congress started requiring states to make reasonable efforts to prevent placement into foster care and to eventually get the children back home in cases where foster care was necessary.⁶⁵ At the same time, the foster care payment program was separated from AFDC and placed under Title IV-E, and was expanded to include ongoing financial assistance to adoptive families to help more children in foster care find a permanent home.⁶⁶ To access federal funds for foster care or adoption assistance, however, a child still had to be eligible for AFDC.

In 1980, Congress also enacted the Refugee Act which provided funding states could use to help recent immigrants (eventually evolved into Refugee and Entrant Assistance program).⁶⁷

In 1981, with concerns about rising caseloads and costs, legislation was proposed that would have combined the three primary federal funding streams used to support state CPS systems (Title IV-B, Title IV-E and Title XX) into a child welfare block grant with fixed funding allotted to each state.⁶⁸ The broad consolidation plan failed but Title XX was turned into the Social Services Block Grant (SSBG).⁶⁹ Under the SSBG, the federal government no longer paid for part of the services states provided to families involved with CPS and, instead, each state was given a fixed amount of funding to cover services for children, the elderly and people with a disability.⁷⁰

In 1984, Congress created a new program (eventually known as the Community Based Child Abuse Prevention (CBCAP) program under CAPTA), which was the first federal funding resource specifically dedicated to help states with child abuse and neglect prevention.⁷¹ It was structured as a fixed amount split among the states.⁷²

In 1986, Congress created a new Title IV-E funding stream (which eventually became known as the Chafee Foster Care Independence program), to support services to help children aging out of the system to successfully transition to living on their own.⁷³ It was also structured as a fixed amount split among the states.

Over the next several years, the number of children in foster care continued to rise. Between 1986 and 1995, the number of children in foster care increased by 76 percent nationally as a result of the economic slowdown, the crack cocaine epidemic and higher incarceration rates among female offenders.⁷⁴

To get states focused on safely keeping or returning children back home, in 1993, Congress enacted the Family Preservation and Support Services Program Act.⁷⁵ It required states to plan and develop more responsive family support and preservation strategies. It also created a new Title IV-B funding stream (now the Promoting Safe and Stable Families program) to support CPS family services, which was structured as a fixed amount split among the states. Finally, the Act created the Court Improvement Program with grants available to state supreme courts to help improve the court process related to CPS cases.

In 1994, Congress created an option allowing states to apply for a waiver that essentially turned Title IV-E funding for foster care into a flexible fixed block grant that would cap funding but give states more discretion regarding how the money was spent.⁷⁶

In 1995, Congress again tried to combine all the different federal child abuse and neglect funding streams into a fixed block grant. The broad consolidation plan failed but, in 1996, welfare reform succeeded and AFDC was supplanted by the Temporary Assistance to Needy Families (TANF) program.⁷⁷ Unlike AFDC, however, TANF was structured as a flexible block grant. The state received a fixed amount of funding which it could then spend on a variety of programs, services or support for low income families. With respect to Title IV-E, since the basic structure of the foster care and adoption assistance program remained unchanged,⁷⁸ Congress controlled costs by tying access to the funds to the now defunct AFDC program with income eligibility fixed at the standards in effect in 1996.⁷⁹ With a fixed income standard, over time, fewer and fewer children would be eligible under Title IV-E.

Still looking for ways to reduce the foster care population, in 1997, Congress enacted the Adoption and Safe Families Act (ASFA). At this point, Congress was concerned that states were letting reunification efforts go on too long and were reluctant to pursue adoption. So ASFA focused on time-limited reunification services and a push for more adoptions. Under ASFA, if a state has provided reasonable reunification services to a parent and the child has been out of the home for 15 of the last 22 months, states are required to pursue adoption unless they document a compelling reason why doing so is not in the child's best interest.⁸⁰ ASFA also created the

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Adoption Incentive Payment program which paid states a bonus when they increased adoptions. A baseline number of adoptions was established for each state, and then each state was paid a specified amount for each adoption that exceeded its established baseline.⁸¹ Congress also expanded funding for the Promoting Safe and Stable Families program to include time-limited reunification services when a child is removed and services to support and promote adoption.⁸²

In 1998, the federal government adopted a regulation that allowed states to use the Child Care and Development Block Grant (CCDBG) (created in 1990 with a fixed amount of funding for each state) for children in protective services.⁸³

In 2001, Congress expanded the Chafee program to include funding for educational and training vouchers.⁸⁴

Over the next several years, there were several unsuccessful proposals to turn Title IV-E into a flexible block grant.⁸⁵

