



## IMPLEMENTING THE PERMANENCY CARE ASSISTANCE PROGRAM

The new permanency care assistance program, which pays relatives who take permanent custody of a child in state care, is well intended. But due to federal and practical constraints, implementation may not go as planned. That is why the 2017 sunset provision is important. It allows sufficient time for the program to get up and running but provides an important "out" if the program does not achieve its intended goals.

### The Permanency Care Assistance Program

In 2008, Congress passed and the President signed the Fostering Connections to Success Act. The act provides new federal matching funds to support states opting to provide financial assistance to relatives who take permanent custody of children in state care under certain circumstances. (Under the federal law, permanent custody is referred to as legal guardianship and under Texas law as permanent managing conservatorship (PMC).) Taking advantage of the new opportunity, the 81<sup>st</sup> Legislature enacted and funded the permanency care assistance (PCA) program.

Under the PCA, a relative must become a licensed foster parent. After becoming licensed, the child must live with the relative for at least 6 months. Afterwards, if the Department of Family and Protective Services (DFPS) finds that reunification and adoption are not appropriate, it enters into a written agreement with the relative to provide ongoing financial assistance once the relative becomes the child's permanent caregiver. The court then appoints the relative as a PMC and legal custody of the child is transferred to the relative. As a PMC, the relative has all the rights and responsibilities of a parent but, unlike adoption, the legal relationship terminates when the child turns 18 and becomes an adult. As a result, parental rights usually remain intact. Once legal custody is transferred to the relative, there is no ongoing DFPS or court supervision. The relative is paid at a rate that is less than the foster care payment but similar to an adoption subsidy: \$4,800 a year for a child at a basic level of care and \$6,540 a year for a child at a moderate, specialized or intense level of care. Payments are made monthly until the child turns 18 or, in some circumstances, until the child turns 21.

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DFPS will start entering into PCA agreements as of September 1, 2010 with payments beginning on October 1, 2010.

### **What the Permanency Care Assistance Program Is Intended to Do**

Each year over 1,400 children turn 18 and "age out" of state care. Most of them have lived in foster care for many years and have no real place to call home. Their outcomes are grim—mental illness, substance abuse, homelessness, teen pregnancy and crime. The PCA is intended to change that. The PCA is meant for relative caretakers who are willing to care for children living in the long-term care of the state but who need financial support to do so. To help these relatives meet burdensome foster care standards, federal law allows DFPS to waive "non-safety" standards on a case-by-case basis.

### **What the Permanency Care Assistance Program Is Not Intended to Do**

Every year, more than 3,200 children leave DFPS custody and go live with a relative who becomes a child's PMC. These caretakers receive virtually no financial support and so, in essence, are providing long-term care for free. The PCA is not meant to significantly change that. The PCA assumes that most relatives who would otherwise provide free long-term PMC care will continue to do so even though there is now a paid PMC option.

Every year more than 2,000 children leave DFPS custody and go live with a relative who adopts them. The PCA is not meant to change that. The PCA assumes that relatives who would adopt in the absence of a paid PMC option will continue to adopt even with a paid PMC option.

### **Consequences if the Permanency Care Assistance Program Does Not Work as Planned**

Although the PCA is well intended, it may not work as planned. If it goes awry, it will have significant financial consequences for the state.

First, many relatives who would have provided long-term PMC care for free under the old structure may now choose to take advantage of the paid PMC option under the PCA program. Although this is not the program's intention, under federal law, DFPS has no way to limit eligibility. All relatives have the right to get licensed as a foster parent. If the child lives with them after licensing for at least 6 months and they would otherwise take PMC, they are eligible for the PCA program. Unlike the adoption subsidy, DFPS cannot limit PCA eligibility to financially needy relatives or to children with special needs. If many relatives who would have otherwise provided PMC care for free choose to take advantage of the PCA program, it will be much more expensive than anticipated.

