

The Family First Act and Texas: An Introduction to Opportunities, Challenges, and Upcoming Decisions

The Family First Prevention Services Act (FFPSA), approved on a bipartisan basis by Congress in February 2018, represents a major reform in how the federal government structures federal financing of child welfare and is accompanied by a new infusion of federal funds. The FFPSA, often referred to as the Family First Act, includes many components, but the main goals behind the law are helping families in crisis safely stay together and reducing the foster care population by:

1. Focusing on prevention of entry into foster care, and
2. Increasing the number of children successfully exiting foster care by reducing reliance on congregate care, which evidence suggests may reduce a child's future ability to find a stable, family-based placement.

These are worthy, child- and family-centered goals for our nation's child welfare system although Texas has some implementation challenges ahead. Based on new federal guidance, it appears that by November 6, 2018, state leaders will have to make at least one big decision related to implementation of the FFPSA that will affect the amount of federal dollars we receive.¹

This brief highlights several key components of the FFPSA based on currently-available information. Guidance from the federal government due October 1, 2018 should clarify some key questions and help states prepare for the significant child welfare reforms ahead.

Two Major Changes in Funding to the States and One Big State Decision

Background on Federal Funding for Child Welfare

Historically, under Title IV-E of the Social Security Act, the federal government has provided funding to states to support child welfare efforts. It is the largest federal funding stream for child welfare. It has provided

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support to states in four areas: (1) foster care, (2) adoption assistance, (3) guardianship assistance; and (4) the Chafee Foster Care Independence Program. For the Texas Department of Family and Protective Services (DFPS) to receive reimbursement for foster care, adoption assistance, and guardianship, children must meet the income eligibility requirements.

In Texas, these funds support a number of costs in each of these four areas. Regarding foster care, reimbursement goes toward expenses like food, clothing, shelter, placement, administrative costs, and training for caseworkers and foster care providers. Relating to adoption assistance, reimbursement may cover adoption subsidies, administrative costs, and training for adoptive parents. Reimbursable guardianship assistance costs include kinship guardianship assistance payments and associated training and administrative costs. Finally, Chafee, unlike the reimbursable areas, is not linked to income eligibility. Through Chafee, Texas receives a flat amount of \$140 million each year to spend on transitional services for youth likely to age out of foster care.²

Some states have pursued demonstration waivers to use IV-E funding more flexibly to test innovative approaches to child welfare service delivery and financing. Unless a state has a waiver, IV-E funding has never been allowed to support programs that prevent children from coming into foster care. Texas does not currently operate with a IV-E waiver.³

Starting October 1, 2019, Title IV-E funding will change in two key ways for which Texas leaders need to prepare.

More Flexibility to Invest in Prevention for Families at Risk of Removal

Under the FFPSA, new money is available to states through Title IV-E for time-limited services to prevent entries into foster care.⁴ These prevention services funds may be used for mental health, substance use, and in-home parenting skills services for two particular populations, regardless of their income:

- children at imminent risk of placement in foster care and their parents or kinship caregivers, and
- pregnant and parenting youth in foster care.

Initially, half of the cost of eligible prevention services may be reimbursed through IV-E; however, starting in 2027, the reimbursement will be tied to the federal FMAP funding formula.

The new federal funding for prevention is intended to supplement — not supplant — state funding for prevention services. Under the maintenance-of-effort requirement, states must at least continue their FY2014-

level spending for these same prevention services for candidates for foster care in order to draw down the funding.

Services are allowable for up to 12 months with no limit on how many times a child and family can receive prevention services if the child continues to be at risk of entry into foster care. Services must be supported by evidence and trauma-informed.

IV-E Funding No Longer Available for Certain Congregate Care Placements

Under the FFPSA, Texas and other states will no longer will be able to use IV-E funding to support children in foster care for more than two weeks in “child care institutions,” a category that covers many of the state’s current congregate care facilities (i.e. group homes, RTCs, shelters, or any placement with 7 or more children).

After children are in care for two weeks, IV-E funding will only support their placement in the following:

- foster family homes;
- facilities for pregnant and parenting youth;
- supervised independent living for youth 18 and older;
- specialized placements for youth who are victims of or at risk of becoming victims of sex trafficking;
- family based residential treatment facilities for substance use; and
- Qualified Residential Treatment Programs (QRTP)

QRTP, a new term introduced by the FFPSA, has a high standard that many congregate care placements in Texas would have to work hard to meet in order to receive payment through IV-E. Currently, very few providers in Texas meet the standard. **As a result, many congregate care placements that are eligible for funding under today’s system could lose IV-E funding when FFPSA is fully implemented.** While fewer congregate care placements should be needed over time as more families benefit from prevention services, in the short term, Texas could experience diminished foster care capacity unless the state adequately prepares or supplements any loss of federal funding with general revenue and boosts recruitment of therapeutic foster homes. In 2017, Texas received \$37 million in IV-E funding for congregate care.