In 2008, Congress was again looking for ways to reduce the number of children in foster care. But unlike previous reform efforts, this time there was no funding or efforts aimed at getting more children safely back home. Instead, the interest was once again on increasing adoptions with an added focus on using relative caregivers. The Fostering Connections to Success and Increasing Adoptions Act created requirements for states to locate and notice relatives when removal is necessary so they can get involved and be a resource for the child. The Act also created a new Title IV-E funding option to support relatives taking permanent legal custody as a child's legal guardian (known in Texas as a permanent managing conservator) with funding structured like foster care and adoption subsidies. The Act reauthorized the Adoption Incentive Payment program, establishing a new baseline for the states and with more money paid for each additional adoption. Finally, the Act provided that eligibility for an adoption subsidy under Title IV-E will be de-linked over time from the 1996 income standards. With more children eligible for an adoption subsidy under Title IV-E, the federal government will shoulder more of the financial cost, freeing up state funding. The Act includes a provision that requires states to re-invest any savings from the increased federal funding back into the CPS system.

In 2010, Congress reauthorized CAPTA until 2015.⁸⁶ The reauthorization did not increase funding under the Basic State Grant or CBCAP program, but it did authorize a grant program through which organizations can apply for funds related to improving collaboration between CPS and domestic violence organizations. It also encouraged states to increase family participation in case planning and placement, allowed states to deny reunification in cases of child sexual abuse and mandated criminal record checks for all adults living in the home of a prospective foster or adoptive parent.

In 2011, the Child and Family Services Improvement and Innovation Act reauthorized the Stephanie Tubbs Jones Child Welfare Services program and Promoting Safe and Stable Families until 2016 but did not increase funding for family services.⁸⁷ It did, however, create a new Title IV-E waiver program where states can again apply for a waiver that would give them more flexibility in how they spend Title IV-E federal foster care funds. But however they spend the funds, the waiver must be cost neutral to the federal government. Although the Act provides no new funding for CPS family support services, it does require states to annually provide information on planned and actual spending for CPS child and family services, including how many are served. It also required the Government Accountability Office to submit a report regarding funding for and access to family services. Specifically, the report will address (1) other funds that states use to pay for CPS services; and (2) an assessment of what families involved in CPS need, including underserved communities, information on how to help caseworkers safely and appropriately manage their work, how long and how many families are waiting for substance abuse and other preventive services and the impact on successful reunification.

Endnotes

- 1 Unless otherwise noted, all references to the budget refer to the 2012 Department of Family and Protective Services (DFPS) Operating Budget and includes 35 percent of the Statewide Intake (SWI) budget (the percentage of call to SWI that are classified as child abuse and neglect reports in 2010) (A.1.1.), all of the CPS budget (B.1), the budget for the two main child abuse and neglect prevention programs, Texas Families: Together and Safe and Community Based Child Abuse Prevention (C.1.3 and C.1.4) and the budget for Child Care Licensing staff that regulate and monitor foster care (E.1.1.2).
- 2 An additional program, Family Strengthening Services, was eliminated as part of the 2012-13 budget cuts. CPS and other state agencies operate other prevention programs but they are primarily focused on youth in crisis or juvenile delinquency.
- 3 Unless otherwise noted, all years refer to the state fiscal year which begins on September 1 and ends on August 31.
- 4 Unless otherwise noted, all data are from the DFPS databooks.
- 5 42 U.S.C. §671 (15) and Texas Family Code (TFC) §262.101 et. seq. This can also include allowing the parents to choose a temporary out-of-home placement in lieu of removal known as a parental child safety placement.
- 6 DFPS data.
- 7 42 U.S.C. §619(a)(19) and Texas Administrative Code (TAC) §700.1320(a)(1).
- 8 CPS Handbook §§6322.2 et. seq.
- 9 42 U.S.C. §671 (15) and TFC §262.2015.
- 10 Based on number of children starting the year in the temporary managing conservatorship (TMC) of the state plus those who entered TMC during the year.
- 11 A relative who takes permanent managing conservatorship and adoption both provide a permanent home for the child. When a relative adopts, parental rights are terminated and the relative becomes the child's legal parent. In contrast, with a permanent managing conservator, parental rights usually remain intact so that the child's legal relationship with the relative ends when the child turns 18.
- 12 Texas Family Code §162.304.
- 13 Texas Family Code §262.851 et. seq.
- 14 All children in state custody receive health care through the STAR Health program.
- 15 DeVooght K, Allen T, Geen R. Federal, State, and Local Spending to Address Child Abuse and Neglect in SFY 2006. Child Trends. December 2008.
- 16 In state fiscal year 2006, state and local funds accounted for 77 percent and 76 percent of child welfare spending in Delaware and Pennsylvania, respectively. State and local funds accounted for 24 percent and 25 percent of child welfare spending in Mississippi and New Mexico, respectively. DeVooght K, Allen T, Geen R. Federal, State, and Local Spending to Address Child Abuse and Neglect in SFY 2006. Child Trends. December 2008.
- 17 Department of Family and Protective Services 2012 Operating Budget.
- 18 Unless otherwise noted, all information about the federal funds comes from Top 100 Federal Funding Sources in the Texas State Budget. Texas Legislative Budget Board. October 2010.
- 19 42 U.S.C. §5116b and §5116i (CBCAP), 42 U.S.C. §623 and §625 (Title IV-B, Part 1), 42 U.S.C. §629c and §629f (Title IV-B, Part 2), 42 U.S.C. §677(c) and (h) (Chafee).
- 20 42 U.S.C. §5116.
- 21 For 2012, Texas will use money from the Child Abuse and Neglect Prevention Trust Fund that is spent on universal child abuse prevention under the STAR prevention program to meet its state match.
- 22 42 U.S.C. §5106a.
- 23 42 U.S.C. §621 (Title IV-B, Part 1) and 42 U.S.C. §629 (Title IV-B, Part 2) et seq.
- 24 42 U.S.C. §670 et seq.
- 25 42 U.S.C. §673b
- 26 42 U.S.C. 474.
- 27 Title IV-A of the Social Security Act et seq.

