A Courtroom Advocate’s Guide to the Family First Prevention Services Act

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Roadmap for Today’s Session

• Background/ History of Legislation

• Four Main Themes
  • Each tied to specific advocacy strategies

• Systemic Advocacy Opportunities

• Q &A/ Discussion
Why Family First?
• Title IV-E biggest pot of federal child welfare money
• Guaranteed funding
• Majority of federal funds only available for foster care
• Need funds for upfront prevention services

Rising Foster Care Population

Number of Children in Foster Care, End of Fiscal Year

United States

Source: KIDS COUNT Data Center, Annie E. Casey Foundation
Substance Abuse Overwhelming Child Welfare Systems

% of children entering care with parental substance abuse as a removal reason
(alone or in combination with other reasons)

- Parent alcohol & drug abuse
- Parent alcohol abuse
- Parent drug abuse

Source: Adoption and Foster Care Reporting System (AFCARS) FY2016
Increased Utilization of Kinship Families...
...Yet Overreliance on Institutional Care Persists

Foster Care Placement Settings, FY2017

- Foster family home - non-relative: 45%
- Foster family home - relative: 32%
- Group home or institution: 12%
- Pre-adoptive home: 4%
- Runaway: 1%

Source: KIDS COUNT Data Center, Annie E. Casey Foundation
Family First Prevention Services Act

enacted February 9, 2018
Family First’s 4 Themes:

- Safely Prevent Unnecessary Removals
- Promote Kinship Involvement
- Reduce Overreliance on Institutional Care
- Support Transition-Aged Youth
Prevention Services & Treatment

Beginning **October 1, 2019**, 50% reimbursement through Title IV-E for eligible services to prevent entry/reentry into foster care:

- **Eligibility:**
  - Candidates for foster care
  - Parents and/or relative caregivers
  - Pregnant or parenting foster youth

- **Duration:**
  - 12 months (no lifetime limit)

- **No income-test!** All children and families eligible, regardless of income
Prevention Services & Treatment

Mental Health Services

Substance Abuse Treatment

Parenting Skills Training

Trauma Informed, Evidence-Based, and Provided by a Qualified Clinician
Prevention Services Under Review

**Mental Health**
- Parent-Child Interaction Therapy
- Trauma-Focused CBT
- Functional Family Therapy
- Multisystemic Family Therapy

**Substance Abuse**
- Families Facing the Future
- Methadone Maintenance Therapy
- Motivational Interviewing

**Parenting Skills & Training**
- Nurse-Family Partnership
- Healthy Families America
- Parents as Teachers

**Kinship Navigator Programs**
- KIN-Tech
- Children’s Home Society of New Jersey Kinship Nav. Model
Family-Based Substance Abuse Treatment

IV-E funding may be used to support placement in a licensed, residential family-based substance abuse treatment facility:

- Must be trauma-informed
- Up to 12 months
- Funds became available 10/1/18
- No income test
All of the new reforms in prevention services and programs are optional to states/tribes....
So What?
“The Children’s Bureau strongly encourages all states to take this opportunity to not only use the title IV-E prevention program to fund these important services, but also to envision and advance a vastly improved way of serving children and families, one that focuses on strengthening their protective and nurturing capacities instead of separating them.”

(ACYF-CB-PI-18-09)
Advocate’s Opportunities (Cont’d)

Request High-Quality Services:
- Trauma-Informed
- Evidence-Based
- Qualified Clinician
- Citations: Sec. 471(e)(4) and Ex. ACYF-CB-PI-18-09

Move for Creative Alternatives to Removal/ Reentry:
- Family-based, residential substance abuse treatment
- In-home, court-supervised cases
- Post-reunification services
- Agency Attorneys: educate court about agency’s safety assessment tool
Promote Kinship Involvement

Kin eligible for the new prevention services and treatment

• Prevention services also for adoption and guardianships at risk of disruption or dissolution

Title IV-E funds for Kinship Navigator Programs

• Must be evidence-based (i.e. promising, supported, well-supported)
• No income-test!
• Open to any kinship families, do not need to be “candidate for foster care”
• Statewide or focused within localities
• Effective October 1, 2018
Improving licensing standards for relative foster homes

- Model licensing standards issued by HHS – States to notify HHS how they compare to the model standards by April 1, 2019*

