



PRIVATIZATION OF CHILD PROTECTIVE SERVICES

March 2005

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The Legislature is considering whether “case management” by Child Protective Services (CPS) within the Department of Family and Protective Services (DFPS) should be “privatized,” meaning performed by private companies rather than by a public agency. Some oppose privatization on the principle that discretionary government functions such as deciding whether parental rights should be terminated ought to be performed by public employees. Others support privatization to bring market forces into public administration. Beyond these basic positions, however, are a host of practical questions and concerns. This policy brief analyzes privatizing case management. The brief recommends that before the state privatizes case management, it pilot the concept, perhaps seeking a federal Title IV-E waiver to use federal funds in a demonstration project.

OVERVIEW

What are the functions of the child protection system?

Child protection can be divided broadly into four functions: 1) investigations; 2) case management, which includes decision-making, coordination, and legal prosecution; 3) services to children and families; and 4) foster care and adoption services for children. It is easier to understand what privatization means by considering these functions in reverse order.

Foster care and adoption services:

In fiscal 2003, CPS contracted with private agencies to care for about 75 percent of the children in foster care, including residential treatment. CPS ran its own foster homes to care for the other 25 percent of the children. These CPS foster homes are much like foster homes run by private agencies. CPS also contracted with private agencies to provide adoption services, while maintaining CPS adoption units that also provided much the same service. Some are recommending that Texas no longer run such a “dual system,” and that it contract for all these services from the private sector. This policy brief does not discuss privately contracting for all foster and adoptive services, except to note that if the state chooses to do so, it needs to provide for an appropriate transition so that no child’s life is disrupted in the process of converting to a totally private system.

Services to children and families:

CPS also contracts with private agencies to provide services to children and families, for example, parenting classes. CPS does provide some services directly to children and families through public employees. Since CPS already contracts for much if not most of the services it provides to children and families, this policy brief does not discuss this issue, except to again note that there must be a period of transition if the state moves to a totally private system of service delivery.

Case management:

Case management is a term about which there is significant confusion. While private child-care agencies do have “case managers” overseeing the children in their care, these case managers do not perform or duplicate the case management done by CPS. In essence, private providers provide placement management. CPS provides case management, which includes placement decisions, treatment decisions, reunification decisions, and the legal court work leading to permanency for a child, including prosecuting a case for termination of parental rights. These case management functions are not currently performed by any private agencies, even when a CPS child is placed in their care.

Investigations:

The state is not considering privatizing investigations, and private agencies are not asking to take over investigations. This is very telling because case management has much more in common with investigations than it does with placement management. Investigators make complex decisions about families, including whether children should be removed to ensure their safety. Investigators prosecute cases in court. Likewise, CPS case managers are making complex decisions about families and prosecuting a legal case in court, often to terminate a parent’s rights.

How does case management work now?

After a CPS investigator conducts an investigation, CPS closes the case, works with the family informally, or takes the family to court. CPS takes the family to court 1) if it determines that a court order is needed to ensure that the family participates in services or 2) to remove a child from the home to ensure safety. If the case moves beyond the investigation stage, a CPS caseworker takes over from the CPS investigator. This caseworker refers the family to free community services or to CPS contract services. The caseworker monitors progress and makes decisions about the case. If CPS takes a case to court, this caseworker makes recommendations to the court pursuant to state policy.

What does it mean to privatize case management?

The Texas Health and Human Services Commission (HHSC) recommends that the state outsource some, but not all, case management services to the private sector. When CPS determines that it will work with the family without removing the child (whether it does so informally or through a court order), HHSC recommends that CPS retain this work. Once a judge places a child in the legal conservatorship (custody) of the state, however, HHSC proposes that the state contract with a private entity to serve as an “independent administrator” (IA) to provide case management, including taking over the legal case, providing services to the family, and caring for the child. The IA would operate under a “performance-based contract,” meaning that the contract would have certain performance standards such as X percentage of percent of children reunited with their families within Y days.