Big Decision for States to Make Regarding Timing

As explained further below, states may delay implementation of these new limitations on IV-E reimbursement for foster care for up to two years. **However, delaying implementation precludes states from taking advantage of the new prevention funding until implementation begins.**

Why Texas Should Boost Prevention to Limit the Number of Children Entering Foster Care

Removing children from their families is traumatic for the children and costly to taxpayers. The FFPSA presents an opportunity for Child Protective Services (CPS) to offer more supports for families at risk of having children enter foster care to ensure the best outcome for children: staying safely with their biological families whenever possible rather than being removed and entering foster care.

This opportunity comes at a time when the Texas foster care population, like the state's overall population, is growing. Over the last four years, more children have come into foster care than exited, a trend that is putting pressure on an already stressed system. This is expensive for the state, and an overburdened system may create risks for children. This challenge is not unique to Texas. Nationwide, since 2011, the foster care population has been growing.

Fiscal Year	Children in DFPS' Legal Responsibility	Change Over Previous Year	Percent Increase Over Previous Year
2017	50,293	1,498	3.1%
2016	48,795	1,447	3.1%
2015	47,348	525	1.1%
2014	46,823	174	0.4%

In Texas, about one-third of children who enter foster care eventually go home to their parents. If families had access to the right services and supports earlier, many of these children may have been able to remain safely with their families instead of entering the foster care system.

Another reason to prevent entries into foster care is because children are coming into care faster than they are exiting, which contributes to the overall growth Texas is seeing in its foster care population. One area where the state has room for improvement in terms of children exiting care is family reunification. Texas' reunification numbers (30 percent)⁵ are well below the national average (51 percent).⁶ What may contribute to Texas' below-average reunification numbers is that Texas removes children from their families at a lower rate than many other states. As Texas generally only removes children in the most dire circumstances, it may be inappropriate or unsafe to return all of them home. In addition to reducing entries into foster care through effective prevention services, Texas could leverage similar services for families with a child in conservatorship to boost reunification and the number of children exiting foster care.

Investing more in prevention should help stem the tide of growth in the state's foster care population and pay off in long-term cost savings to the state. To be clear, this investment may not lead to an *absolute* reduction in removals, considering the growing population of children in Texas and the state's already low removal rate.

Prevention Supports That Will Benefit Texas Parents and Kids

There are several areas where Texas children and families would benefit from additional investment in prevention. **Two of the prevention priorities for Texas under the FFPSA should be addressing neglect and parental substance use, respectively the first and second most common reasons that children enter foster care in Texas and nationwide.** In 2017, according to the DFPS databook, 77 percent of confirmed allegations of abuse or neglect in Texas were either medical neglect, neglectful supervision, or physical neglect.⁷ According to DFPS testimony before the House Select Committee on Opioids and Substance Abuse, parental substance use played a role in the removal of 68 percent of youth who came into foster care in 2017.⁸

In Texas, according to DFPS, new prevention funding under the FFPSA would most likely be used to enhance services provided to some families through Family Based Safety Services (FBSS), those services provided by CPS to keep children safely in their homes and out of foster care.⁹ The goal of FBSS is to strengthen biological families' ability to protect their children and reduce threats to their safety.

Another program in Texas that could be expanded with these funds is Helping through Intervention and Prevention (HIP), a DFPS Prevention and Early Intervention (PEI) program. HIP provides free, voluntary services to the following parents with prior CPS involvement:

- parents who previously had their parental rights terminated due to child abuse and neglect;
- parents who have had a child die due to child abuse or neglect; and
- current and former foster youth who are pregnant, have recently given birth, or are parenting a child, including single teen fathers.

It is important to note that the FFPSA takes a somewhat narrow approach to prevention that focuses on children "at imminent risk" of entering foster care, a category that states will define on their own. Whether programs like the Nurse Family Partnership or other home visiting programs would be eligible for IV-E funding will depend on how Texas chooses to define "at imminent risk" of entering foster care. As FFPSA prevention is specifically aimed at safely allowing children to remain with their parents in their communities, Texas should increase its investment in the continuum of prevention services that further that goal.

