

Next Steps Texas Should Take to Implement the 2018 Family First Act

Response to House Human Services Committee – Interim Charge #2.1

Background

The 2018 Family First Prevention Services Act (FFPSA) restructured how the federal government finances state child welfare systems by prioritizing *prevention services* and *higher-quality foster care* providers. The FFPSA, which takes effect on October 1 next year, must be a priority for the Texas Legislature during the upcoming session.

Through smart implementation of the FFPSA, Texas can keep more kids out of the Child Protective Services (CPS) system, improve the quality of foster care facilities, improve outcomes for children who do enter foster care, and prevent the loss of millions of dollars in federal funding for child welfare. The Department of Family and Protective Services (DFPS) has framed the new restrictions on federal funding for foster care as “optional” because Texas technically is not required to make changes. However, if Texas does not make changes to foster care that are incentivized by the FFPSA, Texas will lose federal funding that it currently relies on to support the foster care system.

Prevention Services

One of the primary goals of the FFPSA is to reduce the number of children entering foster care – while keeping kids safe – by creating new federal funding opportunities to help states address unmet mental health and substance use disorder treatment needs of children and their caregivers. The FFPSA also presents states an opportunity to provide at-risk families with more in-home services and support that would prevent the need for foster care.

[Parental substance use contributes to most CPS removals](#) in Texas. Yet many parents do not receive mental health or substance use services in Texas that could prevent the need for CPS involvement. In fact, some Black and Hispanic moms in Texas [fear seeking treatment for mental health or substance use disorders](#) because they

want to avoid CPS involvement. Similarly, each year, [over 550,000 Texas children and adolescents experience severe mental health needs](#), but many do not receive mental health services until they enter foster care.

The FFPSA could potentially help Texas expand access to these services and keep more children safe with their families instead of being removed and placed in foster care. Eligibility for FFPSA-funded prevention is tied to the state's definition of "foster care candidacy." The new [DFPS Strategic Plan](#) for the FFPSA recommends a slight expansion of the existing candidacy definition, but the state's proposed definition requires a family to be or have been actively involved with CPS to receive FFPSA-funded prevention services. Keeping the definition narrow cuts off Texas' ability to use FFPSA funding to provide mental health and substance use services to certain populations who would clearly benefit. DFPS mentions in their recently released Strategic Plan that they meet with the Health and Human Services Commission (HHSC) monthly "to discuss Behavioral Health Services needs and capacity," but they do not discuss any specific strategies for using new FFPSA funding to increase behavioral health service capacity or address the unmet needs of Texas families. DFPS's FFPSA plan is a great start, but we believe it is important to build on the plan and address areas that need additional attention.

We hope the Legislature will strongly consider some other implementation options outlined in the DFPS plan that would incentivize contracted Family Based Safety Services (FBSS) providers to offer more evidence-based services, expand services for pregnant and parenting youth in foster care, and increase access to prevention services in rural areas. We urge the Legislature to invest as much as possible in keeping children out of foster care by getting more children and families connected to the support and services they need.

Higher-Quality Foster Care

When the FFPSA takes effect in October 2021, Texas is projected to lose substantial federal funding — \$52 million per biennium — for foster care for two main reasons: (1) none of the state's foster care providers meet the heightened federal quality standards for facilities that care for children with significant mental health needs, and (2) the FFPSA requires ongoing court review and approval of placement in facilities that meet the new standards, but Texas does not have in place that court review and approval process for congregate care placements. Historically, all types of foster care providers could be eligible for federal reimbursement. Under FFPSA, states will only receive federal reimbursement for foster care facilities that meet a heightened set of standards and are subject to additional oversight (with a few other exceptions for highly specialized placements).

Improving standards and oversight for foster care facilities would not only help avoid the loss of federal funding, but would also take an important step towards ensuring the children are safe when they are placed in congregate care foster care facilities.

Policy Steps Needed

To prevent children from entering foster care by keeping them safely with their families, legislators should ask DFPS for a more thorough analysis of whether to include the following populations or programs in the state's definition of foster care candidacy or for alternative strategies to meet the needs of these populations:

- **Soon-to-be first-time mothers with substance use disorders.** Although substance use treatment services during pregnancy would benefit mother and baby (and prevent adverse health effects), the state's current and proposed definition of foster care candidacy cut off this new source of federal funding that could be used for substance use and other prevention services for this population. These women would only be eligible to receive FFPSA-funded substance use services after their child is born and a referral to CPS is made. Instead, foster care candidacy criteria should include pregnant women with substance use disorders so they may be eligible for FFPSA-funded prevention services.
- **New parents with maternal mental health challenges.** Maternal mental health challenges, which may arise during pregnancy and the postpartum year, can have devastating effects on women and children if untreated. Parents [may be less likely to implement injury prevention measures](#), such as putting their baby on her back to sleep. Children of mothers with untreated maternal mental health challenges and related conditions are at [increased risk of child abuse or neglect](#).
- **Youth in the juvenile justice system.** [Seventy percent of youth in the juvenile justice system have serious mental health disorders](#). Many children in the juvenile justice system also enter the foster care system because their parents refuse to accept parental responsibility once the child becomes justice-involved. Utah, Nebraska, Maryland, and Washington have an approved FFPSA plan that [includes youth in the juvenile justice system in their foster care candidacy definition](#). Kansas, Virginia, Ohio, and Colorado plan to use FFPSA funding for some services provided to youth and families in their juvenile justice systems. If the existing narrow definition remains in place in Texas, these children would have to enter the CPS system to receive services funded through the FFPSA.
- **Children and youth in the Children's Mental Health Residential Treatment Center Relinquishment Avoidance Project.** This project at the Texas Health and Human Services Commission (HHSC) was intended to prevent children from being legally removed from their families to receive needed mental health services, which is exactly aligned with the goals of the FFPSA. Families are often referred to this project when parents or caregivers cannot access needed mental health services on their own. FFPSA could help fund mental health services for these children. However, this program is not offered through CPS, and these children are not included in the proposed foster care candidacy definition.
- **All families eligible for Helping through Intervention and Prevention (HIP), including:**
 - **Pregnant and parenting young adults who were currently in foster care** (youth and young adults currently in foster care are included in DFPS' proposed expanded candidacy definition);
 - **Parents who have a new child and previously had their rights terminated for another child; and**
 - **Parents who have a new child after having a child die of maltreatment.**