An independent administrator would function just like CPS. The IA would contract with a subcontractor or several subcontractors to 1) place the child in a home; 2) provide services to the child; and 3) provide services to the family. The independent administrator would make decisions regarding the future of the child, including whether to recommend to the court that the child be adopted or placed with relatives or returned to a parent. The IA would have caseworkers (like CPS caseworkers) who used contracts (like CPS caseworkers use contracts) to obtain services from other private providers. Those private providers would also have “case managers” who oversee whatever it is that the private provider is to do, for example, placement services or family services. The IA would not be allowed to provide services because of the conflict of interest between making decisions and making money from those decisions.

What is the difference between an “independent administrator” and a “lead agency”?

The essential difference between an independent administrator and a lead agency is that a lead agency has both the case management function and also provides services, using subcontracts to provide those services the lead agency does not offer. Not only does this create a conflict of interest between making decisions and making money, but it also means that the case manager does not exercise independent judgment, but instead operates from the perspective of a service provider. For example, if the lead agency also provides foster care, one can anticipate that the lead agency might prefer foster placement over kinship care either philosophically or because it is how the agency makes its money. Some private providers prefer a lead agency.

Didn't we try performance-based privatization in the PACE Project?

September 1, 1998, the state began Project PACE, or Permanency Achieved through Coordinated Efforts, in Tarrant County, as a pilot project for performance-based contracting for residential services to abused and neglected children in the state's conservatorship. While there are divergent opinions about why this project failed, everyone agrees that it was not successful. The pilot used a lead agency. HHSC now advocates using an independent administrator because of the problems that arose using the lead agency model in PACE.

ANALYSIS

What advantages do proponents claim for privatization of case management?

HHSC claims privatization of case management will:

- Reduce duplication of public and private efforts;
- Eliminate multiple case managers;
- Increase community involvement;
- Increase availability of services in underserved areas;
- Improve the ability to link families with the most cost-effective services;
- Increase accountability; and
- Allow CPS to focus on its “primary” mission;

This brief will consider each of these claims, but before doing so, the brief addresses two bottom-line issues—quality and cost.

Does privatization of case management improve the quality of services in child protection?

The short answer: Not necessarily. The quality of services in child protection has little, if anything, to do with how case management is organized. To begin with, the children and families that come into the system have difficult problems. Our state makes little help available. For example, the state has limited mental health care and substance abuse treatment. Nothing about privatization fixes this problem. The state does not have an adequate number of foster homes or adoptive homes. Nothing about privatization fixes this problem. In those states that have privatized, private agencies struggle with the same issues that public agencies do such as obtaining adequate services, reducing caseloads, and reducing turnover. More money would increase the availability of services whether spent through the public or private sector, but merely hiring a middle man to manage services does neither.

Does privatization reduce costs?

The short answer: No. HHSC has been clear that no cost savings are anticipated. Indeed, costs might increase since instead of two layers of administration (state and contractors/subcontractors), privatization has three (state, independent administrator, contractors/subcontractors). Even with privatization, the state must both 1) maintain oversight of each case and 2) monitor contract performance and outcomes. Across the country, in those states that have privatized, public sector administrative costs continue to grow for this very reason. Indeed, part of the HHSC reform package is an increase in state staff to oversee private contracts.

How would the state pay a private case manager?

How HHSC proposes to pay a private case manager is unclear, but HHSC wants to move from daily rates for care and fixed fees for services to some model that has performance standards and shifts part of the financial risk to the private provider. Under privatization of case management, the state would define performance standards that private providers had to meet. Presumably, if they failed to meet the standards, they would suffer some financial penalty. The state would also shift some risks to the private provider, such as: 1) that more children come into care than projected; 2) that the costs of service exceed projections; 3) that children and families need more expensive services than projected; and 4) that children and families need services for longer than projected.

Across the country, plans include capitation, capped allocations, and case rates.

Capitation pays a fixed rate for each child in a general population, for example, Harris County. The financial risk is shifted from the state to the service provider. For example, if more children were removed from their homes than forecasted, the service provider might lose money.

Capped allocation also pays a fixed rate per child for each child, but instead of for a general service population for a more limited population, for example, all children removed from their homes by CPS in Harris County that come into the state conservatorship. The financial risk is still shifted from the state to the service provider.

