

Child Welfare Privatization Initiatives—

Assessing Their Implications for the Child Welfare Field and for Federal
Child Welfare Programs

Topical Paper #1

Assessing Site Readiness:

Considerations about Transitioning to a Privatized Child Welfare System

September 2007



**U.S. Department of Health and Human Services
Office of the Assistant Secretary for Planning and Evaluation**

Acknowledgements

This project builds on the resources available at the Quality Improvement Center on the Privatization of Child Welfare Services (QIC PCW), funded by the Children's Bureau. We want to acknowledge all of the state and county child welfare administrators and private providers that shared their experiences with us and the QIC PCW. Additional information on child welfare privatization issues is available through the QIC PCW website: <http://www.uky.edu/SocialWork/qicpcw/>.

This paper was prepared by Planning and Learning Technologies, Inc. in partnership with The Urban Institute for the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, under contract HHSP233200600242U. The opinions expressed in this paper are those of the authors and do not necessarily represent positions of the U.S. Department of Health and Human Services.

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Assessing Site Readiness: Considerations about Transitioning to a Privatized System

Introduction

In 2006, the Office of the Assistant Secretary for Planning and Evaluation funded the ***Child Welfare Privatization Initiatives Project*** to provide information to state and local child welfare administrators who are considering or implementing privatization reforms. The project will produce six technical assistance papers on a range of topics providing insights about factors that should be considered when approaching or improving upon, privatization efforts.

The purpose of this first paper is to help child welfare administrators think through key issues about transitioning to a privatized system of service delivery. The paper is organized around 12 overarching questions that administrators need to ask themselves when assessing the “readiness” of their site. Some questions encourage sites to explore specifically why they are privatizing services and whether or not privatization is the best approach to meeting agency goals. The remaining five papers in this series will examine other specific areas. These are:

- Models of Privatization Reform
- Evolving Roles of Public and Private Agencies
- Developing Effective Contracts
- Contract Monitoring and Accountability
- Evaluating Privatization Initiatives

This paper series builds on research, described below, conducted under the Quality Improvement Center on the Privatization of Child Welfare Services (QIC PCW), funded in 2005 by the Children’s Bureau, US Department of Health and Human Services. It also draws from the research on privatization in other, closely related social services. Information used for this paper series comes from several sources, including:

- Telephone discussions with state child welfare administrators from 44 states and the District of Columbia;
- Regional forums with public and private agency staff and community stakeholders from twelve states that have privatized at least one component of the child welfare system;
- Literature reviews; and
- Follow-up interviews and correspondence with public and private agency providers and key stakeholders from several states.

From this work we have learned that many states and communities have strong privatization initiatives that continue to move forward. However, some communities have tested privatization and have pulled back from these efforts, largely due to poor performance on expected outcomes. Several existing initiatives have been significantly retooled based on lessons learned and unanticipated consequences of the privatized system.

Privatizing services is complicated and is often politicized. The purpose of this first paper is to inform public and private agency partners as well as legislators as they make decisions about privatizing service. It is designed to encourage agency administrators and legislators to ask critical questions and make important choices *prior* to the decision to transition services to the private sector.

This paper will begin by discussing the concepts of privatization and some of its core components. It will then present a series of questions and considerations that must be worked through in preparation for systems reform.

“Privatization” in Child Welfare Services

Although widely used, the term “privatization” has no single definition in child welfare or in other human services. Some use the term broadly and mean by it all contracted service arrangements, others use it more narrowly.

Research indicates that while all states contract out for some form of direct child welfare services, most restrict the decision making authority ceded to providers. In most cases, the state has retained authority for approving contractors’ decisions related to reducing a child’s level of care and permanency decisions (GAO, 2000; U.S. DHHS., 2001; Westat & Chapin Hall, 2002; McCullough, 2003). Two research efforts conducted in the last five years (Westat & Chapin Hall, 2002; Collins-Camargo, Ensign & Flaherty, in press) have identified only a limited number of state and local initiatives where for certain client groups, primary case management authority has been shifted to private provider(s).¹

For the purpose of this paper series, “privatization” is defined as the contracting out of the case management function and/or decision-making authority (subject to periodic public agency and court review and approval periodically or for key events). It is not the geographic, financial or caseload size of the initiative that defines privatization, but the degree to which these essential functions are transferred.

Underlying this definition is the concept that this type of privatization enhances the need for partnership between the public and private sectors. Recognizing that this will always be a contractual relationship, privatization, due to its expanded reliance on the private sector, creates an opportunity and a fundamental challenge to each partner in the delivery of services and achievement of outcomes. In essence, the more responsibility the public agency gives to private providers, the more dependent they are on their performance. Partnership, accountability and trust become key features of the new system. This is sometimes overlooked in the controversy that surrounds the term.

Another key concept is that privatization is not a service model but rather a systemic reform that involves several design elements (contracting method, cost claiming and reimbursement, service delivery system, contract monitoring, etc.) all of which must be designed and aligned in order to operate efficiently and effectively. Further, many of these elements require ongoing refinements.

¹ In addition to retaining the case management function, public agencies have retained the child investigation and protection functions that officials believed to be critical to meeting their legal responsibility for the safety and well-being of children.

The roles and responsibilities of workers in both government and provider agencies are among the issues that will need to be continuously refined. This is because even under a “fully” privatized system, the public agency will continue to play several important roles including contract procurement, monitoring, program funding and policy agenda setting. Ultimately, it is the public agency that is responsible for the care and safety of the children in state custody. For all of these reasons, what is being explored today by states and communities across the country is the relative *balance* that public and private agencies play in the delivery of child welfare services, and their respective roles when realignment does occur.

Finally, lessons learned from our research about privatization initiatives in child welfare are anecdotal. In fact, there is very little research that rigorously compares publicly and privately delivered services systems on client-level child welfare outcomes. There has also been very little rigorous research to confirm that one privatization model, contracting method or management model outperforms another (McCullough, 2005; Lee, Allen and Metz, 2006). In short, the information contained in this technical assistance series should serve as a starting point for a site’s own research and assessment of its individual readiness to privatize a service, or a service system.

