

November 24, 2015

Family First Act

Senate Finance Committee Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) have developed the Family First Act that is likely to be offered with the Tax Bill that is expected to be marked up by the Senate Finance Committee on December 2, 2015. As is the longstanding practice of the Committee, this will be a conceptual markup based on a mark-up document and legislative language will follow. The proposal is significant for children because it allows for the federal dollars to be used on prevention investments and encourages the placement of children in foster care in the most family-like settings appropriate to their special needs. The draft summary below is intended to provide a sense of the scope of the bill as it is currently understood. It will be modified once legislative language becomes available.

Title I. Keeping Children Safe and Supported at Home in the Most Family-Like Setting (Beginning October 1, 2017)

Beginning October 1, 2017, states will be able to use, but will not be required to use, Title IV-E funds for prevention services for eligible children.

Children Eligible for Time-Limited Services:

- Candidates for foster care who are identified by the state as being at “imminent risk” of entering or re-entering foster care but who can safely remain at home or with a kinship caregiver if provided services.
- Pregnant and parenting youth in foster care.
- Parents or kin caregivers of children at risk of entering foster care.

Duration of Time-Limited Services:

- Title IV-E dollars can be used to provide services for a maximum of 12 months. There is not a life-limit on these services so children and families can receive these services more than once.

No Title IV-E Income Eligibility Requirement for Services:

- Eligible children, youth, parents and kin caregivers are eligible for the time-limited family services regardless of whether they meet the AFDC income eligibility requirements otherwise required for Title IV-E.

Time-limited Services Must be Evidence-based Services:

- The services must be trauma-informed and must follow the evidence-based criteria used by the California Evidence-Based Clearinghouse for Child Welfare, which includes programs that are:
 - Promising research evidence,
 - Supported by research evidence, or
 - Well-supported by research evidence.
- The “supported by research evidence” and “well-supported by research evidence” categories do not have to follow the randomized control trial requirement in the

California Clearinghouse, and are instead only required to use a control group (such as the use of children in other counties or on a wait list) rather than other groups of randomly assigned children as the control group.

- The Secretary of the Department of Health and Human Services (HHS) will release guidance on evidence-based programs that qualify for these time-limited family services.
- There is a ten-year phase-in for the new services under Title IV-E that will allow researchers to carefully analyze the progress being made in the delivery and outcomes of the services.

Time-Limited Services and Supports:

- The types of time-limited family services available under Title IV-E depend on different scenarios:

Services for children who remain in the care of their parent or kin caregiver:

- Mental health, substance abuse prevention, in-home parent skill-based services (i.e. parent training and education and individual and family counseling).
- Federal financial participation (FFP) for these services will be phased in and will need to follow certain levels of evidence-based practices, as modeled from the California Evidence-based Clearinghouse for Child Welfare:
 - Beginning October 1, 2017 the FFP will be 40 percent for time-limited services for which there is research evidence that is promising, supported, or well-supported as defined by the California Clearinghouse and noted by the Secretary of HHS,
 - Beginning October 1, 2020 the FFP will be 50 percent for time-limited services for which there is research evidence that is supported or well-supported.
 - Beginning October 1, 2023 the FFP will match the state's Federal Medical Assistance Percentages (FMAP) for time-limited services but they must be well-supported by research evidence criteria.

Services for children who are removed from their home and placed with relatives but who have a goal of reunification:

- Mental health, substance abuse prevention, in-home parent skill-based services, with the addition of short-term financial assistance.
- Federal financial participation (FFP) for short-term financial assistance is at the state's FMAP rate.
- Access to these kin supports are phased-in based on a child's age. The phase-in begins October 1, 2017 with children ages 16 and older (up to state's maximum age for Title IV-E assistance) eligible for this assistance. That eligibility age will decrease by two years each fiscal year so that, as of October 1, 2025, kin of candidates for care of any age will be eligible.

Services for children who are removed from their home and placed with relatives but who will remain in the long-term care of the relative:

- Mental health, substance abuse prevention, in-home parent skill-based services, with the addition of short-term financial assistance and access to kinship navigator to help navigate systems to access further assistance.
- Federal financial participation (FFP) for short-term financial assistance is at the state's FMAP rate.

- Access to these kin supports are phased in based on a child's age. The phase in begins October 1, 2017 with children age 16 and older (up to state's maximum age for Title IV-E assistance) eligible for this assistance. That eligibility age will decrease by two years each fiscal year so that, as of October 1, 2025, kin of candidates for care of any age will be eligible.

Prevention Plan:

- In order to receive time-limited family services, each candidate child must have a prevention plan that lists the services or assistance needed and identifies the permanency goal for the child, how services are tied to the placement and permanency goal and are trauma-informed.

Performance Measures and Data Collection on Time-Limited Services:

- States will need to submit to HHS data such as: 1) the per-child spending on services provided on behalf of each child; 2) the percentage of children served who do not enter foster care at the end of the 12-month period (as well as 12 subsequent months).

Time-limited Family Service Plan:

- States that choose to use Title IV-E funds for preventive time-limited services will need to include in their state child welfare plan a component that details how they will effectively operate their time-limited family services and this must be reviewed by HHS to draw down the new funds.
- States will be allowed to use Title IV-E funds for training and developing the necessary infrastructure for these services, based on a 50 percent reimbursement rate for administration and training.
- There is a maintenance of effort requirement for states that take the option to avoid states supplanting their current dollars with the new Title IV-E funds.

