



NEBRASKA
APPLESEED
STAND UP FOR JUSTICE

CHILD WELFARE REFORM PRIORITIES

As the state builds upon the strong foundation established by LR 37, Nebraska Appleseed believes it is imperative that the state prioritize building an effective “front door” of the child welfare system, improving access to services, extending services and supports to older youth transitioning from foster care to adulthood, reducing racial disparities, and moving forward with a unified system. We commend the Children’s Commission for their commitment to working together with a broad range of stakeholders to chart a positive path forward for child welfare reform in Nebraska.

Specifically, Nebraska Appleseed supports the following priorities:

BUILD AN EFFECTIVE “FRONT DOOR” OF THE SYSTEM

Leverage economic assistance programs to help families and prevent unnecessary child welfare placements

We believe effectively addressing poverty is one of the keys to preventing the unnecessary entry of children into the foster care system. This can be done by leveraging economic assistance programs to help more families who are struggling to meet their children’s basic needs, including increasing the amount of assistance and improving access to programs.¹ Specifically, Nebraska should consider increasing the payment rate of the Aid to Dependent Children (ADC)² program, which has not been adjusted since the 1980s. The monthly ADC rate for a single parent with a school-aged child in Nebraska is \$293 per month.³ By comparison, the monthly base foster care rate, prior to the passage of Neb. Rev. Stat. § 43-4211 et seq. (LB 820), was \$359 per month.⁴ Both of these rates are among the lowest in the country and are inadequate to meet the basic needs of children.⁵ With adequate rates, the ADC program is an effective avenue for helping families meet their child’s basic needs and can help avoid the intervention of the state in the family through the child welfare system. As the Foster Care Reimbursement Rates Committee works to develop an adequate standard for foster care payments in Nebraska, we urge the state to look at the ADC rate in tandem. Nebraska could also extend the amount of time parents can spend engaged in treatment programs as part of their ADC self-sufficiency plan so they are not terminated from the program and don’t end up losing their children while they are getting help.

Create mechanisms for transparency in the use of TANF funds for child welfare

Federal law permits the use of some Temporary Assistance to Need Families (TANF)⁶ funds for child welfare if the use of those federal funds meets one of the four statutory purposes of TANF, including purpose one, which is to provide assistance so children can live in their own home or the homes of relatives.⁷ Therefore, TANF funds can and should be used for services to help keep families together and we support that goal. At the same time, however, there should be limits on the use of TANF dollars for child welfare services to ensure limited (block grant) funding is available to help low-income families meet their basic needs and prepare to enter the workforce.

For this reason, we believe it is important to track the use of TANF funds for child welfare services as part of Neb. Rev. Stat. § 43-534 and § 43-4404 (LB 1160) and Neb. Rev. Stat. § 81-3133 (LB 949) and to analyze the use of funds to ensure that the expenditures meet the requirements of federal law and reflect good policy choices for Nebraska families.

Carefully implement Differential Response in a way that provides adequate services, protects the safety of children and respects the rights of families

We support the implementation of a “front end” system of assessment that includes different approaches to child maltreatment reports and a more collaborative response to working with families. As the state moves forward with Differential Response, we think it is important that implementation is carefully planned and rolled out over a period of time, and that staff are well-trained and that system stakeholders are involved and informed. It is also critical that we make the necessary investment and develop an adequate service array up front to enable such a system to be successful. Finally, an underlying premise of Differential Response is to work collaboratively with families. Therefore, the non-investigation track should be voluntary and should not be structured in a way that creates an environment of coercion (e.g., families being misled to believe that children will be removed if they elect not to participate in offered services). Children and their parents have a substantive due process right to their relationship with one another and this process must respect those constitutional rights.⁸ These aspects will be important to monitor as required by Neb. Rev. Stat. § 43-4406(4)(m) and § 43-4407(2) (LB 1160).

IMPROVE ACCESS TO SERVICES

Develop an evidence-based continuum, including prevention and treatment programs

LB 821 requires the Children’s Commission to create a strategic plan that considers “intentional strategies for high-quality evidence-based prevention and early intervention services.”⁹ There are several steps the state should consider to develop this continuum of care. First, the state should utilize child assessments that provide a broad snapshot of child safety and well-being. Second, the state should analyze that data to help identify the most effective programs and practices for the needs of Nebraska’s children.¹⁰ Specifically, we believe the strategic plan should include a needs assessment and benchmarks or guidelines regarding the use and implementation of evidence-based practices as the state works to develop a continuum of services including prevention and treatment programs. Third, the state should consider broadly how to invest in the start-up and sustainability of the evidence-based programs. In particular, in order to shift funding toward more evidence-based prevention and treatment, the state should maximize funding from Title IV-E (by increasing the penetration rate and through the proposed demonstration project) and Medicaid (by covering all services as required under EPSDT¹¹) as well as better integration of TANF and other programs already serving families. This will likely require the investment of new funds, but can also be accomplished with some redirection and reinvestment of existing funding.¹²

