

RELINQUISHING CUSTODY TO OBTAIN NECESSARY TREATMENT

ISSUE: Requiring parents to relinquish custody in order to obtain essential mental health services and supports for their children wastes public funds, and destroys families.

BACKGROUND: Parents who are responsibly trying to raise children who have mental, emotional, or behavioral disorders search for appropriate and effective treatments, services, and supports to help their child. Sometimes, this search forces parents who have exhausted all their own financial resources, including health insurance benefits, and are not eligible for Medicaid, to transfer custody of their children to state authorities in order to access public funds to pay for necessary mental health care, services and supports. This issue has been eloquently documented by Lee Gutkind in his book *Stuck In Time* which chronicles the lives of three Pennsylvania youths with serious emotional disturbances. Current state policies on the issue have been further documented by a study completed by the Bazelon Center for Mental Health Law in 1999.

This practice is the consequence of several factors. Inadequate funding of mental health services and support for children and their families is a major reason families turn to the child welfare system for help. Lack of incentives to develop effective community-based systems of care to help families keep their children with emotional, behavioral, or mental disorders at home, in school, safe, and out of trouble also contributes to the problem. Insufficient mental health benefits in private and public insurance plans cause families to exhaust benefits before the mental health needs of their child are fully addressed. This is especially true when the child's condition is chronic and intensive intervention is periodically required.

These practices:

- lead children to believe they have been abandoned by their family into the care of the state thus irreparably harming the bond between the child and family;
- force parents to make an otherwise unthinkable choice between retaining responsibility for and a relationship with their children and giving over decision making authority and control to a state agency in order to obtain the help their child desperately needs;
- waste public funds by keeping children as wards of the state when their

basic needs could otherwise be provided by families who love them;
and

- force children into expensive residential placements rather than supporting families and promoting the development of less costly community-based services.

**FFCMH
POSITION:**

The practice of requiring parents, who have exhausted all other resources, to relinquish custody in order to obtain essential mental health services for their children must cease.

Children who need intensive mental health services must not be deprived of their right to be connected to their family. Their parents, siblings, and extended family are the only consistent and unconditional, lifelong source of emotional support for children with significant mental health problems.

In addition to choosing a temporary out-of-home placement when needed to stabilize or resolve a crisis, families must have ongoing access to a wide range of assistance, including home- and community-based services and supports, culturally relevant spiritual healing, as well as traditional clinical mental health treatments and appropriate special education services necessary for a child to remain in their neighborhood and live with the family that will love and care for them as no one else ever will.

**ACTION
REQUIRED:**

Congress needs to enact legislation insuring that:

- States can not require parents to transfer legal custody of a child with a mental health problem for the sole purpose of obtaining necessary treatment, services, or out-of-home placements or to enable the child to become eligible for Medicaid.
- States are allowed and encouraged to use federal funds to pay for home-based and community-based services for children and their families to prevent or forestall temporary out-of-home placement when appropriate; and
- States are required to develop community-based services to help families raise children who have mental, emotional, or behavioral disorders.

Suggested specific federal statutory changes are attached.

Proposed Amendments to Federal Statutes to Address the Issue of Relinquishment of Custody by Families of Children with Emotional, Behavioral, or Mental Disorders

The following package of federal legislative changes is designed to address the problems created for families, children, and public agencies when parents are forced to give up custody of their child in order to obtain essential mental health services and supports. In addition to prohibiting this practice, this set of legislative proposals addresses the underlying problems of limited availability and access to appropriate mental health services and supports for children and their families in the communities where they live; insufficient funding for children's mental health overall; and inadequate mental health benefits in public and private insurance plans. There are four areas of federal law where change is necessary.

Child Welfare Law

1. Amend Title IV-B of the Social Security Act, State Plans for Child Welfare Services, to require state policies that specifically prohibit requiring families to relinquish custody of their child solely for the purpose of accessing residential treatment services for a child with an emotional, behavioral, or mental disorder.
2. Amend Title IV-B of the Social Security Act, to require state family preservation programs to include children with emotional, behavioral, or mental disorders when describing "at risk" families and to provide necessary mental health services and supports necessary to strengthen these families and insure the health and safety of their children.
3. Amend the Adoption and Safe Families Act, 42 USC Sec. 675(5)(c) to require that a court or administrative body conducting a permanency hearing must consider whether a child has been placed in the physical custody of the state primarily for treatment of a physical or mental condition. If such a determination is made, then plans must be made and implemented to restore physical custody to the child's parents and to provide necessary mental health services and support for the child, the child's family, and, if relevant, the family with whom the child is currently living.
4. Amend the Adoption and Safe Families Act, 43 USC Sec. 675(5)(E)(ii) to require that when determining if there is a compelling reason not to file a petition for termination of parent rights, states must consider whether a child has been placed in the physical custody of the state primarily for treatment of a physical or mental condition. If such a determination is made, then plans must be made and implemented to restore physical custody to the child's parents, if appropriate, and to provide necessary mental health services and support for the child, the child's family, and, if relevant, the family with whom the child is currently living.

Medicaid Law

1. Amend Title XIX of the Social Security Act to require states choosing the home and community-based services option under Section 1902(e)(3) to develop eligibility criteria for children with emotional, behavioral, or mental disorders and conduct outreach to families so they know what services are available and how to obtain them whether their child is eligible for

Medicaid under this provision.

2. Require the Health Care Financing Administration to make an unduplicated count of the number of children with emotional, behavioral, or mental disorders in each state who participate in Medicaid under Section 1902(e)(3) and annually report this data to Congress.
3. Amend Title XIX of the Social Security Act to create a \$100 million discretionary fund to assist states choosing the home and community-based services waiver under Section 1915(c) in covering the start up costs for expanding the array of home and community-based mental health services and support for children with emotional, behavioral, or mental disorders and their families.
4. Amend Title XIX of the Social Security Act to require the Health Care Financing Administration to offer technical assistance to states encouraging the use of Section 1915(c) waivers to provide services for children with emotional, behavioral, or mental disorders.

Child Health Insurance Program

1. Amend Title XXI of the Social Security Act Section 2103(a)(2) to require parity between mental and physical health (medical/surgical) benefits of the State Children's Health Insurance Programs.
2. Amend Title XXI of the Social Security Act to authorize families with incomes above the cut-off to buy into the State Children's Health Insurance Program (CHIP) on a sliding scale if their child: a) has a serious emotional disturbance with low-level functioning as defined by the Center for Mental Health Services; and either b) has no insurance; or c) is underinsured for community mental health services (i.e., has exhausted a limited outpatient mental health benefit).

Other Laws

1. Amend Title XIX of the Public Health Service Act Section 1913, to restore the requirement that states spend one third or more of their federal mental health block grant on children's services.
2. Require states to describe in their plans for using mental health block grant funds how they will ensure that all children in the state who have emotional, behavioral, or mental disorders and their families will be able to access appropriate services and supports.
3. Require the Department of Education and states to strictly enforce the Individuals with Disabilities Education Act to insure all children with emotional, behavioral, or mental disorders who are eligible for special education receive functional behavioral assessments, positive behavioral supports, access to the general curriculum with supplementary aids and services, assistive technology, special education, counseling and other necessary related services as appropriate.