INTERIM REPORT TO THE MAJORITY LEADER, ILLINOIS HOUSE OF REPRESENTATIVES

DCFS Pilot Program: Permanency and Stability For Children in the Care of Elderly/Frail Adoptive Parents and Subsidized Guardians

December 2006

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Report Highlights

Interim Report on DCFS Pilot Program: Permanency and Stability for Children in the Care of Elderly/Frail Adoptive Parents and Subsidized Guardians

Why the Family Matters Pilot Program was created: For years, policy makers, legislators, clinical service providers, and attorneys working with adoptive and subsidized guardianship families in the DCFS system have expressed concerns about the permanency and stability needs of children in the care of older and ill caregivers. The families themselves echo these concerns, as approximately 400 children each year who have been adopted by caregivers age 60 and older are orphaned. By 2004, 10,400 children were adopted by 8,000 older caregivers--primarily grandparents raising grandchildren--who have "stepped up to the plate" to provide care and custody for children placed in their care by the child welfare system.

What the Family Matters Project has found: The Family Matters Project, conducted by the Center for Law and Social Work, has provided in-home social work and legal services to 35 families to develop new legal plans for children who no longer have a living parent or legal guardian, or backup plans for children in the care of older, fragile, or ill caregivers as of December 30, 2006. The majority of families have been referred by the DCFS Post Adoption Unit for assistance when a caregiver is ill, and the family is in crisis.

Most older or ill caregivers recognize the need for a backup plan for children in their care, but lack information and access to resources to help with future care planning, including information about available Illinois legal options for backup and temporary care planning. Caregivers lack information about children's continuing eligibility for benefits, and methods of safeguarding benefits access. They also lack information and support to help stabilize placements, particularly around behavioral and mental health services for children and adolescents. Many do not understand the legal implications for adoption, guardianship, or termination of parental rights. Systemic barriers outlined in this report include insufficient DCFS staff resources, need for child welfare staff training, insufficient documentation of family backup plans, a complete lack of policy and procedure regarding future care and custody plans for children placed by DCFS for adoption or subsidized guardianship, potential elimination of a family's plan if a child is in the subsidized guardianship waiver "control" group, and the need to develop a program of assistance for families when caregivers have lost the ability to make decisions about their children.

Families approach backup planning in ways that are somewhat dependent on the caregiver's health status. Ill caregivers are more likely to develop specific backup plans than those who are merely older and in good health, but older caregivers are willing to have a written backup plan developed for their children. The preferred backup plan for relatives who have adopted children from foster care is guardianship rather than adoption. Backup plans should be concretely developed at the time of adoption, and documentation of this plan must follow the child.

Preliminary Recommendations: To help assure permanency and stability for children in the care of older or ill caregivers, it is recommended that 1) the current project be continued and expanded to serve additional clients and develop resources and protocols for assisting older and ill caregivers and their families; 2) child welfare staff be trained in identifying and assisting older and ill caregivers with permanency and stability issues; and 3) DCFS develop policy, rules and procedures to address supports—including backup care and custody planning--for older and ill caregivers and the children in their care.

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December 22, 2006

The Honorable Barbara Flynn Currie
Majority Leader
Illinois House of Representatives
300 Capitol Building
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Subject: *Interim Report on DCFS Pilot Program: Permanency and Stability for Children in the Care of Elderly/Frail Caregivers*

We are pleased to submit this report pursuant to the Memorandum of Understanding (MOU) between the Illinois Department of Children and Family Services and you as Majority Leader of the Illinois House of Representatives.

The MOU established a pilot program of social work and legal services for older (age 60 and over) and ill caregivers who adopt or take guardianship of children through DCFS. The goals of the program, called Family Matters, are 1) to secure future care and custody plans for children and 2) to provide information to caregivers and families about legal options for future care, including standby guardianship, guardianship, standby adoption, and adoption. The MOU also provided for an assessment of state policies and procedures under which social work and legal services may continue to be provided in a timely and cost-effective manner to older and ill caregivers, and to families of deceased caregivers so as to ensure permanency for children in their care and improve gaps in service that may now exist.

The MOU also required interim report and final reports to the legislature on the 1) results of services provided, 2) any legislative impacts, and 3) recommendations regarding necessary changes in policies, procedures, rules, and resources that will enable the State to meet its responsibilities to children previously in the DCFS system who, through adoption or subsidized guardianship, become the responsibility of elderly or frail caregivers.

This interim report provides details on program progress thus far and the needs of these older and ill caregivers, and of families who have already lost an adoptive parent or subsidized guardian. It also presents preliminary recommendations for additional resources and potential changes in policy and law.

Results in Brief

The new Family Matters program created through this MOU has provided the first in-depth look at the permanency and stability needs of a select group of the more than 10,000 children who have been adopted or are under the subsidized guardianship of older or ill caregivers in Illinois. Some of these children—about 400 per year—are orphaned when their adoptive parent dies, and many are at risk of being orphaned due to illness or age of an adoptive parent or subsidized guardian.

As of December 30, 2006 the Project was working with 35 families to develop new legal plans for children who no longer have a living parent or legal guardian, or backup plans for children in the care of older, fragile or ill caregivers. Social work and legal services are provided to these families in their homes.