Key Considerations

1) *Why privatize services?*

It is sometimes overlooked that child welfare services began in the private sector (Embry, Buddenhagen & Bolles, 2000). It was not until the 20th century that a federal social security system, including a child welfare component emerged (Kahn and Kamerman, 1999). While the overall proportion of services delivered by mutual aid and religious charities has ebbed and flowed over time, several events during the 1990s generated a renewed interest in broad scale contracting efforts (increasingly labeled “privatization”). States experienced escalating costs for out-of-home care driven by increases in both the numbers served and the unit costs of care. In 1997, the federal government passed the Adoption and Safe Families Act (ASFA), and then, implemented Federal Child and Family Service Reviews (CFSTRs). Together, these require states to achieve improved performance on child and family outcomes including child safety, timely permanence and well-being.

Why Privatize: To improve performance and reduce costs, several states and communities have experimented with privatization on a pilot basis and two states, Kansas and Florida chose to implement statewide reforms. Increasingly, a number of strategies including privatization, the application of managed care principles and most recently, the use of performance based contracts, are viewed as means of fusing programmatic and fiscal reforms (Wulczyn & Orlebeke, 1998; Embry, Buddenhagen & Bolles, 2000; McCullough, 2003).

The literature discusses several reasons that states have privatized social services including: the potential for higher quality, cheaper services by means of increased competition; greater flexibility within private organizations; a greater sense of mission and responsiveness to client needs among nonprofits (Sanger, 2001); and greater client choice. There are also a range of practical and political considerations that prompt privatization, including the ability to bring in new capacity quickly while at the same time limiting government growth; facilitating a marked change in the program

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“culture” or philosophy; and bringing in new types of providers, such as small community based organizations or faith based organizations (Winston et al, 2002).

This said, the field is beginning to report back that privatization alone will not solve some basic problems that plague the child welfare system and it may not reduce costs. States that have privatized services struggle with the same issues that public agencies do including obtaining adequate community services for families and recruiting and retaining qualified staff (Center for Public Policy Priorities, 2005). Private agency workers experience the same frustrations that public agency workers experience such as high stress, lack of career advancement opportunities and lack of educational preparation for child welfare work (Gleeson, Smith and Dubois, 1993). Early results indicate that simply transferring case management and decision making to the private sector may not improve case outcomes without adequate social, health and mental health resources and foster and adoptive homes in communities, and qualified agency staff that are offered ample supports.

Assessing Systemic Challenges: In light of these systemic challenges, some of the first questions that site officials must consider when assessing site readiness are:

- Does the community have sufficient resources and services for children and families to address their needs and achieve the outcomes of safety, permanency and well-being? If not, how can a privatized system address this? What resources will a private provider need to create additional community supports and/or create that capacity inhouse?
- Have additional funding streams been explored for new contracts (e.g. Medicaid and TANF) to provide additional services?
- Does the community have sufficient numbers of foster and adoptive homes? If not, what resources will providers need to conduct additional outreach and support services to meet these needs?
- If staff recruitment and retention are challenges, what resources and management skills will private agencies need to hire, train, and support staff to help minimize ongoing turnover?

Privatization and Costs: Another important question to ask when initially considering privatization: is the assumption being made that a privatized system will cost less? Research on privatization efforts have found that in most cases, overall spending increases with privatization efforts (Freundlich & Gerstenzang, 2003; Kahn & Kamerman, 1999; GAO, 2000). As an example, the budget for child welfare service in Milwaukee, Wisconsin grew significantly with privatization.² Freundlich & Gerstenzang (2003) point out that it is probably unreasonable to expect new privatization initiatives to achieve better outcomes for children and families and do so at a lower cost than the current system.

While there have been only limited examples of states and communities that have saved – or even controlled -- costs (McCullough & Schmitt, 2003), Illinois significantly reduced costs by converting their standard foster care contracts from cost reimbursement to performance based along with other concurrent reforms. Illinois

² Personal communication with Susan Dreyfus, COO, Alliance for Children and Families, Milwaukee, WI.

attributes the reduction in the state's foster care caseload from 52,000 in 1997 to approximately 18,000 today to the use of performance-based contracts (McEwen, 2006). One of the key lessons that the state learned was the value of reinvesting some of these funds back into the system to support reduced worker caseloads, recruiting foster homes, and providing more clinical services.

In summary, sites must ask themselves: *why they want to privatize a service or a service system* -- what they want this new system to achieve and why they expect private agencies to outperform the existing public system. They need to ask whether transferring case management will address these issues or whether other supports will be necessary.

The answers to these questions will impact contract design and monitoring and may also impact the roles and responsibilities of workers in the ongoing oversight of cases.³ Clearly articulating the “why” is also the only way for states to know how they will define success once projects are implemented and should guide continuous quality improvement efforts (McCullough, 2005).

2) What is the level of stakeholder support for privatization? How do you gain buy-in?

Privatization can engender opposition from a range of stakeholders because it upsets the status quo service arrangements. There are multiple ways to mitigate this opposition and it is likely that several approaches may be needed to gain support. Due to the anxiety that privatization can cause, a first step for public agencies is to create a communications plan for both internal and external stakeholders to minimize the amount of misinformation (McCullough, 2005).

The literature on child welfare privatization emphasizes the value of listening to stakeholders that will participate in, or be impacted by, the new service delivery system (Kahn & Kamerman, 1999; McCullough & Schmitt, 2003; Figgs & Ashlock, 2001). States and communities that have privatized services report that it is important to include a broad group of community stakeholders somewhat early in the conceptualization and planning process, to not only get their input but to bring them along in planning and avoid costly oversights once new contracts are initiated.

Two studies of the Kansas experience with privatization (James Bell Associates, 2001; Figgs & Ashlock, 2001) underscore this issue. Many key stakeholders were not meaningfully involved in planning and design efforts early on. Because of this, faulty implementation decisions were made. Moreover, several external stakeholders including the courts were unclear about the distinct roles and responsibilities of the public and private agencies. Figgs and Ashlock (2001) found that without this initial buy-in and involvement, the courts, schools, and other local agencies did not trust that the private providers would deliver adequate services. Well into implementation, the private agencies had to conduct aggressive public relations campaigns to acquire the trust of other public entities and community based providers on which they relied.

