

# **PRESERVING CONGREGATE CARE FOR AT-RISK YOUTH**

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Government officials and politicians often come together to promote genuine child welfare improvements in the name of saving taxpayer dollars. It can be an effective marketing strategy for generating public support for measures that otherwise might not see the light of day.

But the strategy often seeks to achieve meaningful reform at the expense of the lives of vulnerable populations. Two federal legislative initiatives exemplify the dangers of this approach:

- The Health Maintenance Organization Act of 1973 (P.L. 93-222); and
- The Family First Prevention Services Act (H.R. 5456), which is being debated in Congress.

The Health Maintenance Organization Act, which spurred the growth of Managed Care (aka Managed Health Care) in the United States, provided federal grants and loans to encourage the creation and expansion of Health Maintenance Organizations (HMOs). The primary goal was to reduce the cost of providing health benefits and to improve the quality of care.

The HMOs were created to reduce unnecessary health care costs through various mechanisms, including: economic incentives for physicians and patients to select less costly forms of care; programs for reviewing the medical necessity of specific services; increased beneficiary cost sharing; controls on inpatient admissions and lengths of stay; establishment of cost-sharing incentives for outpatient surgery; and selective contracting with health care providers.

Managed Care has been widely credited with reducing medical cost inflation, reducing unnecessary hospital stays, compelling providers to discount their rates and encouraging the health care industry to become more competitive and efficient. Yet, critics have questioned its overall impact on the *quality* of U.S. health care delivery, arguing it was benefiting for-profit companies that were more interested in saving money than in providing quality health care. In fact, they have expressed doubts about whether the low cost savings resulting from shorter hospital stays produced any real benefits for patients receiving sub-par health care.

The Family First Preventive Services Act appears to be on the same path taken by managed care proponents. It has passed the House of Representatives and is pending Senate approval.

The bill seeks to bolster federal investments designed to prevent children from entering foster care and to reduce the number and length of stays of youth placed in congregate care settings,

including various types of group homes and residential treatment facilities. In effect, it seeks to decrease or eliminate the use of non-therapeutic congregate care settings.

Specifically, the bill establishes a new definition of “qualified residential treatment program” with much higher program requirements. The new definition embraces a strict medical model. In fact, the bill would deny eligibility for federal funds for all other programs classified as congregate care, including group homes, for any placement lasting longer than two weeks.

In an article in *The Chronicle of Social Change* dated June 22, 2016, Sean Hughes put it this way:

“Unfortunately, the new definition is extremely limited and promotes a strict medical model. Meanwhile, all other programs classified as congregate care would, beginning in 2019, be ineligible for federal funding for any placement lasting longer than two weeks. This includes a number of programs that have been developed to serve unique populations and needs, such as group homes that serve youth with behavioral challenges that cannot be safely addressed in a foster home, and youth who are involved with the juvenile justice system for whom group homes are less restrictive than alternatives like locked detention centers.

“These programs would no longer be eligible for federal funds under H.R. 5456. There are just two exceptions written into the bill: programs designed to support pregnant and parenting teens, and independent living programs for youth age 18 and older.”

In other words, the bill’s rigid restrictions on so-called non-intensive treatment group homes would decrease the options available for treating youth whose problems are too serious to be addressed in their own home, a relative’s home or a family foster home but not serious enough to require placement in a more restrictive residential treatment facility.

Further, the bill would end federal reimbursement to states when they “inappropriately” place children in non-family, out-of-home settings. To be eligible for federal payment, the state would have to assess the child’s needs and determine the non-family placement was the most appropriate setting, subject to continuing judicial oversight and approval.

Worst of all, the bill’s sponsors take a page from the Health Maintenance Organization Act by assuming the cost of prevention services to strengthen families would be more than offset by reducing inappropriate group home and residential facility placements. This revenue-neutral funding approach jeopardizes the continued existence of congregate care treatment programs.

While the bill’s preventive services components have gained widespread support from child welfare officials and child advocates, some states and consumer groups have challenged the provisions impacting children living in congregate care settings. The states of California, New York and North Carolina and the New York Public Welfare Association oppose the provisions.