Most older or ill caregivers recognize the need for a backup plan for these children. In most--but not all--cases, extended families are willing to assume responsibility for a child who is adopted and then orphaned. But a number of informational and systemic barriers to making a new legal plan for a child, or even reaching family agreement on a plan, have prevented even reasonably smooth transitions from taking place for these children.

Informational barriers:

- Lack of information by grandparents and other relatives raising children as to continued eligibility for adoption assistance or subsidized guardianship benefits to support the child, and the processes involved in obtaining those benefits.

- Lack of family agreement about the best plan for a child who is at risk of becoming--or has been--orphaned.

- When a family does identify a future caregiver, that caregiver may not be willing, able, or qualified to serve. Problems can include lack of adequate housing or income, inability to pass criminal or child welfare background checks, and age or infirmity of the backup caregiver.

- Lack of information regarding legal options such as successor adoption, guardianship, standby guardianship, standby adoption, or short-term guardianship. These are options that can help caregivers make sound future care and custody plans for children.

- Lack of information about ways in which to safeguard access to financial benefits for children, so that a person of their choosing can administer those benefits if the caregiver becomes disabled. Options can include powers of attorney and secondary signatures on bank accounts. Caregivers also need accurate information about and access to health care powers of attorney.

- Lack of information about community services that can address children's behavioral health or mental health needs. Frequently, older or ill caregivers find themselves unable to deal with the challenges of raising children and adolescents who need supportive mental or behavioral health services.

- Lack of understanding regarding the legal implications of termination of parental rights, guardianship, and adoption. Many adoptive parents and subsidized guardians view the adoption or guardianship as a "temporary plan" until birth parents make sufficient changes in their lives to be able to resume care and custody of children and have their parental rights reinstated. Thus they view return to birth parents as a "backup plan" – a possibility that may or may not receive DCFS subsidy or court approval.

Systemic barriers:

- *Insufficient staff resources:* Adoptive parents and subsidized guardians must rely on a hardworking but understaffed Post Adoption Unit at DCFS for information. Frequently, these caregivers state that they are unaware of the Post Adoption Unit's existence, or that they have been unable to connect with a Post Adoption worker or receive a resolution to a post adoption problem.

- *Insufficient backup documentation*: While child welfare practice is to ask that adoptive parents and subsidized guardians identify potential backup caregivers, there has not been a DCFS process to document the choice of backup to the extent that it follows the child's subsidy file or has been included as part of the subsidy negotiation process.

- *Need for staff training:* In addition to any relevant training regarding older caregivers provided by DCFS and the DCFS Office of the Inspector General, Department and private agency staff need training on ways to assist adoptive parents and subsidized guardians with legal backup planning for children in their care. To support "backup" planning, training is needed on legal options available to Illinois families, benefits assessment and coordination, ways to safeguard access to financial benefits for children, disclosure of illness, supportive services assessment and implementation, cultural issues that impact future planning for children, and assistance to families when caregivers lack the capacity to provide legal consent for temporary or future care for children.

- *Lack of policy and procedure*: There is no DCFS policy or procedure regarding future care and custody, or "backup" planning for adoptive parents or subsidized guardians.

- *Lack of standards for reinstating custody or restoring parental rights to rehabilitated birth parents:* Some families wish to choose rehabilitated birth parents as backup caregivers. There is no current standard for social service providers, DCFS or juvenile court to evaluate the capacity of a rehabilitated birth parent to resume parenting responsibilities for children who were previously removed from their care by DCFS.

- *Subsidized guardianship "control group" membership precludes a family's choice of backup:* Frequently chosen "backup" caregivers indicate that their preference is to become guardians of children vs. becoming adoptive parents. This seems to grow from their wish to not further distort the original family relationships. However, in some instances guardianship cannot be implemented as an option due to assignment of the child involved to the DCFS subsidized guardianship waiver "control group." The child's assignment to the control group may effectively rule out the family's choice of backup caregiver, who prefers to

take guardianship rather than adopt. Or the family's chosen backup caregiver may feel compelled to adopt in order to keep the subsidy available for the child, even though guardianship is the preferred backup plan.

- *Need for assistance when adoptive parents or subsidized guardians lack decision-making capacity:* In some cases grandparents or ill caregivers have already lost the capacity to make legal decisions regarding the future care and custody of their children. These grandparents or other caregivers may need adult guardians to help with decision-making regarding the children. They also need legal representation. As more and more older caregivers adopt or take guardianship of children, the population of caregivers who lose capacity to make decisions is likely to grow. A multidisciplinary response--that involves DCFS, juvenile and adoption courts, eldercare organizations, appropriate state and local agencies, and the adoption and guardianship attorney associations--needs to be coordinated to help respond to the needs of children for permanency and stability.

Initial findings: families engaged in backup planning:

- *Families referred:* Most (71%) of the referrals to this program were made by the DCFS Post Adoption Unit for assistance due to change in health status/age of the current adoptive parent or subsidized guardian. Most of these families are in crisis. Approximately 75% of the children were initially placed with the adoptive parent or subsidized guardian as foster children. Most of the children are currently under the age of 12, and adoptions took place less than five years ago.