Reimbursement for a Child in Residential Treatment with a Parent:

- A child may receive Title IV-E maintenance payment when placed with a parent in a residential substance abuse treatment facility.

Crisis Intervention Assistance Available under Title IV-B:

- A new capped program under Title IV-B will provide short-term financial assistance for up to three months for a child's parent or kinship caregivers when it can be demonstrated that such assistance can prevent a child from entering foster care.

National Model Licensing Standards for Relative Foster Homes:

- HHS will release regulations on national model licensing standards for relative foster homes and states in their state plan must describe how their practices deviate from the national standards.

Eliminate Time-limit on Family Reunification Services:

- The current time-limit on the use of Title IV-B funds for family reunification services for children in foster care will be eliminated.

Title II. Ensuring the Necessity of a Placement that is Not a Foster Family Home (Beginning October 1, 2019)

After states have been able to draw down funds for two years for prevention, states will be required to take steps to safely reduce the inappropriate use of congregate/group care for children.

Restrictions on Federal Reimbursement for Placements Other than Foster Family Homes:

- New protocols and restrictions are put in place for how states can be reimbursed by the federal government for children in a number of different foster family and group care settings.
- After the first two weeks of a child entering foster care, states will only be eligible for federal financial participation (FFP) for children in one of the following settings:
 - Family foster homes with six or fewer foster children (exceptions to six for siblings, children with meaningful relationships, parenting youth in foster care, and children with severe disabilities).
 - Quality Residential Treatment Programs (QRTP), defined as:
 - a clinically recognized treatment model, which is determined necessary for a child based on an assessment by a qualified trained professional or licensed clinician that indicates clinical/medical necessity for treatment;
 - with registered nursing staff and other licensed clinical staff;
 - licensed and nationally accredited by a nationally-recognized accrediting body, such as CARF International, Council on Accreditation, Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or others approved by the Secretary of HHS;
 - facilitate family participation throughout treatment;
 - providing post-discharge services and supports for at least 6 months.
 - Facilities for pregnant and parenting teens.
 - Independent living facilities for youth ages 18 and older.
- For children placed in a QRTP setting, a functional needs assessment, using a valid assessment tool that is age-appropriate and evidence-based, must be made within the first 30 days the child is in the QRTP to determine whether the child's needs can be met with family members or in a foster family home, and if not, what type of treatment setting is necessary.
- The assessment must be done by a "qualified individual", a trained professional or licensed clinician who is not a state employee or affiliated with an independent non-profit agency associated with the child welfare agency or a particular treatment facility. However, this requirement may be waived by the Secretary upon submission by the state certifying that state employee or employee affiliation with an independent non-profit agency can maintain adequate objective in the assessment process.
- The assessment is conducted in conjunction with a family and permanency team, which may include parents, relatives, fictive kin, appropriate professionals (medical, mental health, teachers, clergy or others familiar with the child). If the youth is age 14 or older she can also select and bring with her two members of the permanency planning team, as established in the Preventing Sex Trafficking and Strengthening Families Act of 2014. HHS will release guidance on valid assessment tools.

- If it is determined that the child should not be placed in a QRTP, then the state has an additional 30 days to either step the child down to another placement (i.e. a family foster care setting, kin home, return home with other supports, etc.) or step the child up to a facility that can better address the child's needs. States will be reimbursed at the FFP during this 30 day period, but states will have to pay the full cost for the child beyond those 30 days if the child remains in a setting that is not appropriate for addressing the child's needs.
- Within 60 days of a placement in QRTP the court must review the assessment and approve or disapprove of the QRTP placement. At subsequent state reviews and permanency hearings the state must demonstrate why the child cannot be served in a least restrictive placement and document efforts it has made to step the child down into a more family-like setting.
- After 6 months for children under 13, and after 12 consecutive months or 18 non-consecutive months for all other children in a QRTP, the state must submit documentation to the Secretary and notify the parents, kinship caregiver, legal guardian or any counsel on record that the child has a private right of action to the least restrictive environment.
- An updated assessment of appropriate placement must be conducted prior to each permanency hearing or review and the judge must review the updated assessment and approve the placement.

Additional provisions:

- The state must specify in its state child welfare plan that it has: protocols and procedures in place to ensure children in foster care are not inappropriately diagnosed with mental illness or other disorders or conditions and placed in non-family based settings as a result of such diagnoses; and provided for other audits and evaluations of its system
- States will need to submit detailed data and reports to HHS on children in various non-foster family home placement settings including: the type of setting, the number of children in the setting, the length of placement, the previous placement, whether the child has special needs and the specialized services she is receiving. These data build on the new data requirements added by the Preventing Sex Trafficking and Strengthening Families Act of 2014. Data will include items like documentation on the types of placement settings children are in, the number and their ages, whether or not it was the first time the child was in such a placement, whether they were getting special education, and their permanency plan/goal.
- GAO must issue to Congress a report on the impact of these changes to federal reimbursement for children in group care settings on the juvenile justice system.
- Conditions receipt of Court Improvement Program funding on provision of training for judges about new federal policies on placement of foster children in non-family settings.
- Application to tribes – Any tribe operating a Title IV-E plan may also access this Title IV-E funding for prevention services, programs and assistance, provided that it generally met the same requirements as those applicable to states.