It is also important to highlight that only prevention programs with promising, supported, or well-supported practices will be reimbursable through FFPSA. Which existing Texas programs will meet these standards and

how Texas expands the array of evidence-based programs are questions DFPS is currently exploring. We expect further guidance from the U.S. Health and Human Services Department on the evidentiary requirements for funded prevention programs.¹⁰

Texas Should Reduce the Use of Congregate Care, But There Will Be Challenges at First

Although congregate care should be included in the continuum of foster care placements as it may be the most appropriate option for some children with significant therapeutic needs, national research on the use of congregate care indicates that most children in foster care are best served in a family setting.¹¹ In fact, congregate care may lead to more behavior problems and result in fewer children finding a permanent home.¹² Stays in congregate care should be based on the specialized needs of children. **High-quality congregate care may be necessary to stabilize children with intensive therapeutic needs, but should be a short-term intervention that then helps children successfully transition to a family setting.** In Texas, about 19 percent of youth in foster care were placed in a congregate care setting in 2017 at any given time.¹³

There is little doubt that reducing the use of congregate care as quickly as the FFPSA requires (by October 2019 or as late as October 2021) will likely be costly, at least initially, and challenging. As noted earlier, there are very few congregate care providers in Texas that would be eligible to continue receiving federal financial assistance under IV-E until they meet QRTP standards. Any loss of reimbursement for Texas foster care providers means Texas would either have to supplement the lost federal funding with general revenue or Texas would need to recruit more foster families and boost therapeutic foster care capacity to adequately serve children who do enter foster care.

There is no time limit on using a congregate care facility that qualifies as a QRTP, but there will be a new review process to ensure children are not staying in a congregate care setting longer than necessary. The necessity of the placement must be assessed after 30 days. Then the need for continued care in that placement will be reassessed every 60 days. And if a child is in care for 12 months straight or 18 months total, under FFPSA, the commissioner of DFPS will have to sign off on the placement. The law also requires that states demonstrate procedures and protocols to ensure that youth in foster care are not inappropriately given mental health diagnoses to justify placements. Texas took this step following the passage of HB 7 during the 84th legislative session.

Qualified Residential Treatment Programs (QRTPs) and Challenges Ahead for Texas

As noted above, under the FFPSA, states will be able to use IV-E funding for congregate care facilities called Qualified Residential Treatment Programs. A QRTP must be licensed and accredited and incorporate all of the following:

- A trauma-informed treatment model;
- A registered or licensed nursing and other licensed clinical staff on site, consistent with the QRTP's treatment model;
- Family outreach and engagement; and
- Post-discharge planning and family-based aftercare supports for at least 6 months.¹⁴

Some of the major barriers to becoming a QRTP for existing congregate care providers in Texas include requirements to provide on-site nursing staff, offer post-discharge services for six months, and be accredited by one of three national accrediting bodies.¹⁵ Many Texas providers do not currently have on-site nursing staff. Several providers offer post-adoption services, but the state currently provides the post-discharge services to children who leave care through family reunification or other means. Accreditation through one of the three national accrediting bodies can be an expensive, time-consuming process that may be challenging for smaller providers. To curtail some of the burden potentially associated with accreditation, the U.S. Administration for Children and Families outlined a fourth accreditation option in an information memorandum. According to this guidance, accreditation from any independent, not-for-profit, U.S. Health and Human Services-approved organization will suffice. This fourth option is something Texas should explore.¹⁶

Decisions Ahead for Texas Policymakers: When to Implement the Law and How to Prepare for Funding Changes

Texas could take advantage of the new prevention funding and begin implementation of the FFPSA as soon as October 1, 2019 or delay implementation until as late as 2021 to give the state time to prepare to meet the new congregate care requirements.

Based on new federal guidance, it appears that by November 6, 2018, approximately two months before the commencement of the 2019 legislative session, state leaders will have to decide whether to implement FFPSA in 2019 or delay implementation.¹⁷ Although the FFPSA does not require state legislative approval of the state's decision, we expect the Texas Legislature will play a role alongside DFPS leadership and Governor Abbott given the many policy and budget decisions the state will face.

It is important for Texas leaders to understand the trade-offs and the budget implications of choice ahead. If Texas decides to implement the FFPSA in 2019, Texas will gain new federal funding to invest in child abuse prevention efforts, such as increased access to services for pregnant and parenting youth in foster care and for children and families with substance use or mental health challenges. Unfortunately, choosing to implement in 2019 may result in a significant loss of federal funding for congregate care placements, which the state would need to supplement through general revenue to maintain existing placement capacity or replace with therapeutic foster homes.

