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Defending Liberty
Pursuing Justice

July 20, 2018

Naomi Goldstein
Deputy Assistant Secretary for Planning Research and Evaluation
U.S. Department of Health and Human Services
330 C Street, S.W.
Washington, D.C. 20201

Re: 83 FR 29122

Dear Ms. Goldstein:

Thank you for providing an opportunity to share comments regarding the Family First Prevention Service Act of 2018 (FFPSA). Pursuant to the notice published in the Federal Register on June 22, 2018 (83 FR 29122), the American Bar Association (ABA) submits these comments regarding proposed programs and services for consideration in a Clearinghouse of evidence-based prevention practices.

The ABA is a voluntary professional membership organization with more than 400,000 members, including attorneys in private firms, corporations, nonprofit organizations, and government agencies, as well as judges, prosecutors, defense attorneys and public defenders, legislators, and law professors and law students. In addition to our membership, we have several public interest entities staffed with professionals who direct projects in a variety of legal fields, including child welfare, domestic violence, homelessness, and disability law.

We write here to make two recommendations for the Department of Health and Human Services' (HHS) process of identifying prevention programs eligible for inclusion in the FFPSA Clearinghouse as stated in section 2 of the Federal Register notice.

First, with respect to target outcomes (section 2.2.3), we recommend HHS consider evaluations of programs that incorporate legal assistance as a component of the mental health, substance abuse or in-home parent-skill based services. These types of multidisciplinary programs provide sustainable results that help stabilize families who have children at risk of entering foster care.

Second, with respect to similar populations outside the direct child welfare context (section 2.2.2), we recommend HHS look at programs that address co-occurring housing, domestic violence, and disability needs. In each of these categories, services that simultaneously provide mental health, substance abuse and parenting support can have a significant impact on minimizing child welfare involvement for families whose needs can be met without foster care placement.

I. Target outcomes (2.2.3): Legal assistance as a component of service delivery

Families whose risk of child welfare involvement increases because of mental health, substance abuse and parenting challenges often also have unmet legal needs.[1] As a result, programs that incorporate legal assistance into service delivery can successfully address multi-layered pressures and can have a longer lasting impact on preventing children's potential entry into foster care. Several examples of such programs are provided below.

Medical-legal partnerships: Medical-legal partnerships identify and address simultaneous legal and medical pressures on families that can exacerbate child welfare risk factors, including those that involve mental health and substance abuse challenges.[2] For example, if a child presents with a mental health need that creates challenges in the care he or she is able to receive at home, a medical legal partnership approach can serve the child's mental health needs while also providing legal assistance to help the family access benefits and educational services for which the child may be eligible.[3]

The Arkansas Children's Hospital provides a useful example of a medical-legal partnership targeted at assisting children and families' specific needs in this way and should be examined in more detail for Clearinghouse consideration. This partnership recognizes that "health problems sometimes lead to legal problems, and that legal problems sometimes cause health problems." [4] By leveraging skills from both healthcare providers and attorneys, this approach helps families address challenges that often intersect directly with heightened risks of child welfare involvement. Relevant examples of multilayered challenges that the Arkansas model address include using legal assistance to help families procure insurance that assists with accessing needed medical care for mental health and substance abuse treatment.

Investing in medical-legal partnerships produces sustainable effects and should be examined for consideration in the forthcoming Clearinghouse as a promising practice.

Multidisciplinary legal teams: Multidisciplinary legal teams incorporate an attorney, a social worker and a peer advocate as part of a triad of service delivery provide. This approach provides another example of meeting families' multi-layered needs to prevent unnecessary entry into child welfare. Multidisciplinary legal representation has existed

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[1] *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans***,** Legal Services Corporation (June 2017) (noting that 80% of households with children under 18 experienced a civil legal problem in 2016). Available at https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf**.**

[2] For additional information about the ABA's support of medical-legal partnerships please visit https://www.americanbar.org/groups/probono_public_service/projects_awards/medical_legal_partnerships_pro_bono_project.html.

[3] The settlement agreement reached in *Katie A. v. Bonta* (C.D. Cal. 2002) provides guidance on meeting the mental health needs of children at "imminent risk of foster care placement". More information about the details of that litigation and subsequent policies are available at https://youthlaw.org/publication/katie-a-v-bonta-settlement-ensures-ca-foster-youth-improved-access-to-mental-health-care/.