- *Backup plans should be concretely developed at the time of the initial adoption.* This planning should be part of the work involved in completing the guardianship or adoption subsidy.

- *Ill caregivers are more likely to develop a specific backup plan than those who are merely older and in good health.*

- *The preferred backup plan for relatives who adopted children from foster care is guardianship rather than adoption.*

- *Older caregivers who are still in good health are willing to have a written backup plan developed for their children.*

- *Some families believe that children in their care are not the ongoing responsibility of their extended family unit.* They have expressed the belief that the children should be either returned to foster care or to their birth parents if the adoptive parent or subsidized guardian becomes incapacitated or dies.

Background

Grandparents and other relatives: statewide and child welfare impacts

The number of grandparents and other relatives taking responsibility for children under 18 is large and growing. According to the U.S. Census Bureau, nationally 4.5 million children, or one in 12 children, live in a grandparent headed household. This represents a 30% increase from 1990 to 2000. In Illinois, 288,827, or nearly 9% of all children in 2000 lived in households headed by grandparents or other relatives (213,465, or 6.6% in grandparent-headed households and 75,362, or 2.3% in households headed by other relatives). Of these children, 119, 676 were living with a grandparent or relative and no parent present.

The rise in responsibility for children by grandparents and other relatives has also impacted the child welfare system. Since 1997, the number of children placed for adoption or other permanent placements has increased dramatically.[1] These children came from homes that were abusive and neglectful to the extent that returning them to their parents had been ruled by the courts to be unsafe. More and more of these children are placed with grandparents and other relatives—by September of 2005, 38% (6,827 of 18,161) of children in DCFS substitute care were placed in relative, or "kinship" care.

In thousands of these cases, grandparents and other relatives have "stepped up to the plate" and have become adoptive parents or private guardians of children through DCFS. Statewide, DCFS reported that in 2004 nearly 5,000 older caregivers age 60 and over were caring for 10,400 children, including over 8,000 children who were in adoptive homes or subsidized guardianship arrangements.

Some of these children will experience the death of their adoptive parent or guardian before reaching the age of majority. In Cook County, the DCFS Post Adoption Unit estimates that it is contacted by 1-4 families per week regarding the death of an adoptive parent, a sizable increase from years past. DCFS estimates that, statewide, approximately 400 children adopted through DCFS are orphaned each year, and are in need of successor adoptive parents or guardians.

In addition, after adopting or taking subsidized guardianship, some older or ill caregivers lose capacity to care for children because of physical or mental disability. Children in these situations need a "backup plan" in place before a caregiver loses decision-making capacity to responsibly plan for the child's future.

The overwhelming majority of these adoptive parents and subsidized guardians who lose capacity or die do so without a legal plan in place for the children. Yet, prior to the signing of the Memorandum of Understanding, no protocol or program was in place to help these families make secure legal plans for the future of the children in the event that the caregiver should die or become too disabled to provide care. With the creation of the Family Matters Program pursuant to the MOU, a new program is in place, and new protocols will be developed.

Previous legislation: grandparents and other relatives raising grandchildren through child welfare

[1] This is reflected in the Department's data on substitute care, which has been reduced by nearly two-thirds (from 52,000 children in FY 1997 to less than 17,000 children in September of 2006—a decrease of more than 67%). Most of these children have been moved to permanency through adoption or subsidized private guardianship.

1) Initial intent: more information for grandparents raising grandchildren through child welfare: The General Assembly has a history of recognizing the needs of grandparents and other relatives who raise children in the child welfare system. Since the mid-1990's, state law has provided that DCFS *may* establish a "Grandparent child care program" of information and other services to grandparents caring for grandchildren who were victims of child abuse and neglect (20 ILCS 505/34.11). Recognizing that parental substance abuse, child abuse, mental illness, poverty, and death "as well as concerted efforts by families and by the child welfare system" keep children with relatives whenever possible, the DCFS Act was amended to provide "information about the issues of kinship care, the special needs of (both physical and psychological) of children born to a substance-abusing mother or at risk of child abuse, neglect, or abandonment, and the support resources currently available to them." Information for grandparents included a brochure that could include prevalent causes of kinship care, problems experienced by children being raised by nonparent caregivers, problems experienced by grandparents and others providing primary care for children with special needs, the legal system as it relates to children and nonparent primary caregivers, benefits available to children and nonparent primary caregivers, and a list of support groups and resources located throughout the state. This program, however, was not required or funded, and has not been established within DCFS.

2) Attempts to close gaps in support for children who are adopted and then orphaned: By the late 1990's and early in 2000, the need for secure "backup" planning became more recognized as a critical need for children being cared for by older and ill adoptive parents and subsidized guardians. As previously mentioned, in Cook County alone between 1 and 4 families each week call the DCFS Post Adoption Unit concerning the death of an adoptive parent or subsidized guardian. The most recent available statewide data indicated that approximately 400 children are orphaned each year when an adoptive parent or subsidized guardian dies. Yet no protocol has been developed to assist families with children who were previously in state care and are at risk of being—or have been—orphaned when an adoptive parent or subsidized guardian dies.