If Texas chooses to delay implementation until 2021, the state would miss out on two years' worth of funding that could be effectively used to help prevent children from entering foster care. On the other hand, a delay would allow Texas more time to develop more QRTPs and therapeutic foster homes. The law also comes with new data collection, reporting, and evaluation requirements, which will require expenditures to update some of Texas' existing information technology.

Whether or not Texas chooses to implement in 2019 or delay for two years, Congress sent a clear message through FFPSA that child welfare should move in the direction of enhanced prevention services, family preservation, and reduced reliance on congregate care. Given this direction, Texas should continue building on our state's array of existing prevention services and identify additional supports shown to help families at risk of child welfare involvement safely stay together. **This means that smart investment in services that help meet the needs of families with behavioral health concerns — including mental illness and substance use, as well as the needs of youth in foster care who are pregnant or parenting — should be top child welfare priorities in the 2019 legislative session.** Texas should also begin identifying and implementing strategies to recruit more foster family homes, including therapeutic foster homes, and increase the capacity of congregate care providers able to meet the new QRTP standards so that Texas will be able to maximize the federal funding opportunities for foster care placements under FFPSA.

There are still many unanswered questions related to FFPSA implementation; although federal guidance expected by October 1, 2018, should help Texas leaders develop priorities and develop a plan for FFPSA implementation. Fortunately, DFPS has completed a summary of the FFPSA that includes areas of the child welfare system that may be affected and possible next steps to further assess the costs and actions required by this new law.¹⁸

As Texas leaders prepare to make the decision about when to implement the FFPSA, key questions to answer include the following:

- What are the trade-offs, both fiscally and programmatically, of implementing FFPSA in 2019 or waiting two additional years?

- Which existing prevention services are most likely to reduce the number of children removed from their families and placed in foster care if scaled up?
- Are there significant gaps in the types or geographic distribution of eligible prevention services?
- Does Texas need to create, identify, or expand treatment and other prevention programs to ensure the state can maximize new federal funding?
- Does Texas need to target recruitment efforts in certain areas of the state or for specific populations to ensure an adequate number of well-prepared and trauma-informed foster homes that can serve the unique needs of more youth in care? How fast can Texas recruit new, high-quality foster families? How much will these recruitment efforts cost the state?
- What do congregate care facilities need to do to meet the FFPSA's new standards and how long will it take?

References

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⁴ Brady, *Committee on Ways and Means Report 114-628*, Congress.gov (Jun. 21, 2016) available at <https://www.congress.gov/114/crpt/hrpt628/CRPT-114hrpt628.pdf> ("The Committee believes the intent of this legislation is for states to use these new matching funds in the panoply of possible scenarios under which a child may be at imminent risk of entering foster care and would likely enter but for the provision of support services"); see Senator Chuck Grassley (R-Iowa), *Preventing child abuse and neglect fatalities*, The Hill (05/09/2018 12:10 PM EDT), <http://thehill.com/blogs/congress-blog/politics/386807-preventing-child-abuse-and-neglect-fatalities> ("If we can work to prevent child abuse and neglect from taking place, we can reduce the number of children in foster care"); see also H.R. Res. 1892, 115th Cong. (2018) (enacted), available at <https://www.congress.gov/115/bills/hr1892/BILLS-115hr1892enr.pdf>.

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¹¹ U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Children's Bureau, *A National Look at the Use of Congregate Care in Child Welfare* (2015), available at <https://www.acf.hhs.gov/cb/resource/congregate-care-brief>.

¹² U.S. Dep't of Health & Human Servs., Admin. for Children & Families, Children's Bureau, *A National Look at the Use of Congregate Care in Child Welfare* (2015), available at <https://www.acf.hhs.gov/cb/resource/congregate-care-brief>; *Congregate Care, Residential Treatment and Group Home State Legislature Enactments 2009-2013*, National Conference of State Legislatures (2/10/2017), <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>; Mary Dozier, Charles H. Zeneah, Allison R Wallin & Carole Shauffer, *Institutional Care for Young Children: Review of Literature and Policy Implications*, U.S. Nat'l Library of Medicine, Nat'l Inst. of Health, (2013 Mar 6) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3600163/>; The Annie E. Casey Foundation, *Reducing Congregate Care: Worth the Fight* (Apr. 4, 2012), <http://www.aecf.org/blog/reducing-congregate-care-worth-the-fight/>.

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