There are also examples of sites that report successfully including stakeholders in planning endeavors. During regional forums held by the Quality Improvement Center on the Privatization of Child Welfare Services, representatives from El Paso County, Colorado described what they considered to be an inclusive planning process. The

³ Personal communication with Ron Zychowski, CEO, Community Partnership for Children, FL.

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County had a history with privatizing other services and had a clear vision that they wanted to partner with private agencies to deliver child welfare services (rather than simply “transfer case management”) and wanted to better blend funding streams (Medicaid and IV-E) to expand services for families involved with the child welfare system. Forum participants from both public and private agencies explained that both elected officials and agency staff were interested in making this new system work and work well. This involved collaboration during initial planning as well as an emphasis on ongoing communication between systems once the new contracts were issued.

El Paso County, Colorado spent approximately eight months planning the new service delivery system before anything was implemented. County staff met with the provider community as well as foster parents, partnering Child Placement Agencies, Juvenile Court, Guardians Ad Litem, Court Appointed Special Advocates, Respondent Attorneys, local Community Mental Health Center, County Commissioners, and the State Department of Human Services to develop the new service delivery structure. It was reported that as planning went on, county officials kept adding stakeholders to the planning meetings to ensure broad community and stakeholder support for this new approach in serving foster children in El Paso County (Flaherty, 2006).⁴

The broader literature suggests that during the planning phase, program planners might hold focus groups and/or conduct surveys with representatives from key stakeholder groups in and outside of the child welfare system. To varying degrees, those encouraged to participate in initial discussions include:

- The service provider community that would be affected and would be involved in bidding and ultimately delivering target services;⁵
- Representatives of all levels of the public agency (caseworkers, supervisors, managers and top administration);
- Juvenile and family court judges;
- Parents and youth who receive services
- Foster and adoptive parents (or associations);
- Monitors of court negotiated agreements;
- Unions of employee organizations and/or their professional organizations;
- Members of the state legislature and legislative committees;
- County commissioners;
- Auditors; and
- The broader service community e.g. mental health and substance abuse providers.

Explore what they consider to be challenges and constraints in the current system to ensure that you address these obstacles to the best of your ability in the newly privatized system. Explore people’s recommendations for a new system and their concerns about shifting case management to the private sector. Discussions with the provider community should include identifying appropriate and attainable client and systems outcomes, along with benchmarks and quality assurance systems to monitor

⁴ Information collected during the regional forum was later expanded by personal communication with Rick Bengtsson, Child Welfare Manager, El Paso County, Department of Human Services.

⁵ This process must be done in light of state procurement rules so that the integrity of competitive bidding is not compromised.

success. Only in this way can leaders in both the private and public systems design contracts and systems that are responsive to the realities on the ground.

Whether or not private providers and other key players participated in the initial conceptualization of contract requirements, once contracts are drafted, consider hosting informational meetings with potential bidders to get their comments and ideas about the proposed scope of work. Receiving this form of input on contracts before they go out for official bidding can help reduce confusion and minimize implementation barriers.

Public Agencies and Unions: The experiences of states and communities that have privatized tells us that the greatest opposition will likely come from public agency workers and their unions. Agency officials must expect that merely conducting a readiness assessment will produce anxiety and resentment among agency staff and negatively impact morale.

This can be moderated by reaching out to agency workers and their unions early in the process in order to understand and address their concerns. Several states have engaged in “workforce transitions” that bring public employees that might be displaced, into the privatization planning process, and offer them training and other benefits. A 1997 GAO report on the experience of six state and community governments that had privatized services found that all select sites had provided safety nets for displaced workers. Workers were offered early retirement, severance pay, buy-outs and, in some cases, the opportunity to compete with private providers for the contract work. In some cases, workers were offered career planning and training to move into the private sector (GAO 1997b). Some sites required contractors to give public agency staff preferential consideration in hiring practices.

Dependency Courts: Much has been written about the particular importance of engaging the courts in the planning for privatization efforts (McCullough 2005, Snell, 2000). The courts play a critical role in the child welfare system and can support or hinder implementation activities (Meezan and McBeath 2003). The role of the courts is unique. Ultimately, all decisions influencing the achievement of key outcomes (case plan approval, key decisions on placement and permanency, case opening and closing) must be approved by the courts. Therefore, their impact on the success of privatization initiatives is amplified.⁶ Politically, judges can play prominent roles in community affairs. Therefore, it is advisable to consult with them early and often when undertaking systemic reform of the service delivery system.

Court personnel should be involved in planning activities also because there are a range of practical questions that must be addressed about the new system. These include whether public or private agency staff are best equipped to represent cases in court and to what extent this role is shared between systems (McCullough, 2005). Private agencies must be clear about the informational needs of the courts and how court work will impact their staffing and training plans. (There are also a range of liability issues for private agencies that assume case management and court work, discussed later in this paper.)

Community Service Providers: Another important constituency is the broader group of community service providers on whom the private agency will depend, in order to meet client service needs. These providers need to be invited to the table and

⁶ This is particularly key when communities use performance-based contracts. Everyone must be on the same page about specific priorities and quality services when agency payments are impacted by performance on matters that receive judicial review.

brought along in program planning or they may be less likely to collaborate in the new system.

Research in Kansas provides another cautionary tale. Due partly to limited initial community involvement in planning, in Kansas, private foster care providers had tremendous difficulty coordinating and paying for community services especially community mental health, in the early years of privatization (James Bell Associates, 2000). The providers were unable to leverage payment for specialized assessments and services ordered by the courts – but seen as unnecessary by the community providers and therefore screened out for reimbursement.

Even in cases when collaboration begins early, public agencies must be prepared to provide ongoing support to initiatives to help coordinate and link providers if contracts demand that private agencies access these services. One example is Florida. Like Kansas, some jurisdictions in Florida have struggled with ensuring children involved with the privatized system are able to access quality mental health services. In February, 2007 Florida implemented a child welfare prepaid mental health plan to try to ensure better access to, and improved quality of mental health services. Over 20,000 Medicaid eligible children in the child welfare system are currently enrolled in the Child Welfare Prepaid Mental Health Plan (CWPMHP).