Attorneys working with DCFS adoption cases began to realize both the legal and practical consequences of the absence of "backup", or successor planning for these children. Not only did leaving the child without a secure custody plan mean that the child had no legally responsible adult who could make decisions about the child, it also meant that benefits (including monthly cash payment and a medical card) for which the child was still eligible were stopped, at least temporarily—for an average of 5 months per child.

This "gap" in benefits for the child resulted from a number of factors, including 1) a lack of information on the part of remaining family members as to the child's continued eligibility for adoption assistance and the process for continuing the assistance, 2) the time needed to complete the administrative process of approving a new subsidy for the child, and 3) no backup plan in place for the child. Frequently, adoptive parents would die without a plan, and families would not know who to contact in DCFS concerning a new plan for the child—or even whether DCFS would provide assistance in those circumstances. In many cases, only the now-deceased adoptive parent was involved in negotiating the DCFS subsidy agreement, which

includes a monthly cash payment and a medical card for the child. Remaining family members, unfamiliar with the process used to establish a subsidy for a child in the first place, had no knowledge as to how to continue access to this federally-reimbursed benefit for the child.

Once a family did know that the child was still eligible for a subsidy and learned who to contact, and once DCFS was informed that the adoptive parent had died, the subsidy benefits for the child stopped until a new adoption or subsidized guardianship could be approved for the child. A new legal plan for the child also needed to be made, and agreement among remaining family members as to who, if anyone, was willing, able, and qualified to re-adopt the child. DCFS data indicate that the average length of time involved in this process was 157 days, or more than 5 months without adoption assistance payments for which the child remained eligible.

In 2004, the Chicago Bar Association Adoption Law Committee developed a proposal that would enable DCFS to continue federally-reimbursable payments for children for the period of time between the death of the adoptive parent and the child's re-adoption. This proposal became a CBA-sponsored initiative, and was also supported by the Illinois State Bar Association, Volunteers of America, FCAN (Families' and Children's AIDS Network), the AIDS Foundation of Chicago, the AIDS Legal Council of Chicago, and others. HB 1548, sponsored by Representative Currie, passed both houses unanimously in 2005 and became effective on January 1, 2006 (20 ILCS 505/5 (j).

Since January of 2006, the gap in payments for children has been substantially reduced. Under a new process, payments now begin once an interim subsidy is signed – but this process still takes approximately two months to complete. The current MOU program will attempt to address ways to close the existing payment and medical insurance gap for these children.

Legislative history of the Memorandum of Understanding

In 2005, the CBA Adoption Law Committee developed a proposal for a program of legal and social work services to help adoptive families make secure backup plans for children in their care. This proposal also became a CBA-sponsored initiative. Other supporters included the Chicago Bar Association, AIDS Legal Council of Chicago, AIDS Foundation of Chicago, AARP, FCAN (Families' and Children's AIDS Network), and the Illinois State Bar Association. HB 4526, sponsored by Representative Currie, passed the House of Representatives unanimously. The bill was held in the Senate after an agreement was reached between Representative Currie, DCFS, and the Governor's Office regarding establishment of a one-year pilot program to test the effectiveness of the services that were proposed.

Program Progress as of December 30, 2006

Following the signing of the MOU in April, 2006 DCFS moved quickly to establish the pilot program. As required by the MOU, a contractor was identified, and a contract was in place to

begin the program on July 1, 2006. The Center for Law and Social Work was selected as the contractor for the program, called "Family Matters."

Pursuant to requirements of the MOU, an Advisory Committee was also formed to provide input and guidance to the new program. To date this committee has met twice. Representation on the Advisory Committee includes the following: DCFS, Children's Home and Aid Society (CHASI), FCAN (Families' and Children's AIDS Network), Chicago Bar Association Adoption Law Committee, AARP, Illinois Department on Aging, Chicago Department on Aging, Office of the Cook County Public Guardian, University of Illinois Jane Addams School of Social Work, and the Illinois General Assembly. See Appendix 3 for a complete committee list.

Goals of the pilot program.

The Family Matters Program has the following goals:

- Provision of direct legal and social work services to a maximum of 100 elderly, frail or ill caregivers who are currently legally responsible through a court order of adoption or guardianship for minor children who were previously wards of DCFS. These services are to be directed at the development of secure future legal care and custody plans for the minor children in the event that the current caregiver is no longer able to carry out these responsibilities.

- Development of a protocol for ensuring that a document is developed in the course of the direct legal and social work services with the caregiver which will designate a future caregiver and that caregivers' acceptance of the responsibility should the need arise; a copy of which would be included in each child's case file and adoption or guardianship subsidy file as applicable to the child.

- Development of a protocol for identification of elderly and frail caregivers who may be in need of future care and custody planning.

- Development of recommendations concerning training for Department and private agency staff on methods of assisting Caregivers to make future care and custody plans for children in their care.

Brief summary of services to date

As of December 30, 2006 Family Matters has a caseload of thirty-five families with whom we are developing new legal plans for children who no longer have a living parent or legal guardian or back up legal plans for the minor children in the care of older, fragile or ill caregivers.

