Joint Legislative Audit and Review Commission

Custody Relinquishment and the Comprehensive Services Act

Joint Commission on Health Care
Behavioral Health Care Subcommittee

June 13, 2007

CSA Follow-Up Report

- Requested by Joint Legislative Subcommittee Studying the Comprehensive Services Act (Senator Hanger)
- Estimated fiscal impact of Attorney General (AG) opinion
- Review of fiscal impact of AG opinion revealed State policy as additional root cause of custody relinquishment
- Conducted fiscal impact analysis of repealing State policy

AG Opinion Finds Custody Relinquishment Unnecessary to Obtain Mandated Services

- Eligible children whose parents contemplate custody relinquishment are eligible for mandated funding
  - Custody relinquishment runs counter to CSA's goal of keeping families together
  - Foster Care Prevention funding exists for children at risk of foster care placement
  - Court determination is not necessary to find a child "in need of services"
- Despite statutory provisions, custody relinquishment thought to occur due to variation in local implementation

JLARC Review Confirmed That Some Localities Interpret CSA Law Narrowly

- 20% of localities reported not using Foster Care Prevention funding to serve eligible children
- 225 children could begin accessing services with Foster Care Prevention funding in these localities, costing $1.5M annually
- Only 2 localities require court determination to serve eligible children in need of services
- Most localities provide these children with services, within constraints of State policy

JLARC Review Identified State Policy as Key Contributor to Custody Relinquishment

- For at least 5 years, State policy precluded use of Foster Care Prevention funding for
  - Residential care
  - Community-based services > 6 months
- In every Virginia locality, children who needed these services could receive mandated funding only if placed in foster care
- Non-custodial agreement can be alternative to custody relinquishment
  - Unavailable or limited in 56% of localities
  - Considered foster care and subject to foster care requirements

State Foster Care Prevention Policy Lacked Legal Basis and Was Inconsistent With VA Law

- *Code of Virginia* expressly states that eligible children at risk of foster care placement can receive full range of services without restrictions or exceptions
  - No differentiation between nature and duration of services available to children in foster care and those at risk of placement
- CSA goals emphasize keeping families together and providing appropriate services

State Policy Repealed March 2007

- Prompt action taken to repeal policy upon JLARC report publication
- New policy requires localities to:
  - Provide eligible children at risk of foster care placement with access to full array of services, including residential
  - Determine duration of services based on needs and not limit to 6 months
  - Enter into agreements with parents whose children are placed in residential facility

Estimated Fiscal Impact of Change in State Policy

- Localities impacted primarily if previously did not offer or limited use of noncustodial agreements
  - Used multivariate regression to predict additional children served based on experience in localities that already served all eligible children
- 753 additional children may be served under new policy at average annual cost of $28K per child
- Total estimated annual fiscal impact: $21.2 million
  - State share: $13.4 million (63%)
  - Local share: $7.8 million (37%)

Implementation Considerations

- Proper implementation hinges upon clear definitions of key terms
  - Ambiguity around definition of "at risk of foster care placement" and "in need of services"
- Gaps in availability of community-based services will compound fiscal impact of repealed State policy and undermine ability to serve in least restrictive setting