Although this is a statewide plan, each lead agency (which oversees child welfare services in a given region) along with the families, caregivers and treatment providers has control of the review for appropriateness of services. The state health care organization authorizes certain services but the local community determines what level of care to request. Each lead agency has assigned staff to manage the CWPMHP at the local level. These staff are known as the Points of Contact (POCs). The Florida Coalition for Children, a statewide organization of lead agencies and child welfare providers, also has staff positions to provide the technical support to the Points of Contact and monitoring of performance. There are weekly calls and quarterly statewide meetings to keep this new project on track. CWPMHP is beginning to collect data which will be shared through various communication mechanisms (Florida Coalition, June 2007).⁷

3) *Has the public agency set aside enough time for planning and designing the initiative?*

Decisions to privatize services are often mandated by governors and state legislatures. Privatization is sometimes implemented in a context of class action lawsuits or responses to negative publicity from child deaths or other examples of severe abuse. In short, privatization is frequently politicized and controversial. This was the case in Kansas, Florida, and Wisconsin and most recently in Texas.⁸ These pressures can lead to reduced time and insufficient attention to project planning.

Research on existing privatization efforts indicate that many states and communities were under a great deal of pressure to plan and release request for proposals (RFPs) within a compressed timeframe and did not have sufficient time to prepare (Kahn & Kamerman, 1999; Mahoney, 2000; U.S. DHHS, n.d.). Failing to

⁷ From Charlotte McCullough unpublished report (2007).

⁸ At the time that this paper was drafted, efforts to privatize a region's foster care program in Texas have been delayed, if not halted.

adequately plan services and contracting mechanisms, and adequately support private agency infrastructure needs, puts private providers at financial risk, and reduces the likelihood that public agencies will get the quality of work that they had expected.

As will be discussed in this and/or following papers, there is much to think through before launching privatization initiatives. Some key elements include:

- Program goals, desired outcomes and performance indicators;
- The service needs and service utilization patterns of the target population, based on accurate baseline data;
- Contract risk arrangements, case rates or other contracting mechanisms based on reliable actuarial data;
- Strategies to monitor contracts and hold agencies accountable;
- Roles and responsibilities of public and private agency case managers and administrators (and how the public system will prepare its staff for new roles of contract management versus traditional case work);
- Private agency qualifications (e.g. credentialing) and readiness (e.g. do agency staff have sufficient clinical expertise in working with families and communities);
- Agency grievance and appeal processes;
- How the new service providers will interface with other community services and insure service access for families;
- Rollout schedule of reforms. Should they be:
 - Piloted geographically or rolled out in full?
 - Phased in programmatically or all at once? For instance, when implementing performance based contracts, should providers be held harmless for a transitional period to assess the extent to which performance measures are realistic and/or to determine the training and support needs of new agencies before penalizing them financially (O'Brien, 2005);
- How cases will be transferred to the private agency (how families will be notified, how case records will be copied and transferred, etc.).

These topics are complex and decisions should be based on careful attention and research. In 2006, the Quality Improvement Center on the Privatization of Child Welfare Services held three regional forums with twelve states and/or communities that had privatized at least one component of their child welfare system.⁹ Based on their experience, participants (including public and private agency administrators as well as community stakeholders) were asked how much time should be set aside for sites to assess and plan for a privatized system. The general consensus was that sites should allot 12-18 months to prepare to transition services (Flaherty, Collins-Camargo & Lee, unpublished).

Finally, systems reforms takes time to fully implement and it may take longer than planned to see improved outcomes for children and families. There is the possibility that new projects will not show improved outcomes within the first year, or longer. Due to the resources required to transition services (both human and financial), prior to implementation, it may be helpful to have discussions about how the new public/private partners will respond if there are no differences in outcomes, and possibly higher costs, in the first year or two of operations.

⁹ These states and jurisdictions were: El Paso, Colorado; Washington, DC; Florida, Kansas, Illinois, Michigan; St. Louis, MO; New Mexico; New York City, NY; Franklin County, OH; Philadelphia, PA; and Milwaukee, WI.

4) Are there sufficient administrative and cost data to develop contracts and estimate case rates and other service costs?

As sites consider privatizing services, they must do so with sufficient and accurate information about costs, caseload trends, service utilization and performance on child welfare outcomes in the current system. Accurate data is critical to establishing sufficient case rates for private providers, appropriate performance benchmarks and performance indicators.

When Kansas privatized, the state faced challenges resulting from unreliable administrative data on caseload trends, characteristics and costs. As a result, officials were unable to establish a baseline for the pricing of foster care. In transferring the existing state caseload to the private sector, Kansas mislabeled much of the state's existing foster care population as "new referrals" rather than identifying them as older, more deeply entrenched cases which would likely require more intensive services and a longer duration of service delivery (James Bell Associates, 2001; Snell, 2000; Westat & Chapin Hall, 2002).

The National Child Welfare Resource Center for Organizational Improvement (NRCOI) writes that data used to develop contracts must be seen as reliable and valid by both agencies and providers. "It is critical to talk about this issue at the very beginning of negotiations with providers, to understand that it will be difficult, and to expect to invest significant resources (of both time and money) into developing good data to guide negotiations on assessing current performance and planning for improvements" (O'Brien, p. 1 2005).

State officials in Illinois describe their success in this area and its impact on gaining buy-in from the provider community when it was negotiating new foster care contracts in the mid 1990s. When Illinois changed its contracts from fee-for-child payment to performance based, private providers were concerned about the data by which performance would be measured as this information would drive the new payment system. Providers wanted to be confident that the data would be accurate and reliable. In response, the state contracted with the Chapin Hall Center for Children at the University of Chicago to administer the management information system used to guide decisions about performance and payments to private agencies. Erwin (Mac) McEwen, Director of Illinois Department of Children and Families wrote at the time, this was critical because "Unless private providers believed in these policies and the practices for implementing them, it would be impossible for policies to succeed" (McEwen, 2006).

The lack of quality information related to costs, service utilization and caseload trends is one of the greatest obstacles to planning efforts. Researcher Charlotte McCullough, who has conducted several national surveys on financing reforms in child welfare and has helped several states think through site readiness issues, reports that many states use "guesstimates" about actual costs and service patterns because the actual data are not available. The hardest information to gather is client use of external services outside of the child welfare system, most commonly, mental health and substance abuse treatment. This information is important to redesigning both program and fiscal models and planning for the coordination of services.