Case rates pay per child but regardless of the services offered. This too shifts the risk to the service provider. For example, if a drug-abuse epidemic hit a community, resulting in drug-exposed babies with very high medical needs, the provider would have to meet those needs on a case rate set before the epidemic.

How does payment methodology affect services to children and families?

Regardless of how rates are structured, if they are too low, children and families won't get the help they need. If rates are structured wrong, incentives or disincentives can negatively affect services. For example, children may be "pushed through the system" to minimize costs or avoid penalties. This could result in a child being returned home, and subsequently killed by an abusive parent, because of how a state contract allocates financial risk.

Can't we count on nonprofit providers to do the right thing?

To begin with, it isn't clear that providers will be nonprofits. HHSC wants the option to contract with for-profit companies because for-profits may have better access to sufficient capital to undertake such a massive project. Moreover, nonprofits are not immune from financial or program abuses, as the state has learned through charter schools.

But doesn't privatization harness market forces?

There is no competitive market for child protection case management. Indeed, if the state were to privatize case management, it would be buying a service that no provider in Texas currently sells. The state would have to recruit companies into the business. These companies would have significant financial barriers to entering the market. They have no staff whatsoever trained for case management. They would not have the physical facilities to house the staff or see the clients. Start-up costs would be significant. The few sellers able to respond to a contract offer will in essence have monopoly power.

But doesn't privatization reduce duplication?

Discussion of privatization has gone forward under a significant misunderstanding. Right now, private providers do not manage the CPS case or the CPS litigation. Private providers merely provide contract services and contract care. They have staff trained to manage the service they provide, but they do not have staff trained or experienced in managing the CPS case or the CPS litigation. Managing services and care is a different function from managing decisions about families and litigation.

But doesn't privatization allow providers to work with families instead of just children?

This too is a much misunderstood area. Having a public case manager is not a barrier to having service providers work with the whole family. CPS can structure its contracts right now to allow for a provider to work with the whole family. Conversely, having a private case manager does not mean that service providers will necessarily get to work with the whole family. The IA caseworker will be no different whatsoever from a CPS caseworker: The IA will not be delivering services, but will rather be contracting with other entities for services. So the IA, exactly like a CPS caseworker, might have one company providing foster care to children, another providing counseling to parents, another providing homemaking classes, etc.

Does privatization enhance community involvement?

Texas has significant community involvement in responding to child abuse. Texas counties contribute financially, and Texas Child Welfare Boards and Texas Community Partners provide additional resources and volunteer hours. Moving to privatization of case management might actually reduce community involvement if counties and others do not wish to partner with a private company with whom they may have less opportunity to collaborate, particularly a for-profit company.

Does privatization increase accountability?

HHSC suggests that competitive contract procurement rather than open contract enrollment may increase accountability, but HHSC can use competitive contract procurement right now without privatizing case management. In fact, privatization may actually decrease accountability if the state does not provide individual case oversight or adequately monitor contracts and subcontracts.

Don't private contractors have more authority to get things done?

One of the oddest claims about privatization is that private contractors will have more authority than CPS has now. Private contractors will merely stand in the shoes of CPS with no more or less authority. A state district judge supervises a child abuse or neglect case. CPS is a party, the parents are parties, the child has a

lawyer and a guardian, and they all make recommendations to the judge, who makes decisions. Nothing about being a private contractor frees one from the travails of litigation.

Do we want a private contractor representing the State of Texas in court?

Do we want private contractors managing public litigation, making decisions about whether the state will recommend that parental rights be terminated, and standing before a judge or jury and speaking for the State of Texas? If a private contractor is the case manager, there is no way around the private contractor taking the lead in the litigation if only because the private contractor rather than the state will have the only firsthand knowledge regarding the child and family.

Does privatization of case management free CPS to focus on its primary mission?

HHSC claims that privatization would allow the state to focus on its primary mission of investigations. The primary mission of the state, however, has never been confined to investigations, but has always included ensuring safety and permanency for children.