[4] For more information about the Arkansas Medical Legal partnership visit http://arlegalaid.org/what-we-do/justice-projects/medical-legal-partnerships-in-arkansas.html.

within the child welfare context for more than a decade.[5] The Center for Family Representation in New York and the Washington State Office of Public Defense provide two prominent examples of results that can be achieved by using this model to represent parents after a petition has been filed.[6]

As a prevention model, the Detroit Center for Family Advocacy (CFA) also provides an excellent example of how multidisciplinary representation can help eliminate the need for foster care placement by supporting families before a petition has been filed.[7] In CFA's prevention services program, families with a substantiated allegation of child abuse or neglect but no filed petition or court proceeding were provided with a multidisciplinary legal team including a lawyer, a social worker and a peer advocate.

The lawyer's role on this team is to address unmet legal needs that could alleviate risk of entry into the child welfare system, such as guardianships, custody, housing, paternity, public benefits, domestic violence, and power of attorney cases. In this respect, the legal services can be beneficial both for parents and for potential kin caregivers who seek to care for children outside the child welfare system. The social worker's role on this team is to serve as a care coordinator responsible for helping the client access needed services, including mental health, substance abuse and parenting supports. The family/peer advocate is traditionally an individual who has experienced the child welfare system first-hand. His or her role is to provide emotional support and help the parent and family members understand the child welfare system and how to build on family strengths in order to eliminate the risks of their children's entry into child welfare.

During a three-year evaluation, the CFA multidisciplinary teams prevented the need for dependency petitions in nearly 93% of all cases handled. In the four cases where petitions were filed, the juvenile court dismissed those cases quickly and children remained with parents or returned to their parents' care promptly. In none of the cases were children placed in the home of unrelated foster parents. These favorable effects tie in directly with FFPSA goals of reducing the need for foster care by either keeping children safely with birth parents or supporting kin caregivers.

II. Target populations (2.2.2): Families with co-occurring challenges

Families at risk of child welfare involvement who face challenges related to mental health, substance abuse and gaps in parenting support also often have intersecting challenges in housing, domestic violence and disability contexts and may be considered "similar" to child welfare

[5] The ABA endorsed multidisciplinary representation models in 2006, when the ABA House of Delegates passed the *ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, available at https://www.americanbar.org/content/dam/aba/administrative/child_law/ABA-Parent-Rep-Stds.authcheckdam.pdf.
[6] U.S. Department of Health and Human Services, Administration on Children, Youth and Families. Information Memorandum on Legal Representation and Child Welfare, ACYF-CB-IM-17-02, Attachment A (January 17, 2017) (noting several models of multidisciplinary representation in child welfare).
[7] For more information about Detroit CFA and the results produced in a three year pilot please visit: https://www.healthymarriageandfamilies.org/library-resource/detroit-center-family-advocacy-pilot-evaluation-report-72009-62012.

populations for the purpose of evaluating effective prevention programs.[8] Providing services to populations affected by domestic violence, housing and disability will therefore help reduce risks associated with entry into the child welfare system and should be explored as potential program priority areas in the Clearinghouse.

Domestic Violence: Parents who have experienced domestic violence and whose children are at risk for child welfare involvement often require critical mental health and counseling supports for both themselves and their children. In some cases, substance abuse treatment may also be a needed resource. Programs that address mental health service and/or substance abuse treatment delivery for populations affected by domestic violence are also in keeping with laws that prohibit agencies from removing children from a non-offending parent where the basis for removal is that the parent has been a victim of domestic violence.[9] When looking at target populations to reach with prevention services, we encourage HHS to consider programs that address domestic violence survivors' mental health and substance abuse needs. For example, in an Illinois Title IV-E waiver program that provided recovery coaches for parents whose children entered child welfare due to substance abuse, evaluators found that families achieved more significant improvement in child welfare outcomes when recovery coaches were also able to integrate supports that addressed domestic violence and mental health needs.[10]

Housing: Families facing challenges in obtaining substance abuse treatment can have also present co-occurring challenges maintaining access to safe and secure housing. For example, in the same Illinois Title IV-E waiver recovery coaches program cited above, housing instability presented as a co-occurring problem in 40% of all cases. Although the recovery coaches had a positive impact on reunification rates overall, cases with these co-occurring housing challenges had a decreased likelihood of reunification. Outcomes of the expanded waiver program should be evaluated when examining the effectiveness of substance abuse treatment that addresses co-occurring housing, domestic violence and mental health needs.