Eliminate Medicaid cost shifting

Too many children enter the child welfare system not due to abuse or neglect, but in order to obtain a court order for mental or behavioral health services recommended by their doctor but denied by Medicaid. This causes further trauma to the child, unnecessarily breaks up the family, and costs the state more money. This could be addressed by eliminating overly restrictive Medicaid policies, such as exclusions based on diagnosis and for certain types of behavioral treatment. There is also a need for additional investment in behavioral health services to fill gaps in the service array. We

urge the Commission to recommend next steps on this fundamental issue following the cross-system Medicaid analysis.¹³

EXTEND SERVICES AND SUPPORT FOR OLDER YOUTH

Seize the opportunity under the Fostering Connections Act to extend voluntary services and support to youth up to age 21

The federal Fostering Connections Act allows states to draw down federal matching funds to extend services and support to age 21 for young people who age out of the foster care system and those who were adopted or entered a guardianship at age 16 or older, as long as they are enrolled in secondary or post-secondary education, are working or participating in a work activity, or are unable to do so due to a medical condition.¹⁴ These transition services can make the life-changing difference between a young person obtaining a college degree and a good job or becoming homeless and entering the adult public benefits system.¹⁵ In addition, research supports that this investment yields a two to one return.¹⁶ A broad group of stakeholders, including young people with experience in the foster care system, has been working together and providing input on the structure of a potential program in Nebraska.¹⁷ Taking the federal option to extend services and support to age 21 under the Fostering Connections Act should be a key part of the statewide strategic plan.

Effectively implement the new Medicaid provisions of the Affordable Care Act so former foster youth are able to access health care services to age 26

Starting in 2014, the Affordable Care Act (ACA) extends Medicaid coverage to former foster youth until they reach the age of 26, so long as the young person turned 18 while in foster care and was enrolled in Medicaid at that time.¹⁸ This allows these young people the same opportunity for coverage as many of their peers who are eligible to remain on their parents' insurance policy until the age of 26 under the ACA. Nebraska's effective implementation of this provision will help improve outcomes for young people in the transition from foster care to adulthood, and caseworkers should be amply trained on this new eligibility to ensure access for this population. In addition, creating a consumer focused health care exchange, which may be an entry point for former foster youth who seek health care at a later time, will be critical.

REDUCE RACIAL DISPARITIES IN THE CHILD WELFARE SYSTEM

Improve compliance with the Indian Child Welfare Act

In 1978, Congress enacted the Indian Child Welfare Act (ICWA) after recognizing that a disproportionate number of Native American children were being removed from their homes and placed in non-Native homes.¹⁹ Unfortunately, this continues to be an issue nationally and specifically in Nebraska where we have the second highest disproportionality of Native American children in foster care in the country.²⁰ Together with the Nebraska ICWA Coalition, Nebraska Appleseed suggests the following goals to improve ICWA compliance in Nebraska: increase the availability of relative and tribal foster care placements, improve the notice issued to tribes in ICWA cases so they can be involved, and clarify the definition of active efforts (i.e., the level of services required to be provided to prevent family breakup and rehabilitate the family).²¹ In addition, we believe the Children's Commission would benefit from an additional seat for a tribal representative.

Create a plan for improving cultural disparities in child welfare cases

Unfortunately, children of color are overrepresented among children in out-of-home care in Nebraska, despite national research showing that parents of color are no more likely than White parents to abuse or neglect their children.²² Nebraska's strategic plan should make addressing this issue a priority, including improving the identification and availability of culturally appropriate services and access to language resources.

MOVE FORWARD WITH A UNIFIED SYSTEM

We continue to believe that case management of child welfare services is a core government responsibility. While we have not yet seen the results of the system evaluation, we believe that, unless significant improvement in outcomes is shown, the state should move forward with a unified system. If a partially privatized system is continued, privatized and non-privatized areas of the state should receive proportional funding and should be held to similar standards.