Can HHSC and DFPS implement privatization?

HHSC is under serious managerial stress from so much change so fast in the reorganization of health and human services. DFPS is also under serious managerial stress from the many investigations of this past year. Additionally, DFPS has new leadership that will be hard pressed to make all the changes in investigations that the Legislature is mandating. Asking HHSC and DFPS to privatize case management on top of everything else is to solicit failure. All by itself, so much change in so short a time argues for a pilot of privatization rather than a full roll out.

How would a pilot work and how is it different from a “roll out”?

In a pilot, HHSC would take one or more counties and contract with a private company under the independent administrator model to provide all necessary services to children in the state’s conservatorship within the pilot area. HHSC would then lay off all public staff previously performing those functions in the pilot area. HHSC would fund the pilot from the funds it would have spent anyway on services plus the money it would otherwise have spent on public staff and support. After a period of time, twelve to twenty-four months, HHSC would evaluate outcomes and costs by comparing performance in the pilot area with private case management to comparable counties in the rest of the state using public case management.

A “roll out” with ongoing evaluations is not the same as a pilot. In a roll out, a decision to privatize has been made and can only be reversed by legislative action. In a pilot, a decision to conduct a study to determine whether privatization is advantageous has been made, and after the results, an informed legislative decision about going forward is made. It is the difference between saying “let’s study this and see if it works” and “let’s do this, reserving the right to change our mind if it is a disaster.”

This is a significant difference. For one thing, a pilot has the advantage of not sending a discouraging and inaccurate message to the state’s CPS workforce. If a decision is made to privatize without a pilot, the state may demoralize its workforce as well as send it scattering for new jobs in other endeavors. Certainly we should not inadvertently dismantle our public system before we know if it is possible to create a private system that does better. Through a pilot, the Legislature can systematically test the strengths of the public system and a private system and make an informed decision.

Don't we just need to mandate privatization for it to work?

As discussion of privatization has proceeded two views have emerged. On the one hand, some argue that a pilot is the only prudent way to proceed. On the other hand, some argue that privatization will never work unless it is just “mandated.” Their argument goes that without a mandate the “bureaucracy” will sabotage change. This line of reasoning ignores that health and human services were restructured in 2003, and it is now HHSC that would oversee any project. Moreover, in a properly designed pilot, an entire county would be privatized and independently evaluated. But most important, the experience in other states is that the likelihood of success is directly related to the extent that the public sector, private sector, legal system, and community as a whole have a shared vision for how privatization might make things better for children. While those involved in the privatization debate may feel it has been much studied, in fact, huge questions are unanswered and there is much concern. Instead of ensuring success, “mandating” privatization and ignoring the concerns of key stakeholders will undermine its success.

Could we get federal funding for a pilot through Title IV-E waiver?

As part of the Social Security Act, Congress created the Title IV-E child welfare waiver program in 1994. The program allows states to test promising service delivery models to improve child and family outcomes. Under a Title IV-E waiver, a state can use categorical IV-E dollars in flexible ways to experiment on new approaches to service delivery. Through rigorous evaluations, waiver demonstrations improve the child protection system. While the authorization for waivers is soon to expire, Congress may extend it. If so, a Texas privatization pilot would be ideal for a IV-E waiver demonstration project.

Conclusion

While advocates across the state are frustrated with CPS, day in and day out, CPS does much good work for children and families. Many of the problems CPS does have are directly related to a lack of resources, a problem privatization won't solve. We also need to keep in mind that we have 25,000 children in the legal custody of the state. It is these children who will suffer if an imprudent decision is made. When it comes to the care of children, Texas should proceed cautiously.