Once programs are implemented, reliable data tracking systems are critical to contract monitoring and quality assurance (QA) systems. MIS systems should be designed to track both contract performance and client outcomes. In many instances,

substantial investments in software, hardware and training are needed to ensure that information technology is available and used for system implementation and improvement (Westat & Chapin Hall, 2002).

5) *Is there viable competition in the marketplace to deliver target services?*

It is argued that one of the defining features of a privatized system is competition in the marketplace. It is assumed that competition will encourage providers to work efficiently and effectively. Competition is expected to result in higher quality, less expensive services because the purchaser can shop around for the best products at the cheapest costs (Winston et al., 2002, Nightingale and Pindus, 1997).

However, competition does not exist in all communities for all services. Because barriers to entry are substantial, competition may not exist prior to privatization or even following implementation. In fact, informal discussions with state child welfare administrators held during the QIC PCW needs assessment found that the lack of capable providers to deliver services was one of the most common barriers to initial or expanded privatization efforts among those states that identified barriers (University of Kentucky & Planning and Learning Technologies, 2006). States and communities considering privatization are advised to examine the provider landscape and assess whether there are viable providers to provide the targeted service.

For instance, instead of issuing an RFP, Florida issued an “Invitation to Negotiate” for lead agencies, to assess provider capacity and determine if agencies had the necessary infrastructure to provide quality services (Freundlich and Gerstenzang, 2003). Florida’s assessment of agency capacity focused on:

- agency purpose and relationship to community,
- quality assurance system,
- organizational stability,
- human resources management,
- information systems, and
- proposed service delivery model for lead agency services and activities.

It is interesting to note that the state did *not* initially score providers on their capacity to deliver child welfare services, but rather looked more generally at infrastructure and management issues (Freundlich and Gerstenzang, 2003). In fact, a great deal of attention was paid to the provider’s financial security including matters of:

- Existence of security bonds, liability insurance and performance bonds,
- Savings to cover at least 60 days of agency operations,
- A viable, long term business plan,
- An accounting system that uses cost centers that would allow providers to assess costs by case and predict costs into the future, and
- A risk management program.

6) *If necessary, how can public agencies expand provider capacity and thereby increase competition?*

Child welfare can learn much from other fields about expanding competition in the marketplace. Cohen and Eimicke (2001)¹⁰ suggest that government agencies might offer providers “capacity building grants” to encourage them to enter the system. Alternatively, government can help to pay for contractor expansion such as purchasing facilities or hiring new staff. The authors caution that although both approaches will increase competition, they may also reduce potential cost savings from privatization, at least in the short term.

This issue is complex in child welfare because federal Title IV-E funding only reimburses after services are delivered and only for certain, limited activities. That said, some child welfare agencies have supported capacity building, primarily through the use of start-up funds. Learning from Kansas and its own early implementation efforts, Florida began to offer its lead agencies transition funding to support start up costs including efforts to write agency systems of care and contracting procedures for local service networks. Other sites, such as Milwaukee, Wisconsin, have provided grants to private providers to open new facilities.¹¹

The payment structure itself can have an effect on competition. Pure performance-based contracts can exclude organizations with fewer resources – often smaller community based organizations or faith based organizations -- since they often cannot bear the financial burden of providing services until payment points are achieved (McConnell et al., 2003). Public agencies might reach out to a wider pool of private bidders especially those that do not consider themselves eligible due to agency size or lack of history of child welfare service delivery, by creating several smaller contracts that may be more appropriate for smaller community based or faith based groups.

Philadelphia has always relied on private agencies to deliver prevention and foster care services. Partly due to its multi-ethnic demographics, the city has worked hard to support smaller, community based organizations that reflect the communities being served.¹² The city offers its providers free, ongoing training on case management services as well as parent education and other services. To encourage participation of smaller providers, the city has also authorized that larger providers may serve as fiduciary agents (or fiscal sponsors) to smaller groups. A sponsor is a nonprofit corporation that receives and disperses funds for organizations and provides administrative and financial supports to programs that lack this capacity (Green et al., 2006). In Philadelphia, the Greater Philadelphia Urban Affairs Coalition provides a variety of business services, including payroll, accounting, and auditing services to its member programs. They also offer providers access to group vendor discounts for goods and services, including office supplies and insurance coverage and access to legal services. The Coalition charges providers five to eight percent of project budgets for this service.¹³

¹⁰ As described in Winston et al., (2002), pp. 23-24.

¹¹ Personal communication with Bill Fiss, Department of Health and Family Services, Wisconsin.

¹² Personal communication with Dianne Ruffin, Philadelphia, Department of Human Services.

¹³ Personal communication with Trino Boix, Operations Manager, Greater Philadelphia Urban Affairs Coalition.

Another means of increasing competition is to allow the public agency (or units of the agency) to compete against private providers for the contract(s). While we are not familiar with any such instances in the privatization of child welfare services, this has happened in other human services, such as Temporary Assistance to Needy Families (TANF) (Nightingale and Pindus, 1997).

7) Do private providers have sufficient skills and administrative capacity to manage large scale contracts, and monitor service delivery and client outcomes?

As described in the literature, some of the most common challenges and knowledge gaps reported by private providers who manage new, risk-based direct service contracts include:

A lack of knowledge of contract risk issues. There are presently a broad spectrum of contract models ranging from “no-risk” purchase of service contracts where private providers are reimbursed at agreed upon rates for services, to higher risk managed care and/or performance based contracts. The latter types of contracts introduce risk to the private provider because payment under these contracts is not strictly linked to service delivery, but rather to the achievement of specific contract goals, which may be achieved only after incurring service expenditures for some time.

It is well documented that rate setting is one of the biggest challenges in privatization efforts (Kretman, 2003; U.S. DHHS 2003). Several factors determine the financial risk to providers who are not reimbursed under traditional purchase of service contracts. The contractor may be required to absorb costs in situations when they are serving more cases, providing more services, providing more expensive services or providing services for a longer period than originally planned. One national study found that states use a range of information to develop case rates. They use historical data about past expenditures and target populations and often the geographic region being served. Due to challenges in identifying service costs, several states and jurisdictions were found to estimate case rates and then further negotiate these rates with private providers as additional data and experience using the rates became available (Westat & Chapin Hall, 2002).