The Family Matters program model is based in part on the interdisciplinary model of future care and custody planning developed by FCAN's Family Options Project. Family Options has a 10-year history of providing legal and social work services to families in which parents0 are terminally or chronically ill, and to families in which children have already been orphaned by

HIV/AIDS. As with Family Matters, the goal is to keep families together and assist them with making their own plans for children. Program planning included consultation with FCAN regarding the process of working with ill caregivers and families of orphaned children.

The Project's work began on July 1, 2006 with a staff of two attorneys, two licensed clinical social workers and two law and social work interns from Loyola University. Prior to the receipt of the first referrals, project staff held four meetings with DCFS, Metropolitan Family Services' Older Caregiver Program, DCFS Post Adoption Unit, the Cradle, and the DCFS Inspector General's office concerning the development of a program plan and a referral process, assure program coordination with other services. Our advisory committee has had two meetings to date. Project staff also met with Governor's State University, which will serve as project evaluator.

The project's first referral was received on July 27. As of December 30, 2006 the project has 35 cases, with a target of 100 cases by June 30, 2007.

How the services are delivered: Upon receipt of a referral from the client directly or from the DCFS Post Adoption Unit a home visit is made to the parent or the child's current caregiver by a lawyer and social worker team. At that meeting the family is informed that the Family Matters staff will assist them in developing and implementing their back up plan for the children. Project staff discuss various legal options available (short term guardianship forms, stand by adoption, standby guardianship, guardianship, adoption or a written plan indicating their preferences to be placed in their DCFS subsidy file) and emphasize the fact that as the parent this is their plan for the child, not that of DCFS or Family Matters. Project staff also discuss with the family their current situation such as age, health status, degree of urgency they are experiencing, what if any successor plans they have in mind, the wishes and needs of the children and any other concerns their family may raise.

Legal services to these families have included guardianship transfer, standby guardianship, short-term guardianship, and successor adoption. Lawyers and social workers also help families develop written plans for children when the family chooses not to go to court at this time. Social work services have included extended family meetings, contacts with collaterals, exploration of children's benefits with DCFS and other agencies, referrals and linkages with ongoing counseling and other support services.

During the first home visit a back up plan is begun and all steps needed to implement it are outlined. The project has found that within three or four contacts, through home visits and telephone contact, a plan can be developed and the implementation begun (background checks completed, court appearances scheduled, short term forms executed, payments stopped, initiated or transferred, etc).
Initial observations about the families:

- *How the referrals have come in:* Twenty-five of the referrals have come as a result of the family calling DCFS Post Adoption services seeking assistance of some form due to the health status/age of the current parent. Generally these families are in crisis mode. About 75 percent of our current clients are ill rather than solely elderly. We believe that more elderly clients will self-refer as DCFS provides information about the program to older adoptive parents and subsidized guardians. (In December 2006 DCFS began sending

outreach letters describing the program to twenty older caregivers each week asking them to call us if they are interested in implementing a back up plan for the minor children in their care. At the same time an article about the program appeared in the DCFS Newsletter, "Illinois Families, Now and Forever".)

- *Relationship of caregivers to children:* Approximately 75% of the families being serviced began as relatives providing foster care to related children. They have since adopted the children or become subsidized private guardians.

- *Children's age and length of time since adoption:* Most of the children are currently under the age of 12 and the adoptions took place less than five years ago.

- *Family self-referrals:* Seven of the cases involve families who have called our staff directly or through their former adoption attorney seeking implementation of a back up plan. Because this program is in place, project staff will be able to implement the legal plan the families want for their children and facilitate the transfer of the subsidy payments to the child's new legal parent or guardian. Again, it is expected that more families will self-refer as information is distributed by DCFS to older adoptive parents and subsidized guardians.

- *Disabled children who are approaching adulthood:* Two referrals concern families who are about to adopt children with severe impairments. These families are seeking services concerning both current back up plans and future adult guardians for the children when they reach their 18th birthday.

Initial findings: families engaged in planning

- *Back up plans should be concretely developed at the time of the initial adoption.* Families are much more available at that time rather than during a crisis such as illness or death. The back up planning can and should be presented as one additional piece of information and paperwork to be completed along with the development of the adoption or guardianship subsidy packet. A form documenting the plan should be included in the child's adoption subsidy case file. The plan developed should be very specific, outlining to both the adoptive family and the identified back up exactly what steps should be take if and when the back up plan needs to be implemented. Such advance planning will allow for greater emotional certainty, financial security and less chaos for all involved when illness or death makes a change in care plan necessary.

- *Nearly all of the families we are currently working with came to us with a back up plan in mind wanting to know if it was legal, possible and how to implement the plan*. They completely lacked information as to legal options and DCFS approval procedures for successor adoption or guardianship, and many also lacked information as to whether the child was still entitled to adoption assistance benefits.

- *The preferred back up plan for relatives who adopted children from foster care is guardianship rather than adoption.* This seems to grow from their wish to not further distort the original family relationships.

- *Ill caregivers are more likely to develop and implement a specific backup plan than those who are merely older and in good health*. These cases are complex and often present an immediate need to transfer a child's care and custody.

- *Older caregivers who are still in good health are willing to have a written plan developed for the children* They are less likely to want to proceed to Court for the entry of a standby adoption or standby guardianship order, unless illness presents an immediate need to do so.