Sheila Harrigan, Executive Director, New York Public Welfare Association, expressed her opinion in a letter to Senate leaders:

“We appreciate the fiscal support brought forward for Preventive Services, but ... this new federal legislation dramatically limits Title IV-E congregate care funding – going so far as

eliminating federal dollars after 21 days unless the program serving a child meets highly restrictive federal standards. The bill also requires increased assessment responsibilities which would lead to the loss of IV-E dollars if rigid time frames are not met.”

In essence, the Family First initiative threatens to eliminate a vital component of the youth services continuum of care: community-based congregate care settings for youth who require the services offered in most group homes. Their needs cannot be appropriately met in a family-based setting. They require far more than can be provided by a stable, loving foster family.

Consider some examples of youths served in a facility that I administered from 2001-03:

- One boy had been physically and sexually assaulted by his father since he was 7 years old. His mother, who failed to report the father’s transgressions, compounded the problem by dressing her son in girl’s clothing. By the time he reached the facility, this teenager was convinced he was a girl. His gender confusion was caused and abetted by his abusive parents. He identified as a girl, insisted he had a vagina and called himself Nicole or Kimberly. The facility’s staff of psychiatrists, psychologists and other therapists provided intensive services that helped this boy improve to a higher functional level.
- Another youth had failed in no fewer than 12 foster homes and, as a result, attended nine different public schools. His emotional and mental health issues had not been addressed. He was socially promoted and by the age of 15, could not read or write above a rudimentary level. Upon entering the facility, he’d regularly disrupt activities in school out of fear of being called upon to recite in front of his classmates. Through individualized tutoring, special education and intensive social and therapeutic services, he improved his literacy and social skills and regained his confidence and self-esteem.
- A boy with a history of fire-setting was rejected for placement in foster homes, group homes and private residential treatment facilities. He was a severely troubled youth with a long history of major mental health problems and was finally placed in a residential treatment facility. One day, he slipped away from group activities, returned to his room and set fire to the bed and bedding. When the fire alarm and sprinkler system was activated, staff rushed to the boy’s living unit. They found him lying in a fetal position in a corner of the fire- and smoke-filled room, pleading: “Just let me die.”

Can you imagine any of these teenagers receiving safe, secure and appropriate services in their own home, a kinship care home or a regular foster home? The youths in the above examples needed intensive treatment in a residential facility in the hope of stepping down over time to a group home or other congregate care setting before ultimately, returning home to their families as they transition to young adulthood.

The Family First approach properly aims to promote policy changes and funding incentives to prevent children from being inappropriately placed in out-of-home settings. But it seeks to do so by cutting funds from congregate care settings, thereby placing their very existence at risk.

Three California agencies have raised serious objections to H.R. 5456: The Department of Social Services, the California State Association of Counties and the Child Welfare Directors Association (CWDA). In an article in *The Chronicle of Social Change* dated June 22, 2016, John Kelly examined the reasons why they oppose certain provisions of the bill:

“DSS Director Will Lightbourne ... cited three specific populations that ... would no longer get federal support: commercially exploited youth, juvenile sex offenders, and kids who are affiliated with or impacted by gangs.

“CWDA took particular exception to limiting group settings available to juvenile offenders in general, who many foster parents will not take and for whom congregate care can represent a less-severe alternative to incarceration or a step-down from such a setting. From the association’s letter: *‘CWDA questions why states would be required to certify that they will not implement policies that will result in a “significant increase” in juvenile justice placements. If there is a federal policy interest in this matter, it would appear to be one in which states should align their policies with this federal act and make efforts to reduce the juvenile justice population.’*

“Prohibitions, CWDA argues, are “likely to increase placement into these less-desired, more-restrictive settings.”

By pursuing a budget neutrality approach, the bill sets up a competition by seeking to fund laudable prevention goals at the expense of congregate care programs. It decreases funds for services to youth in such settings in order to increase investment in prevention care. This amounts to robbing Peter to pay Paul – and I’m not referring to the Apostles.

There’s no logic to such an approach. It is far more costly in the long run and unnecessarily delays or denies the provision of appropriate treatment services to which at-risk youth are entitled. It also leaves state child welfare agencies with few, if any, options for accommodating the needs of youth with mental health, emotional and behavioral problems.

To be effective, the continuum of care requires the full spectrum of options to serve at-risk youths – ranging from least intensive (child’s own home, kinship care home) to most restrictive (intensive residential treatment facility), with all of the alternatives in between (shelters, group homes, etc.). Instead of reducing congregate care funding, the federal government should increase funding and financial incentives for programs serving youths in *all* out-of-home settings – not just foster homes.