Even after establishing negotiated rates, many states have implemented means to further mitigate provider risk. These include using:

- Risk corridors whereby providers are sheltered from expenses that exceed a certain level but must also reimburse the state if they spend less than a certain level, or
- Risk pools whereby contractors can pull down funds needed, based on agreed upon formulas.

Capacity to track and report client outcomes and other data. While many private agencies have strong internal management information systems (MIS) and case tracking systems, others do not. When assessing readiness, public agencies must decide whether the private agency will be able to use the public agency’s SACWIS (or comparable agency system) or whether the private agency’s own system should interface with the state’s SACWIS. Alternatively, will data need to be entered into both systems? Ideally, private agency systems should be able to track:

- The case plan
- Client location and status
- Service utilization and
- Service costs.

The system should be user-friendly and be able to generate useful reports easily and quickly (McCullough, 2005).

Ability to recruit, train and retain qualified staff and managers. For over a decade, the child welfare system – both public and private agencies - has struggled to hire and retain qualified staff. When assessing readiness, public agencies should not assume that the private providers will be able to recruit, train and retain new staff more easily than the public agency. This issue will be explored more fully in later papers.

Florida addressed many of these uncertainties by implementing a “readiness assessment” process for all new providers. For the six year period between 1999 and 2005, the department systematically transitioned the management and day-to-day operations of the child welfare system to lead agencies in 22 regions of the state. From the outset, contracts included a start-up period to enable lead agencies to build the infrastructure and finalize a series of deliverables that were submitted to the department -- including specific plans for: their system of care, human resources, network development, quality assurance systems, fiscal and risk management, and transition.

Even with a phased-in approach, researcher Charlotte McCullough reports that the state realized after several lead agencies made the transition that a formal, standardized assessment of readiness was needed to ensure that both the lead agency and its local public partners were fully prepared to implement the approved plans. The Department developed a readiness assessment tool and a formal process for assessing and preparing local department units and lead agencies to become ready to safely transition services. The Department’s Readiness Assessment process utilized an external team of peer experts to assess the development of the local infrastructure and transition plans, and provided technical assistance to both public and private agencies prior to initiating transfer of any services. The assessment tool and process were refined on several occasions to reflect challenges encountered and lessons learned at each stage of the statewide roll-out (McCullough, 2003).

8) *Do private agency front line staff have sufficient skills and knowledge about child welfare policies and evidence based reforms to deliver services?*

When designing privatization initiatives, states must decide what level of credentials should be required of private agencies. Must agencies be accredited? Will contracts specify worker credentials or will this be left to the private agency? These decisions will be driven partly by the anticipated division of activities and functions between agency workers and other community based agencies that can provide clinical and other special services.

With the privatization of the case management function, public agencies will need to decide whether private agencies must meet all of the existing child welfare training and certification requirements of public agency workers. Other decisions involve who

will provide the training and how it will be funded. Title IV-E funding can be used to reimburse 75 percent of state's training expenditures related to foster care and adoption services *for public agency workers*. Training delivered to *private* agency workers is reimbursed at 50 percent (GAO, 2004).

It cannot be assumed that public agency workers will transition to the private agencies bringing with them their skills and experience with child welfare issues (James Bell Associates, 2000). In Kansas, the public agency remained fully staffed with few workers transferring to the private agency and in other states, only limited numbers of agency workers transferred to the private providers.

Due to the extensive hiring that will need to take place as private agencies take on significant new child welfare functions, training might be offered on flexible and ongoing schedules so that new workers can be trained shortly after they are hired. Kansas, for example, worked with its Training Institute (the University of Kansas) to shorten traditional training modules from 1-2 days to 3-4 hours, to permit new workers to remain in the field as much as possible. Much of the initial training focused on enabling new workers to examine their own belief systems about parenting, ethnicity and social class, and familiarize them with basic child welfare policies and state statutes (Ortega and Levy, 2002). The University of Kansas training team works closely with the state's private providers to develop ongoing training programs. Considered to be part of their technical assistance program, private agency management help design advanced training topics which sometimes involves bringing in local or even national experts, to train on specific topics (Ortega and Levy, 2002).

The third paper in this technical assistance series, **Evolving Roles of Public and Private Agencies**, will more thoroughly discuss transitioning from publicly to privately delivered service systems and states' experience with front line training needs.

9) *Is the public agency prepared to design a new service delivery system, and assume new roles focused on contract design, procurement, and monitoring?*

As has been discussed, designing a new service delivery system involves several considerations and should be driven by system goals, target population and even scope of system reforms. Designing the contracting models goes beyond the financial approach used to support services. It involves several complex decisions about whether or not to use a lead agency, the type and structure of contracts and the extent to which the public agency continues to oversee individual cases.

Public agencies must consider whether they want to function primarily as an administrative oversight agency and transfer all operations to the private sector, or whether they want to contract out for specific functions and retain decision making and/or service coordinating activities.

Designing new service delivery systems, as well as assuming new responsibilities for contract design, procurement and monitoring, are complex issues that go well beyond the scope of this paper. Each will be discussed more fully in later papers, including the lessons learned to date. But, following are some limited considerations on each topic.

Contract Design: Once sites have settled on a program model and contracting method, they must be able to prepare contracts that are clear and complete. Contracts often lack the needed specificity because the agency does not have sufficient experience preparing contracts and/or, information is not available. McCullough (2005) reminds us that “[a]fter a decade of experimentation, there is still no compelling evidence of the efficacy of one financial approach over another.” From a survey of private agency administrators in five states that had privatized some component of their service system, she found that administrators of every program discussed challenges in their initiative’s chosen contracting mechanism (McCullough 2005 p19).

A number of key topics that should be fully clarified in service contracts:

Specific target population,

- Service provision (scope and duration),
- Special populations that are explicitly included or excluded from the target population,
- Responsibility for determining federal/state (if local initiative) funding eligibility and reporting,
- Billing and payment arrangements, including when and under what conditions financial incentives and penalties will apply,
- Standards for program and client data collection and reporting,
- A quality assurance plan that describes how the contractor’s performance will be assessed, and
- Agency grievance and appeal processes.