- *DCFS has no current policy or procedure concerning backup planning for children who are adopted or are placed with a subsidized private guardian.*

- *In 2006, DCFS began providing services consistent with the Inspector General's Older Caregiver Initiative*, which requires that caseworkers meet with the foster parent and the proposed back up caregiver to discuss the child, the proposed subsidy and the responsibility the caregiver is agreeing to assume in the future as the need arises. The back up is provided with telephone numbers of DCFS Post Adoption staff and Adoption Preservation Services. This is a relatively new process for DCFS. *No specific directions are provided concerning what needs to be done should it become necessary for the back up plan to be implemented.*

- *In the small sample of cases we have worked with so far we find that a distinction remains between adopted children and birth children in the minds of the adoptive family*. At least one quarter of these adoptive families believe that the children are not the ongoing responsibility of their extended family unit. They have expressed the belief that the children should either be returned to foster care or to their birth parents if either illness or death of the adoptive parent
  requires the implementation of a successor or back up care plan for the children.

- *At the time of a discussion of a back up plan, those birth parents who are still involved with the child and adoptive parents have demonstrated a lack of understanding of the legal implications of a termination of parental rights order, an adoption order or guardianship order*. Repeatedly both adoptive parents and birth parents have told us that they view the adoption or guardianship as a "temporary plan" until the birth parents made sufficient changes in their lives to be able to resume care of the children and have their parental rights reinstated.

- *No current standard exists for social service providers or the Court to evaluate the current circumstances and capacity of a birth parent whose rights to the child in question were previously terminated when that parent is being considered as a successor parent or guardian*. Thus if a family's "backup" plan is the (now rehabilitated) birth parent, there is no process or standard for reinstating parental rights to children.

- *Caregivers do not know how to access community services for the children's mental health or behavioral needs.* Most of the ill caregivers have accessed in home services for themselves through the Department of Human Services, Department of Aging or local community groups to assist with their own health care and daily needs. But many report frustration with their prior contacts with DCFS, and several provided examples of

attempting to obtain assistance for a period of two years. The families' greatest complaints involved either how long it took to obtain services or the lack of availability of satisfactory services to meet their needs. Fortunately, Family Matters has been able to resolve most of the issues involved, including the desire to implement a back up plan, transfer subsidy payments to the person caring for the child during an illness, and efforts to obtain services for children with extreme mental health or behavioral needs.

- *Assistance with administering financial support:* Few caregivers have a secondary signature on their bank accounts. If a caregiver is severely disabled--as with a stroke, dementia or Alzheimer's--the friends or family members who are assisting with the care of the children have no way to access the subsidy or other funds for the benefit of the children.

- *Assistance with documenting health care and financial powers of attorney:* Few have executed powers of attorney for health care and even fewer have executed powers of attorney for financial or other matters.

- *Knowledge about legal options that can help:* None were familiar with short-term guardianship forms or standby adoption or standby guardianship options.

The families, their needs and Family Matters interventions: Case examples

Case Example 1: Adoptive parent incapacitated and in hospice, no prior backup plan

M is a 55-year-old woman with two adopted children B age 7 and G age 9. M and her husband adopted the children at the same time although they are not biological siblings. She also has an 18-year-old biological daughter who is living at home with her, attending college and caring for the younger children. M's husband died about 5 years ago.

M has been diagnosed with breast, bone and brain cancer. While in the Family Matters Program she has developed a plan for the children but she does not want it put into place until she has "left this earth." The plan involves having B go to live with relatives in Milwaukee and G to live with relatives in the suburbs and having the relatives assume guardianship of the children.

At our first meeting with M and her family she signed short term guardianship forms naming relatives as short-term guardians. The short-term guardianships were to take effect when she was no longer able to care for the children.

Shortly before Thanksgiving M's health took a turn for the worse and she was hospitalized, then transferred to a nursing home and is now in hospice, is non-responsive and therefore not able to sign subsequent short-term guardianship forms. Now she also lacks the capacity to consent to the children's re-adoption or to appointment of a guardian.

The relatives do not want to ask a court to have M found "unfit" to be able begin the adoption proceedings while she is still alive as that is contrary to her wishes.

Counseling services, legal consultation and family meetings all continue with the family while M remains in hospice.

Case Example 2: Grandparent terminal illness, death, and family that wants to take guardianship but not adopt. At the time of the referral from DCFS Post Adoption, A, age 72 was in a nursing home following a stroke. The referral indicated that C, the 14 year old boy for whom A had been appointed guardian 8 years ago had been living with his elderly uncle but is now with an aunt, age 37. C has many emotional and behavioral problems at home and at school. At the time of the referral to Family

Matters he had been psychiatrically hospitalized for harm to animals and attempting to set a fire to the family home. His aunt wishes to assume subsidized guardianship for him and continue to provide for his needs. He is receiving outpatient therapy, attending a weekend "boot camp" and in enrolled in an alternative school program through his school district.

Three weeks after we began our work with the family, A died.