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- 28 Child care funding is managed and administered by the Texas Workforce Commission, even for families involved in CPS.
- 29 Title XX of the Social Security Act et seq.
- 30 Title XIX of the Social Security Act et seq.
- 31 Prevention (C.1.3 and C.1.4), family services (B.1.5, B.1.9, B.1.10.1, B.1.10.2, B.1.10.3), relative caregiver support (B.1.4, B.1.13), services for youth aging out (B.1.8), staff and admin (35% of A.1.1, B.1.1, B.1.2, B.1.10.6, E.1.1.2), foster care, adoption and PCA payments (B.1.3, B.1.6, B.1.7, B.1.10.4, B.1.10.5, B.1.11, B.1.12).
- 32 Texas Budget Highlights, Fiscal 2012-13. House Research Organization. December 6, 2011.
- 33 Based on information provided by DSHS comparing the budget for 2011 to the budget for 2012.
- 34 Foster care related staff and administration includes 35% of statewide intake (A.1.1) all direct delivery staff (B.1.1), program support (B.1.2) and Child Care Licensing residential child care staff (E.1.1.2) paid for with federal Title IV-E funds and matching state and local funds.
- 35 Brief History of Federal Child Welfare Financing Legislation. Child Welfare League of America. July 2003.
- 36 42 U.S.C. §672(a)(3). As part of the 2008 federal Fostering Connections to Success and Increasing Adoptions Act, the income eligibility requirement for the adoption subsidy is being eliminated over time. 42 U.S.C. §673(e).
- 37 42 U.S.C. §672(a)(3).
- 38 Includes costs of foster care payments (B.1.11) and day care (B.1.3), adoption and PCA subsidies (B.1.12).
- 39 To determine what percentage of staff, administration and program support costs are eligible for the federal subsidy, the federal government looks at the share of children in state custody who are Title IV-E eligible.
- 40 Includes B.1.2 and B.1.3.
- 41 2012 DFPS Operating Budget.
- 42 2012 DFPS Operating Budget.
- 43 Appendix A contains a detailed discussion of how the various federal funding streams supporting the CPS budget evolved.
- 44 Time for Reform: Fix the Foster Care Lookback. Pew Charitable Trust. Available at: www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/FixtheFosterCareLookback.pdf. Accessed on December 9, 2011.
- 45 Includes children in FBSS and children in the temporary managing conservatorship of the state. Services include protective day care, substance abuse services, foster/adoption–child welfare services, in-home services and intensive family based services.
- 46 CPPP analysis of DFPS data.
- 47 Looking at awards in 2005 compared to 2012 funding increased by 0.2%.
- 48 Includes protective day care, substance abuse services, foster/adoption – child welfare services, in-home services and intensive family based services.
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This policy page was underwritten in part through funding by Casey Family Programs, whose mission is to provide and improve—and ultimately to prevent the need for—foster care. Established by UPS Founder Jim Casey in 1966, the foundation provides direct services and promotes advances in child welfare practice and policy. To learn more, visit www.casey.org. The opinions expressed in this policy brief, however, are those of the Center for Public Policy Priorities and do not necessarily reflect the views of Casey Family Programs.

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