References

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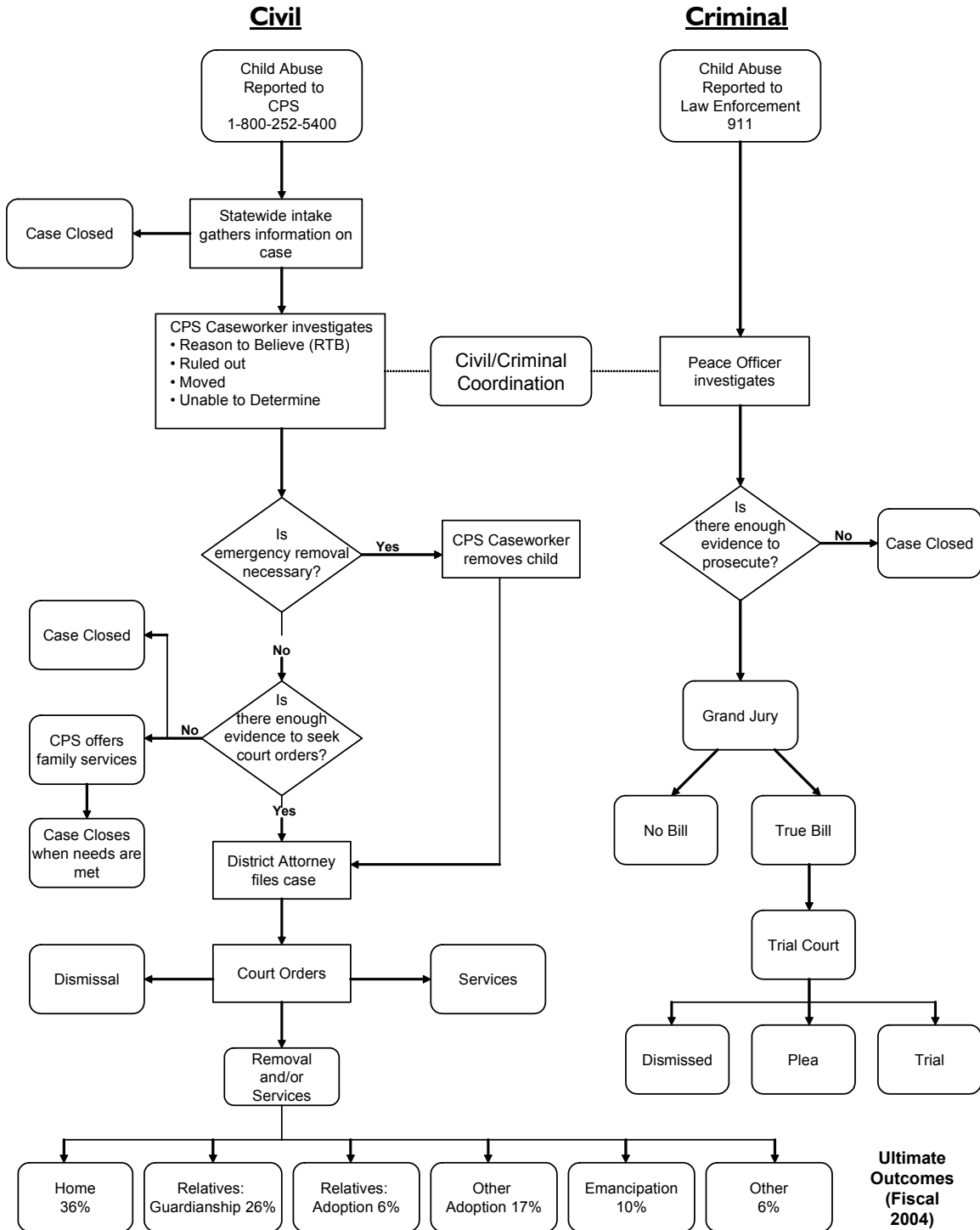
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This policy brief is underwritten in part by a grant from *Fostering Results*, a national, nonpartisan project to raise awareness of issues facing children in foster care at the Family Research Center at the School of Social Work of the University of Illinois at Urbana-Champaign. To learn more, go to www.fosteringresults.org. The opinions expressed in this policy brief are those of the Center for Public Policy Priorities and do not necessarily reflect the views of *Fostering Results*.

The Texas Child Protection System



NOTE: “Ultimate Outcomes” are based on DFPS data and shown only for children for whom DFPS had legal responsibility.

Prepared by the Center for Public Policy Priorities 2005