Our staff has had extensive contact with the family and developed a legal and support plan involving successor guardianship. As we began to implement the successor guardianship legal work we were informed by DCFS post adoption that A had in fact adopted C as he was in the control group and therefore did not qualify for subsidized guardianship. His aunt was so informed but does not wish to adopt him due to his extensive needs, as he may need residential treatment in the future—a service she cannot personally afford. She wants him to remain with her. She also wants to become his guardian, and to be able to access DCFS services as needed. We have been unable to make contact with her since she was informed of these barriers to guardianship.

Case Example 3: An incapacitated adoptive grandparent, short-term guardianship, and adoption subsidy funds.

B, age 64 adopted grandson S, now 16, when S was a toddler. B has been living in a rehabilitation center since 2004 following a broken hip and a stroke. S has been cared for during this time by his relatives. The relatives contacted the DCFS Post Adoption Unit about two years ago seeking to have the subsidy payments sent to them as S was living in their home. This was not possible because the relatives had no legal authority to be caring for him. B had no identification, no bank account and no way to specifically confirm her identity and reportedly would therefore be unable to cash the checks herself and transfer the funds to the relatives for S's benefit. S was without a legal parent or guardian available to care for him on a daily basis.

In July 2006 the relatives again contacted DCFS Post Adoption unit for assistance in obtaining S's birth certificate, subsidy funds funding and a medical card for S.

Family Matters staff made a home visit to the relatives and to B in the rehabilitation center. After these contacts, a letter was sent by our staff to the DCFS Post adoption Unit outlining the wishes of B that the payments be reinitiated in her name at the relatives address. She also requested that future payments be directly deposited into the relatives' checking account to avoid any problems with check cashing, etc. DCFS then confirmed this plan with B and payments were reinstated. Not wishing to vacate any of her parental rights to S, with our help B is executing a series of short term guardianship forms S every 60 days which will allow the relatives to continue providing care for him until S reaches majority.

Case example 4: Adoptive parent incapacity to provide care, and immediate successor adoption.

M is a fifty-five year old woman with diabetes, congestive heart failure, high blood pressure and is oxygen dependent. Her children, now ages eleven and fifteen were adopted when they were toddlers. M's doctors have told her that she must immediately move with her adult children to a warmer climate and can no longer care for the minor children.

M has a backup plan in mind for the younger child with the father of a half sibling, C, but no one is willing to take the older child due to his significant delinquent behaviors; he will probably need to return to foster care. Family Matters team members met with M and then with C, the proposed new adoptive parent for the younger child. Upon learning that foster care was the plan for the older boy, C agreed to adopt him once counseling services were in place for his new family. Our staff filed an adoption petition, accompanied M, C and the children to a court hearing in which M voluntarily consented to the children's adoption by C and an Interim order for adoption was entered. M moved from Chicago's cold climate as planned and the adoption will finalize in March 2007.

Case Example 5: Making a Back up plan at the time of the initial adoption.

R, age 15, has been placed with the G's since she was a young child. She is a severely developmentally delayed child with significant emotional problems. The G's are ready to adopt her but want to be certain that she would not return to foster care if they were to die. N, a former teacher of R's has indicated her willingness to be the back up caregiver for the child. Once the initial adoption is completed, Family Matters staff will go to adoption court with N, the G's and R and have a standby adoption hearing which will allow N to step forward and care for R if the G's should become ill, incapacitated or die. R will not be left in legal limbo without a legal caregiver or return to foster care and the G's will have peace of mind that their daughter will be safe and cared for.

Summary of current case status

- As stated previously, the preferred back up plan for relatives who adopted children from foster care is guardianship rather than adoption. This seems to grow from their wish to not further distort the original family relationships. We have encountered three instances so far where it will is not be possible to implement a guardianship rather than an adoption due to the subsidized guardianship "waiver" and the issues related to the "control group" as part of the waiver. One of these children may need to return to foster care in the home of their current relative caregiver due to subsidized guardianship not being a legal option for them and the child's severe mental health and behavioral needs.

- Six cases are ready for dates to be scheduled in Probate Court for the appointment of guardians for the children. We will be asking DCFS to complete background checks, home studies and new subsidies prior to completion of the guardianships.

- One case is awaiting finalization of a successor adoption.

- In one case two children are being returned to foster case because the adoptive parent and her extended family are fearful of the children, do not want them and no other back up plan exists. The children have severe mental health and behavioral problems, and have threatened the adoptive parent and the children themselves.

- In four cases the proposed back up plan was the immediate return of the children to the birth family with whom the children have had an ongoing relationship. These plans are being evaluated and efforts being made to determine how to implement the return of children to a birth parent whose rights to the children have previously been terminated.

- Two families are utilizing an ongoing series of Short Term guardianship forms while waiting to see whether the health of the adoptive parent improves. We have set dates to meet with these families to see if the plan continues to meet their needs or if a new plan needs to be implemented.

- One family wishes to proceed immediately to a successor adoption due to the advancing Alzheimer's disease of the adoptive mother. They are also seeking assistance with finding larger and safe affordable housing for a family of eight.