Other model programs that have been successful in addressing co-occurring housing and substance abuse programs include those funded through the Residential Treatment for Pregnant and Postpartum Women (PPW) grant program operated through the federal Substance Abuse and Mental Health Administration. Those programs have demonstrated that providing longer-term multi-faceted support produces positive results and can minimize risks of child welfare entry.[11] PPW programs have been particularly successful

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[8] Testa, M., Smith, B. (2009) Prevention and Drug Treatment, *Future of Children* 19(2), 148-167 (explaining co-occurring risk factors on child welfare involvement); *Child Welfare Information Gateway: Parental Substance Abuse and the Child Welfare System* https://www.childwelfare.gov/pubPDFs/parentalsubabuse.pdf.

[9] *In re Nicholson*, 181 F. Supp. 2d 182 (E.D.N.Y., Jan. 1, 2002) (*Nicholson I*); *Nicholson v. Williams*. 203 F. Supp. 2d 153 (E.D.N.Y. March 18, 2002) (*Nicholson II*).

[10] For more information about the Illinois AODA IV-E Waiver Program Evaluation please visit: https://cfrc.illinois.edu/pubs/rp_20120701_IllinoisAODAIV-EWaiverDemonstrationFinalEvaluationReport.pdf.

[11] Several agencies that have operated successful PPW programs in practice that address both housing and substance abuse challenges include SHIELDS for families in LA: https://www.shieldsforfamilies.org/; Chrysalis House in MD: http://www.chrysalishouses.org/; Operation PAR in FL: https://www.operationpar.org/; and Amethyst Inc. in OH: https://www.amethyst-inc.org/.

when they also provide child care assistance to parents as they seek out substance abuse treatment because lack of access to child care during the treatment can serve as a regular barrier to attendance.

Disability: Families in which parents or children have disabilities are disproportionately represented in the child welfare system and can benefit significantly from supports provided in-home outside of foster care, in keeping with FFPSA's prevention service goals.[12] For example, the ARCH National Respite Network and Resource Center has evaluated programs that provide in-home respite care for parents who care for children with disabilities or other special needs.[13] This approach to parenting support for target populations is effective because it is built on a recognition of the specialized needs involved and on trust between the family and caregiver. Similarly, the national organization, Through the Looking Glass, has documented common gaps in services for parents with disabilities. In-home support programs that address those gaps could be targeted in a way that minimizes risks of unnecessary child welfare involvement for children with disabled parents.[14] As a result, we recommend HHS consider program evaluations that provide in-home services to parents and children with disabilities for Clearinghouse inclusion.

Conclusion

In sum, to achieve target outcomes (2.2.3) that reduce the need for foster care and allow children to remain home or with kin caregivers, we recommend HHS consider programs that incorporate legal assistance as a component of the mental health, substance abuse or in-home parent support services. Additionally, to reach target populations (2.2.2), we recommend HHS look at programs that address co-occurring needs in domestic violence, housing, and disability subject areas.

Thank you for considering these comments. If you have questions or need more information, please contact Prudence Beidler Carr, Director, ABA Center on Children and the Law (202-662-1740, prudence.beidlercarr@americanbar.org) or David Eppstein, Legislative Counsel, ABA Governmental Affairs Office (202-662-1766, David.Eppstein@americanbar.org).

Sincerely,

Holly O'Grady Cook

[12] Children with disabilities are three times more likely to be abused or neglected than their peers. https://www.childwelfare.gov/pubPDFs/focus.pdf. For information on the risk of child welfare involvement for parents with disabilities please visit https://www.christopherreeve.org/blog/daily-dose/know-your-rights-parenting-with-a-disability (noting 35 states include physical disability as grounds for termination of parental rights, even with no other evidence of abuse or neglect).

[13] For more details about approaches to in-home respite care as a parenting support please visit the National Respite Network and Resource Center at https://archrespite.org/program-evaluation.

[14] The Through the Looking Glass report titled "Keeping Our Families Together" provides detailed information about gaps in services for parents with disabilities: http://lookingglass.org/pdf/Keeping-Our-Families-Together-TLG.pdf. Additional information about programs that support parents with disabilities in caring for infants can be found in "A Disability Culture Perspective on Early Intervention with Parents with Physical or Cognitive Disabilities and their Infants, Meghan Kirshbaum, Ph.D, originally published in *Infants and Children 13(2)*, 9-20 (2000) http://lookingglass.org/pdf/A-Disability-Culture-Perspective-TLG.pdf.