For more information, please contact Sarah Helvey at shelvey@neappleseed.org or (402) 438-8853, ext. 106

ENDNOTES

¹ For more information, see Appleseed's Fact Sheet: "Policy options for prevention: Leveraging economic assistance programs to help families and prevent unnecessary child welfare placements," *available at* <http://neappleseed.org/wp-content/uploads/downloads/2012/09/Fact-Sheet-LR-529-Sept-2012.pdf>

² ADC is Nebraska's cash assistance program for low-income families with minor children.

³ Nebraska Department of Health and Human Services, "Income Standards and Payment Rates," 2011.

⁴ Foster Care Review Board, "The Nebraska Foster Care Review Board 2010 Annual Report," 2011.

⁵ Children's Rights, National Foster Parents Association and the University of Maryland School of Social Work, "Hitting the MARC: Establishing Minimum Adequate Rates for Children," 2007, *available at* http://www.childrensrights.org/wp-content/uploads/2008/06/hitting_the_marc_summary_october_2007.pdf; National Center for Children in Poverty, Mailman School of Public Health, Columbia University, "50 State Policy Wizard," *available at* <http://www.nccp.org/tools/policy>.

⁶ Temporary Assistance to Needy Families is the federal program, which provides time-limited cash assistance to low-income families with minor children and includes work requirements. The federal government provides grants to states and allows broad flexibility to carry out the TANF program. For example, the states determine the amount of assistance, the range of benefits, and eligibility.

⁷ 42 U.S.C. § 601(a).

⁸ *Amanda C. v. Case*, 275 Neb. 757 (2008) (recognizing that parents and children have a constitutionally protected right to companionship which protects the child's reciprocal right to be raised and nurtured by his or her biological parent absent a finding of unfitness).

⁹ Neb. Rev. Stat. § 43-4204(1)(b).

¹⁰ Effective program and practices can identified using evidence-based practice databases, see e.g., Blueprints database, hosted and maintained by the University of Colorado (expanded website will be open to the public in January 2013), *available at* <http://www.colorado.edu/cspv/blueprints/>

¹¹ EPSDT (Early Periodic Screening Diagnosis and Treatment), called Health Check in Nebraska, is a provision of the federal Medicaid Act and is a comprehensive benefits package available to all Medicaid-eligible children under the age of 21. EPSDT requires states to provide all children enrolled in Medicaid with periodic screenings for physical and mental health conditions, effective diagnosis of any conditions that need treatment, and any medically necessary treatments to address conditions identified in the screenings that fall within the scope of services provided under the Medicaid Act. EPSDT covers not just medical services to address physical conditions, but also medically necessary services and treatment to address mental and behavioral health conditions. See 42 U.S.C. 1396(d)a.

¹² See Barbara Hanson Langford and Margaret Flynn-Khan with Kelly English, Gerry Grimm, and Ken Taylor, Financing Structures and Strategies, October 2011 (regarding financing strategies to support evidence-based practice), *available at* <http://neappleseed.org/wp-content/uploads/downloads/2012/09/E2S-Financing-Paper.pdf>.

¹³ Neb. Rev. Stat. § 43-4205.

¹⁴ Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

¹⁵ Services for young adults who age out of foster care include Medicaid coverage, housing support, and young adult-directed case management services. Services for young adults who were adopted or guardianshiped would receive Medicaid coverage and continued adoption or guardianship subsidies.

¹⁶ Peters, C., Dworsky, A., Courtney, M. & Pollack, H., "The benefits and costs of extending foster care to age 21," 2009, Chicago: Chapin Hall at the University of Chicago, *available at* http://www.chapinhall.org/sites/default/files/BCA%20CH%20report_final_August_11.doc.pdf

¹⁷ Nebraska Appleseed, "Bridging the gap: Supporting youth in the transition from foster care to adulthood," 2012, *available at* <http://neappleseed.org/blog/7239>.

¹⁸ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §2703, 124 Stat. 119, 318-319 (2010).

¹⁹ 25 U.S.C. § 1901 *et seq.*; Neb. Rev. Stat. § 43-1501 *et seq.*

²⁰ Pew Charitable Trusts' Kids Are Waiting Campaign and the National Indian Child Welfare Association, "Time for Reform: A Matter of Justice for American Indian and Alaskan Native Children," 2007, *available at* http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/NICWARReport.pdf.

²¹ Nebraska ICWA Coalition recommendations to improve child welfare in Nebraska, *available at* <http://neappleseed.org/wp-content/uploads/downloads/2012/09/NE-ICWA-Coalition-Suggestions.pdf>

²² Kids Count in Nebraska 2011, Voices for Children in Nebraska, *available at* <http://voicesforchildren.com/kids-count/>.