- Our work with one family has been to encourage family members to implement the back up plan they have already chosen. The adoptive mother, age 60 has stage IV cancer, is in the midst of chemotherapy and was hospitalized at the time of the referral. The grandmother, age 76 is limited in her mobility due to amputation of one leg below the knee, and therefore cannot serve as a backup for her daughter. The children are ages 14 and 20, severely disabled and require 24 hour nursing care. The back up plan is that the 26-year-old daughter of the adoptive mother becomes the standby guardian of the children.

Research and evaluation

We have begun to develop our research questions on client satisfaction with Governors State University. They will evaluate our work with families in need of secure back up care and custody plans in terms of length of service client satisfaction, barriers to needed services and outcome measures.

Conclusion

The new Family Matters Program created through the MOU is the first DCFS program to take an in-depth look at addressing permanency and stability needs of children whose adoptive parents or guardians are older, ill, or deceased. Prior to the establishment of this program, DCFS lacked resources to devote to the issue of planning for children who are at risk of—or who have become—orphaned after adoption or guardianship. This pilot program provides a first step toward building a more systemic program of information and supportive services for these families to help them secure future permanency for children; and training, policy and resource development to better equip the Department and private agencies to assist these families.

Preliminary Recommendations

Resources

The existing Family Matters program is funded with $100,000 pursuant to the MOU, and an additional $100,000 in other DCFS resources. This funding provides for services to 100 families, policy and evaluation research, development of new protocols for documentation of backup plans, development of a protocol for identifying elderly and ill caregivers who may be in need of future care and custody planning, and development of recommendations concerning DCFS and private agency training regarding legal options and documentation of backup planning. Other program components, such as staffing of the project's Advisory Committee and completion of this report are being contributed at no charge to the Department.

1) Continue and expand the current pilot program: This program needs to continue and expand so that more cases can be accommodated. DCFS estimates that approximately 23

percent, or 500 newly entering yearly adoptions and guardianships involve caregivers age 59 and above. An additional 10,000 existing cases involve caregivers who are now over 60 years of age—and most are without a plan for the child's future care and custody. And approximately 400 children each year who have been adopted through DCFS have been orphaned.

The current staffing level of two part-time lawyers and two part-time social workers needs to be expanded to three two full-time attorneys and four full-time social workers. A policy and research component is also needed to continue to develop and monitor new policies that address older and ill caregivers who take responsibility for children through the child welfare system. The Family Matters Project should also develop training materials for DCFS and private agency staff (see 2) below).

2) Train child welfare staff on legal options and ways to assist older and ill caregivers with successor caregiver planning: Training of DCFS and private agency staff on legal options and backup planning for older and ill caregivers also needs to take place. Training should include assessment of the future (backup) caregiver, legal options available to Illinois families, case benefits assessment and coordination of benefits with available legal options, methods of safeguarding access to financial benefits for children, disclosure of illness within families, cultural issues that impact future planning for children, short-term guardianship as a temporary private guardianship measure, and how to assist families when caregivers lack the capacity to provide legal consent for temporary or future care.

Previous estimates developed by DCFS regarding training included initial training for approximately 1,600 DCFS staff. This training would then be incorporated into the Department's Core curriculum after the first full year of implementation. [2]

DCFS Policy, Rule and Procedure

No DCFS rule or procedure is in place regarding services to children whose adoptive parents or subsidized guardians are older, ill or deceased, except the Department's current procedure for authorizing interim payments on behalf of children when adoptions are dissolved.[3] In addition, although DCFS reports a new process for meeting with prospective adoptive parents and backup caregivers prior to initial adoption, we are not aware of any policy guidance that exists regarding backup planning for at-risk caregivers. This is an area that needs to be addressed, but may also require additional legislation (see below).

Legislative Impacts

The population of children in the care of adoptive parents and subsidized guardians who are older or ill, or whose caregivers are deceased, is large and growing.

[2] Training developed as a result of these recommendations should be coordinated with any relevant training offered by DCFS or the DCFS Office of the Inspector General.

[3] Procedures 359: Authorized Child Care Payments includes a section c) Interim Payments for Dissolved Adoptions, including adoptions that are dissolved due to death of an adoptive parent. These payments take effect on the date an "interim subsidy agreement" is signed by all appropriate parties—a process that can take approximately two months to complete. No provision is made for the payments for the two-month "gap" period.

Consideration should be given to proceeding with HB 4526 in order to give DCFS the statutory authority to provide services to assist older and ill caregivers with future custody planning for children in their care. These services should include social work, legal, and information services for caregivers, documentation of caregiver plans that follow the child, and training for DCFS staff. Appropriate rules, procedures and policy based in law will help support implementation of these services to ensure permanency and stability for children in the care of older and ill caregivers.

Sincerely,

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Center for Law and Social Work

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Co-Chair
Family Matters Advisory Committee

cc: Honorable Rod R. Blagojevich, Governor, State of Illinois
Honorable Michael J. Madigan, Speaker, Illinois House of Representatives
Honorable Emil Jones, Jr. President, Illinois Senate
Erwin McEwen, Acting Director, Illinois Department of Children and Family Services

Appendix 1

DCFS Pilot Program
Elderly/Frail Child Caregivers

Barbara Flynn Currie
Majority Leader

Illinois House of Representatives
94th General Assembly

April 2006


QuickTime™ and a
TIFF (Uncompressed) decompressor
are needed to see this picture.


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