Second, with a paid PMC option under the PCA, relatives who would have otherwise adopted may now take PMC. Given complicated family relationships and dynamics, relatives are sometimes reluctant to pursue adoption because they do not want to terminate parental rights. As a result, they may prefer PMC because it allows

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them to have legal custody without terminating parental rights. Relatives' reluctance, however, can be mitigated by providing a financial incentive to adopt. As currently structured, however, the PCA eliminates that financial incentive as relatives receive the same payment under either adoption or PMC. Under such circumstances, it is likely that relatives who would otherwise have adopted will now take PMC. For example, when Illinois implemented a similar paid PMC program, a study found that 66% of relative PMCs under the program could have been adoptions if the program had not been implemented.<sup>1</sup>

The PCA does have an adoption "rule out" provision. To be eligible for the program, DFPS must find that adoption is not appropriate. But DFPS has no way of forcing a relative to adopt. If a child has been living with and has become bonded to a relative who does not want to terminate parental rights, as a practical matter, adoption is effectively "ruled out."<sup>2</sup> Illinois had a similar adoption "rule out" provision and yet relatives still shifted to PMC. If a substantial number of relatives who would have otherwise adopted now take PMC, the state's overall adoption numbers will decline. If that happens, DFPS will lose its federal adoption incentive payment because it is paid only if a state's adoption numbers continue to rise. For state fiscal year 2010, that would mean a loss of \$4.4 million in federal money, which funds 66 percent of DFPS' purchased adoption services.

Third, once licensed, relatives may not want to take PMC (or adopt) because it entails a significant financial loss. The federal Administration of Children and Families (ACF) has evaluated PMC programs in other states. Like Texas, both Maryland and North Carolina originally set their PMC payment at less than the foster care payment. That strategy failed, leading ACF to conclude that leaving foster care "is not an attractive option for many caregivers if it entails a substantial net loss in family income."<sup>3</sup>

Under the current PCA structure, a relative who takes PMC (or adopts) 2 children will lose more than \$30,000 in 5 years in addition to the loss of subsidized day care and respite care. If a relative is either unable or unwilling to take that loss, DFPS has no way of forcing them out of foster care. Under federal law, a relative foster parent is entitled to the same benefits as a non-relative foster parent.<sup>4</sup>

Last, the very population that the PCA targets—relatives with limited financial resources—may actually end up excluded from the program. Relatives with limited financial resources may not be able to meet foster care standards, even if "non-safety" requirements are waived.

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## Possible Options to Help Ensure the Permanency Care Assistance Program Works as Planned

1. Aggressively use \$1,000 upfront payment allowed under Relative Monetary Assistance Program (TFC § 264.755(b)) for relatives who need financial help to meet foster care standards.
2. Set PCA payment at less than adoption subsidy so relatives still have a financial incentive to pursue adoption.
3. Seek changes in federal law and policy to:
  - a. Allow states to target the PCA program to financially needy relatives and special needs children.
  - b. Provide federal monetary incentives for permanency, not just adoption.
  - c. Allow states to reduce benefits for relatives who stay in foster care long-term.

Respectfully submitted,

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<sup>1</sup> Testa MF. *Subsidized Guardianship: Testing the Effectiveness of an Idea Whose Time Has Finally Come*. Children and Family Research Center. May 2008. A similar substitution effect was found in Tennessee. There was no substitution effect found in a similar program adopted in Milwaukee, Wisconsin. But researchers attributed the lack of an effect to Milwaukee's decision not to inform about or offer the guardianship program to families who were already on the track to adoption, a strategy that is not available under the PCA program.

<sup>2</sup> Texas Administrative Code §700.1203-04; Child Protective Services (CPS) policy manual § 6221.1 and 6221.2.

<sup>3</sup> *Synthesis of Findings from State Assisted Guardianship Title IV-E Demonstration Projects (September 2005)*. Administration of Children and Families. (Available at: [http://www.acf.hhs.gov/programs/cb/programs\\_fund/cwwaiver/agissue/evaluation.htm#process](http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/agissue/evaluation.htm#process). Accessed on September 28, 2009).

<sup>4</sup> *Miller v. Yoakim*, 440 U.S. 125 (1979).