Procurement Process. The process for letting, evaluating, and awarding contracts must be transparent and fair, in reality and in perception. How bids are evaluated, scored, and awarded can have important ramifications for the level of controversy surrounding privatization – processes that lack transparency or appear open to favoritism or corruption can lead to legal and political problems. In addition, the level of specificity and prescription within the RFP can affect the quality of the service approach. The public agency letting the contract needs to balance the goal that providers meet certain quality thresholds with the desire to encourage bidders to be innovative in service design and delivery (McConnell et al., 2003). As a result, certain process and outcomes must be defined and prescribed, while leaving sufficient discretion in how these are met.

Monitoring. Effective monitoring is critical to successful privatization, but has been an ongoing challenge in privatization initiatives. A 1997 GAO study found that monitoring contractors’ performance was “the weakest link” in the process (GAO, 1997a). More recent studies have found similar challenges. A 2002 GAO study of TANF contracting found significant problems tracking TANF fiscal and program activities in 15 states over two years, and noted potential problems in over a quarter of states (GAO, 2002). In a separate 2003 HHS study of TANF case management privatization, in two of the six projects studied, state auditors exposed inadequacies in state monitoring (McConnell et al., 2003).

There are cases where public agency casework staff have been shifted to contract oversight positions without sufficient training and ongoing guidance. Adequate

MIS infrastructure is often lacking. In short, when planning and preparing for privatization efforts, contract monitoring can require large scale investment in computers, software and training on both the side of the public and private sectors (Embry, Buddenhagen & Bolles, 2000).

In most cases, monitoring assesses compliance with statutes, regulations and the specific terms of the contract agreement. Today, with the new emphasis on performance contracting, there is an expanded interest in also monitoring major outcomes – the effect of the services on clients. Contracts are being monitored, and in many cases rewarded, on the basis of child and family outcomes in addition to their compliance with process or practice standards.

A Westat and Chapin Hall (2002) study found that the two most common forms of contract monitoring for child welfare fiscal reform initiatives were the use of collaborative case reviews and analysis of management information systems. Among the 22 states studied, case reviews involved ongoing collaborative decision making meetings or periodic case reviews where public agency staff look over a sample of cases to examine service provision and costs. Public and private agency staff discussed service quality, patterns of expenditures and permanency plans. States are also increasingly relying on management information systems to monitor services. For instance, New York has implemented a new interactive MIS (called EQUIP) that allows the public agency to tie reimbursement to child outcomes (O'Brien, 2002).

Eggers (1997) recommends that plans for contract monitoring (and by extension, quality assurance systems), must be thought through prior to the release of an RFP for services. The plan should be included in the contract and describe:

- Reporting requirements,
- How information will be shared (through reports, shared MIS, meetings),
- Agreement to share (and means of access for) client records,
- What happens when there is non-conformance with contract requirements (e.g. use of corrective action plans),
- How providers will be held accountable, and
- Complaint and appeal processes.

The National Child Welfare Resource Center for Organizational Improvement has examined state quality assurance systems and prepared ***A Framework for Quality Assurance in Child Welfare***. The Framework serves as a helpful guide for state officials and includes both case studies and steps to design effective QA systems (O'Brien, 2002).

10) Are roles and responsibilities clear between the public and private sectors?

Coordination between the public and private agencies is a critical task – even in full scale privatization -- because the public agency is still ultimately responsible for the quality and nature of the services clients receive, the achievement of client outcomes, the appropriate use of taxpayer funds, and compliance with the law. In addition, in

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nearly every community in the country, child investigations and protective services are still being carried out by the public agency.¹⁴

Establishing clear roles and responsibilities between agencies has emerged as one of the most complex challenges of privatization. Elements that must be considered include:

- Developing and coordinating case plans for new entrants (because the public agency will conduct the investigation and may coordinate early services);
- Determining funding eligibility for programs (with the need to train contractors to understand multiple program rules);
- Bringing into line the goals of public and private agencies (contract employees may focus more on performance targets while public employees may focus more on process and timeliness);
- Coordinating services and information to keep clients from “falling between the cracks” (different or incompatible management information systems can make this more difficult); and
- Encouraging good working relationships among staff when cultures, pay, and compensation policies can differ significantly.

When designing the new service models, decisions must be made about specific roles of both the public and private agency workers. Questions include:

- Who handles matters of eligibility for Federal title IV-E and Medicaid dollars and other requirements? If this function has been transferred to the private sector, how does the public agency verify these findings?
- Who has primary responsibility for developing the case plan, the public or private provider?
- Who presents information about the case and makes recommendations to the court about the case plan including goals, services, etc. – the public or private agency worker, or both?
- What are the decisions that can be made by the private provider?
 - Selecting services
 - Level of placement
 - Visitation
 - Case goal
 - Whether and when to return a child home
 - Recommendations for termination of parental rights (TPR)
- For which of these decisions does the private provider seek approval from the public agency worker? How does this work and in what timeframe?

In many communities and states, these relationships and roles have evolved over time as public agencies become more confident in the decisions about, and services delivered to, clients.

It is also important to keep in mind that contractors need to have adequate control over case management decisions when using risk-based contract arrangements such as managed care and performance-based contracting. In many cases across the

¹⁴ Exceptions to this include jurisdictions in Florida and Arkansas where child protection investigations are carried out by law enforcement, generally local sheriff's offices.

country, private agencies are reimbursed for performance, but do not have final decision making authority over how they direct services and resources. This disconnect between financial risk that private providers assume and the actual control they have over casework, will continue to challenge privatization efforts (Westat & Chapin Hall, 2002).

11) What are the legal risks with privatization?

There are a range of legal issues that must be considered when privatizing services. The federal government is actually silent as to whether the case management function can be privatized. McHugh (2000) found there is nothing stated that directly sanctions, nor prohibits it.