Limiting both the placement and funding options means a large percentage of at-risk youth will be denied the level of care, safety and treatment they need to survive and thrive. The tragedy is such youths will be forced into home-based modes of care that are ill-equipped and unprepared to handle them, resulting in one disrupted placement after another.

Sean Hughes added:

“Furthermore, the bill does nothing to develop alternative placements for the youth who are generally placed in congregate care. These foster youth tend to be older and are far more likely

to have mental or behavioral health challenges than their peers in family-based foster care. Simply shutting down current group home programs without providing a suitable alternative sets these young people up for further placement disruptions, and increases the risk that they will run away or become involved in the juvenile justice system.”

Efforts to restrict the placement of youths in out-of-home placements also tend to overlook one compelling statistic: the vast majority of youth in the child welfare system are cared for in home-based settings. The 2016 edition of *New Jersey Kids Count*, compiled by the nonprofit Advocates for Children of New Jersey, reported that 86 percent of the 48,667 children under supervision of the NJ Department of Children and Families (DCF) were living and receiving services in their own homes in 2015. Only 14 per cent (6,995) were in out-of-home placement.

Further, a report issued on May 13, 2015 by the US Department of Health and Human Services noted: “There has been a significant decrease in the percentage of children placed in congregate care settings in the past decade, and this reduction is at a greater rate than the overall foster care population. *According to the most recent data available, children spend an average of 8 months in congregate care.*”

The report, entitled *A National Look at the Use of Congregate Care in Child Welfare*, acknowledged “... there is an appropriate role for congregate care placements in the continuum of foster care settings, ... Stays in congregate care should be based on the specialized behavioral and mental health needs or clinical disabilities of children. It should be used only for as long as is needed to stabilize the child or youth so they can return to a family-like setting.”

So, what would happen if the states and private youth service providers were compelled to remove youths from congregate care settings, including group homes and residential facilities under highly restrictive time lines and conditions? In my view, the results would be disastrous:

- Group homes required by law to discharge youths within 12-21 days of admittance would become nothing more than children’s shelters with rapidly revolving doors.
- Congregate care program providers would lack sufficient funds to provide treatment services for at-risk youth and many group homes would fail or opt out of the system.
- The safety and security of thousands of disturbed youths would be jeopardized.
- Many at-risk youth would be forced into less restrictive, home-based modes of care that are ill-equipped to handle them, causing multiple placement disruptions.
- The incidence of youth homelessness and juvenile justice involvement would dramatically increase.
- The Family Courts would be hard-pressed to help troubled youths because appropriate congregate care options would be limited or non-existent.
- Law suits would probably be filed by children’s rights, legal services and child advocacy agencies in defense of the rights of youths whose needs were not being fully met in home-based settings.
- The affected youths would be denied the treatment to which they are entitled.

In short, the child welfare system would be turned on its head. The law would remove a vital, sturdy rung in the ladder of successful youth treatment programs.

In New Jersey, youth placed in out-of-home settings are entitled to protections afforded by the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-1), enacted in 1991. It guarantees children in congregate care facilities no fewer than 16 specific rights.

The law provides a safety net aimed at avoiding unnecessary placements and avoiding long lengths of stay. But it does *not* eliminate the youth's right to the least restrictive, most appropriate mode of care.

In fact, it protects youths' rights to "placement outside his home only after the applicable department has made every reasonable effort ... to enable the child to remain in his home" or "to place the child with a relative" or "in an appropriate setting in his own community." Yet, it also grants youths the right to "services of a high quality that are designed to maintain and advance the child's mental and physical well-being."

#### **ISSUES FOR YOUTH SYMPOSIUM ATTENDEES TO CONSIDER:**

1. Should state child welfare agencies and private nonprofit service providers seek to amend the Family First Prevention Services Act to retain congregate care programs serving at-risk youth as a vital component of the children's continuum of care?
2. Should state child welfare agencies and private nonprofit service providers seek to amend the Family First Prevention Services Act to ensure that adequate funding is provided so congregate care programs can continue to provide such services?
3. Should Community Access Unlimited lead a grass-roots effort involving nonprofit service providers, parent groups and child advocates to urge Congress to preserve congregate care services and funding for at-risk youth and to increase funding for group homes?

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