

Leveraging Federal Funding to Support Child and Maternal Health in Texas

Response to House Appropriations Article II Subcommittee - Charge #2

Family First Prevention Services Act (FFPSA)

The 2018 Family First Act (FFPSA) restructured how the federal government finances state child welfare systems by prioritizing prevention 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. It will have a significant effect on Article II of the state budget.

Prevention

One of the primary goals of the FFPSA is to reduce the number of children entering foster care by creating new federal funding opportunities to help states address unmet mental health and substance use disorder treatment needs of children and their caregivers.

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

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 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 Texans. 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.

High Quality Foster Care

When the FFPSA takes effect, 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, which Texas would not currently comply with. 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 help avoid the loss of federal funding, but would 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 cuts 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 could 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, these children would have to be designated as a foster care candidate through CPS for them 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.

To mitigate the projected loss of \$52 million in federal funding for foster care and better serve children with complex needs, 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.
- **Allow providers to offer post discharge planning and after care 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 after care 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; and settings specializing in serving survivors of human trafficking.

- **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.

Healthy Texas Women 1115 Waiver Implementation

There are policy steps Texas can – and should – take under the HTW waiver to ease the transition of new mothers from Medicaid to HTW, maximize state cost savings, and minimize burdens on women, health clinics, and the state.

- **Post enrollment verification for new mothers entering HTW after Medicaid for Pregnant Women expires.** If HHSC eliminates auto-enrollment, a mom with a one- or two-month old baby will only be transitioned into HTW if she submits within a 10-day window (or the agency has ready access to) verification of all required eligibility criteria (such as current income information, citizenship/immigration status, and proof of residency). New moms who do not submit requested information within the short timeframe provided will be denied HTW. They will not be enrolled in any program.

To mitigate the negative impact, post-enrollment verification allows a better transition for new moms. Moms could submit pay stubs or other required paperwork during a temporary period (90-day window) *after* she is enrolled in HTW. Post-enrollment verification is already used in Texas Medicaid for Pregnant Women and would not require a waiver from CMS.

- **Self-attestation as verification for certain eligibility criteria.** The use of self-attestation as verification for certain eligibility criteria would allow a better transition for new moms. Medicaid and CHIP regulations allow for the use of self-attestation as verification for all eligibility criteria except income, citizenship/immigration status, and SSNs. This does not require a waiver from CMS. As an example, self-attestation of residency is already used at renewal for Texas Medicaid for Children and CHIP.

- **HHSC should request a waiver to continue adjunctive eligibility.** CMS has allowed adjunctive eligibility for certain MAGI-based eligibility groups. For example, CMS allows express lane eligibility for children’s Medicaid when they are enrolled in SNAP or WIC. CMS has also allowed adjunctive eligibility for certain adult, MAGI-based eligibility groups, through time-limited waivers. HHSC would need to request a waiver from CMS to continue adjunctive eligibility.
- **HHSC should amend the waiver implementation plan to continue use of the simplified application.** CMS has allowed the use of simplified applications for family planning demonstrations, including Texas’s previous family planning demonstration. Further, CMS seemingly approved the continued use of the simplified application in Sections 17(e) and (f) of the special terms and conditions. HHSC would need to amend the waiver implementation plan to continue the use of the simplified application. The simplified application would require minor modifications to implement MAGI methodologies.

Leveraging Federal Funds for Comprehensive Health Insurance

The Texas Legislature should also support comprehensive coverage for low-wage Texas adults.

- Pumping billions of federal Medicaid expansion dollars into Texas would help reboot our struggling state economy, help rural hospitals and providers stay open, create and save jobs, and take pressure off of property taxes. Federal funding would reduce the need for local governments to [use property tax revenue](#) to provide health care services to uninsured residents. It would also cut down the amount of uncompensated care that hospitals and community health centers provide.
- Medicaid expansion can be neutral to or even benefit the state budget. The federal government is required by statute to cover 90 percent of the cost of Medicaid expansion. The remaining 10 percent share of the cost could be financed by local governments and health care provider taxes, similar to the way Texas covers the state’s share in the current 1115 Medicaid Waiver. Other states reduced state spending in particular areas – such as mental health and corrections – by [using federal Medicaid expansion dollars](#).