“Instead, federal law holds states ultimately responsible for the placement and care of children in foster care and for all other federal mandates under Title IV-E and other provisions of the Social Security Act. Moreover, under federal constitutional law, some public child welfare agencies have been held legally responsible under certain circumstances for ensuring that children are not harmed while in state custody based on involuntariness of state’s action. Accordingly, if a public agency were to privatize all or any case management responsibilities, federal law would seemingly still hold the public agency accountable for its contract agent’s actions.” (McHugh, p. 13, 2000)

In addition to federal law, states must examine their own laws which may specify certain purely government functions in the delivery of child welfare services. North Dakota, for instance, amended its child protection statute in 2005 allowing it greater flexibility to contract out child welfare services (Section 50-25.1-06). Other states, including Arizona and Texas, are looking into more subtle legal issues. These states have determined that state law does not explicitly prohibit privatization of services, but are exploring whether state law and court rules might preclude the private agencies from presenting the “state’s” recommendation in court, even if they serve as the agent of the state.¹⁵

Finally, states must consider the liability issues of the private agencies. Will private agency workers have legal representation in courts? If, for example, private providers are representing the case in court themselves, does state law grant immunity to the provider as an agent of the state? If not, what are the legal consequences of this for the private agencies? What are the financial consequences for the private provider for legal representation and insurance coverage? Some locations are trying to determine whether State attorneys will be able to represent the private agency case workers in court as they currently do for public agency, child protection staff (McCullough, 2005).

¹⁵ Personal communication with Charlotte McCullough.

12) Will privatizing services alone bring about improved outcomes or will the agency need to implement other reforms in tandem with privatization to improve system performance?

When considering whether privatization will benefit the current system, agency leaders must examine how privatization will support or complicate other reforms underway. Initiative planners must determine whether they will need to adjust other features of the service system when cases and case decision making authority are transferred.

Privatization efforts should be considered *part* of a state's or community's overall reform agenda. As discussed earlier, privatization alone will not likely solve all problems facing an often overburdened and under funded system. In Illinois, state staff recognized that there were a complex set of interrelated pressures hindering agency performance which needed to be addressed on several fronts (Shaver, 2006). Some of the core design changes involved a re-design of front-end operations (reducing caseloads of investigative workers, implementing a new risk assessment tool, reducing time to service referral), redesigning contract monitoring (doing away with the dual case management system where public and private agency caseworkers jointly reviewed all key case decisions), developing the performance-based contracting system and adding guardianship as a permanency option. In short, privatizing case management and redesigning the payment structure of the foster care contracts was just part of the state's overall reform agenda to improve permanency rates.

Conclusion

The first round of Child and Family Services Reviews confirmed what many have known – state and county child welfare systems continue to struggle to achieve timely permanence for children. The reviews also confirmed the chronic barriers states face in delivering services, including the fact that large caseloads and staff turnover limit caseworker visits with children and thereby fetter a state's ability to ensure federal goals of timely permanency and safety (US DHHS, 2004).

The reasons for undertaking privatization reform are varied but a common theme is improving outcomes for children and families. To achieve these results, privatization efforts must be based on careful up-front assessment of current issues facing the child welfare system, thinking through where improvement is most desired, and scrutinizing the capacity of private providers to deliver on expected results. Most experienced observers advise a thoughtful and inclusive planning process that includes a focus on contract design and infrastructure needs of the private provider community. Public agencies must also assess their own ability to take on new monitoring functions and oversee new, or expanded, contracts. Sites embarking on this assessment must be prepared to do this work in a politicized context.

One of many benefits reported by those states and communities that have privatized large segments of their child welfare system is that privatization can leverage support from the community and expand the political base for advocacy and program expansion. In addition, by broadening the service provider community, the system can offer more specialized and, in some cases, more culturally appropriate services.

In short, privatization can improve service delivery and child and family outcomes, but it remains a complex systemic reform that requires considerations of multiple political and program factors. As noted in this paper, it is important that sites undertake this process in an informed manner to a number of points; specifically:

- **Mandates alone won't achieve outcomes.** Writing a contract that demands a certain level of performance will not ensure that intended outcomes will be achieved. Just as public agencies have struggled to continuously improve service delivery, private agencies will have their own set of struggles. Short and long-term plans for staff training, contract monitoring, technical assistance, and corrective action must be thought through prior to implementation.
- **Successful initiatives are partnerships.** Private agencies may not be able to leverage needed community services and build capacity without the support of the public agency. In fact, private community-based agencies may be less well-equipped to broker needed health and mental health services from other community providers than the public agency. Initiatives must be planned with time and resources dedicated to knowledge transfer and opportunities for collaborative problem solving.
- **You can't get something for nothing.** Improving quality of services delivered and the outcomes achieved requires investing needed resources, at least in the short-run. Recent privatization reforms teach us that privatization can help achieve outcomes, spur innovation, and align performance with financial incentives. However, these reforms also show that in most cases, enhancing system performance comes at a higher cost than the current system.
- **Don't ignore staffing issues.** Again, a change of this magnitude will have multiple ramifications for staff in both public and private agencies. Public agency staff may not support the change, and private agencies will face many of the same difficulties recruiting, training, and retaining child welfare staff. Early discussion of needed supports is critical.

It must also be remembered that privatization, or systemic, fundamental reform cannot be planned in a vacuum. Sufficient time must be devoted to a thorough assessment of where you want to go and what in the current system supports or inhibits performance. New service delivery systems must be designed to take advantage of system strengths and to address identified barriers to performance. In addition, the best-intended reform can get quickly off-track (even before implementation) if the planning process is not inclusive. The child welfare system involves many key players in the delivery and oversight of services – early involvement and buy-in from these players is important to designing and implementing efforts.

Many scholars of child welfare privatization initiatives have suggested that the effectiveness of privatization efforts depends on the quality of planning and implementation activities carried out by the public and private sectors (Nightingale & Pindus 1997, Freundlich & Gerstenzang, 2003; McCullough, 2003). Public agency officials must select among a range of service delivery models, contract payment methods, quality assurance and contract monitoring methods. Each component must be designed, and then aligned with other design features to achieve agency goals (McCullough, 2005). The next paper in this series will present a range of structural models and fiscal arrangements used by states and communities today and will highlight lessons learned to help states weigh options. Future papers will provide detailed

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information about how states have divided roles and responsibilities, developed contracts and carried out contract monitoring and accountability functions.

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