- **Children of incarcerated parents.** Nationwide, eleven percent of children of incarcerated parents are in foster care. A [2019 study of the Harris County Jail](#) highlighted the need for expanded access to mental health, substance use, and parenting services to better serve children whose parents are incarcerated.

Texas leaders should also intentionally work to reduce disproportionality and disparities while implementing across-the-board improvements to foster care and the CPS system. As Texas leaders make decisions about how to implement the FFPSA that appear to be “race neutral,” policymakers must be mindful of the impact of policy decisions on racial disparities and disproportionality. For instance, if Texas expands the definition of foster care candidacy to provide more families with FFPSA prevention services, it will be important to ensure that the policy does not unintentionally draw more Black children deeper into the CPS system.

To mitigate the projected loss of \$52 million in federal funding for foster care during the next two-year budget cycle, better serve children with complex needs, and support the rollout of Community-Based Care (CBC), the Legislature should take the following actions:

- **Extend Eligibility for Treatment Foster Family Care.** CPS began the Treatment Foster Family Care program to increase capacity in the foster care system and reduce the number of children under the age of 10 in Residential Treatment Centers (RTCs), a type of congregate care that serves children with significant behavioral health needs. Expanding eligibility for this program to kids of all ages would support DFPS’ primary FFPSA strategy of reducing reliance on congregate care altogether. This is already being done in some Community-Based Care Regions because they have more flexibility with their blended rate, but it should be an option in the legacy system as well.
- **Allow providers to offer post-discharge planning and aftercare services.** The state needs clear long-term strategies to elevate the quality of care provided in RTCs. Although no providers in Texas currently meet all the FFPSA standards, some RTCs are very close and have indicated that they would meet all the new federal requirements if they were allowed to offer discharge planning and aftercare services (a function currently performed by CPS). This was not discussed in the DFPS report, but making this change could help protect some federal funding.
- **Expand High-Quality Specialized Foster Homes and Facilities.** Legislators should add placements that will be reimbursable using federal funding to the existing [Foster Care Needs Assessment](#), including: placements specializing in prenatal, postpartum, or parenting supports for youth; licensed residential family-specialized substance use treatment facilities; qualified residential treatment programs as defined in the FFPSA; supervised independent living; juvenile justice system placements; and settings specializing in serving survivors of human trafficking. The Foster Care Needs Assessment is intended to help communities prepare for the rollout of CBC by identifying gaps in the foster care placement capacity. Adding these types of placements or the populations they serve to the assessment is a [budget neutral strategy](#) that would give communities a more clear understanding of how to target placement capacity growth to help them serve kids with complex needs while also protecting federal funding for foster care.

- **Strengthen court oversight for all kids who enter congregate care.** To draw down federal funding for foster care under the FFPSA, not only must congregate care providers meet heightened quality standards, but the courts must review and approve placements in foster care facilities that meet the new standards – an added layer of oversight intended to assure that children in congregate care are only there if they need to be and they are receiving the type of care they need to heal and thrive. Although the FFPSA only requires this additional oversight for higher-quality providers, the Legislature should amend the Texas Family Code so all children in congregate care settings can benefit from heightened court oversight. As shown in the recent hearings in the federal lawsuit, many safety concerns go unaddressed in congregate care settings, especially for children in long-term foster care who have less frequent court oversight of their placement. Enhanced court oversight would not only remove barriers to receiving federal funding for foster care, but – most importantly – may keep children in foster care safer. The DFPS Strategic Plan indicated that there may be a cost associated with these changes because it could add to the workload for caseworkers. However, reducing any inappropriate or concerning use of congregate care through better oversight may lessen costs over time as family-based settings are often more affordable for the state and better for kids. Further, Community-Based Care providers who want to elevate the quality of care in RTCs or other congregate providers in their region in a way that is consistent with FFPSA would not be able to seek federal reimbursement for placements unless they have undergone this newly required court review and approval process.

Other Considerations Related to Community-Based Care

We encourage legislators to closely examine the potential benefits and challenges of these approaches given that CBC is still in the relatively early stages of rolling out. Specifically, legislators should seek clarification or additional information about the following:

- **The timeline for incorporating FBSS into the existing CBC model as a new stage of implementation** because it could be several years before we would begin to see the state start this change with just one region; and
- **The reasons DFPS ended the FBSS privatization pilot in El Paso County** as well as any relevant challenges DFPS and other state leaders should take into consideration.

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