Enhanced kin involvement in residential assessment and treatment

- More on that later in this presentation!
Advocate’s Opportunities

- Move the court (and build a record) for kinship placement:
  - Informal placement as an alternative to court-involvement
  - Formal kinship placement, unlicensed and licensed
    - Licensing waivers remain available
  - Services to prevent removal or disruption
  - Advocate for expanded definition of kin (Ex. ACYF-CB-PI-18-11)
• **Request** kinship support from the agency:
  • Routinize court inquiry about efforts to locate kin
  • Services for (1) children and youth (2) for kin caregivers themselves and (3) and parents
  • Includes referrals for benefits, training, and legal assistance
  • Per statute, part of child’s case planning team
  • Argue legal nexus between these supports and **Reasonable Efforts** to achieve permanency with kin
Reduce Overreliance on Institutional Care

- Beginning **Oct. 1, 2019**, states must safely reduce the inappropriate use of group care
  - States can delay this requirement up to two years (Oct. 1, 2021), **but then forfeit** the prevention funds during those two years.

- **Title IV-E maintenance payments** will *only* be available for certain settings:
  - Foster family homes (6 children or fewer, with exceptions)
  - Placements for pregnant or parenting youth
  - Supervised independent living for youth 18+
  - Specialized placements for victims and those at risk of sex trafficking
  - Children with parent(s) in residential treatment facility for substance abuse
  - **Qualified Residential Treatment Programs (QRTP)**
  - Non-QRTP congregate care facilities up to two weeks
Reduce Overreliance on Institutional Care

Qualified Residential Treatment Programs (QRTPs):

- Assessment to determine appropriateness of placement (30 days)
- Protocols to prevent inappropriate diagnosis
- Court approval (60 days) and ongoing review of placement
- Facilitates outreach to the child’s family and participation in treatment
- Provides discharge planning and family-based aftercare supports for at least 6 months after discharge
- Registered or licensed nursing staff and other licensed clinical staff available 24/7
- Licensed and accredited by COA, CARF, or JCAHO
Court Review of Residential Placements

Beginning in 3rd week of residential placement, child must be in eligible non-family settings.

Within 30 days of placement in QRTP, child must complete assessment that is, age-appropriate, functional and clinical.

Within 60 days of placement in a QRTP, the Court must review assessment and approve or disapprove of placement.

Placement is reconsidered at each status and permanency hearing.
Ensure High-Fidelity Independent Assessment:

- Written assessment, to occur within 30 days
- Conducted by a qualified clinician not employed by the state agency or QRTP
- Screening tool: must be age-appropriate, evidence-based, validated, functional assessment tool
- Assessor must consult:
  - all appropriate family, relatives, and fictive kin of the child, as well as relevant professionals (ex. teachers, medical or mental health providers, clergy)
  - child age 14 or over can select additional team members
- Have state protocols to prevent inappropriate diagnosis been followed?
- Assessor must develop child-specific short- & long-term mental & behavioral health goals
Review QRTP Case Plan to Ensure Compliance:

• the reasonable and good faith effort of the agency to include all the individuals required to be on the child’s family and permanency team;
• all contact information for family, fictive kin and permanency team;
• evidence that meetings of the family and permanency team, including meetings relating to the required 30-day assessment of the appropriateness of the QRTP placement are held at a time and place convenient for family;
• if reunification is the goal, evidence demonstrating that the parent from whom the child was removed provided input on the team membership;
• if QRTP is recommended over the objection of the child or parent, the reasons why the preferences of the team and of the child were not recommended.

• Citations: Sec. 471(e)(4) and ACYF-CB-IM-18-02
Support or Oppose Initial Court Determination:

- Initial review and approval/disapproval to occur within 60 days
- Law is silent as to whether there must be a hearing; no bar on requesting hearing
- File written opposition if appropriate

**Required Judicial Finding**: “Whether or not [QRTP] provides the most effective and appropriate level of care for the child in least restrictive environment” and is “consistent with the permanency plan.”

Request or Object to Exceptions as Appropriate:

- Large sibling groups (6+), parenting youth, meaningful relationships
- Foster homes trained to care for children with “severe disabilities”
- Non-QRTP programs that meet client’s needs can still be funded through state dollars
Support or Oppose Continued QRTP Placement:

- Agency must submit documentation regarding placement at each future hearing, including documentation of effort’s to return the child to a non-institutional setting (link to Reasonable Efforts)
- Is the QRTP able to provide the treatment recommended by the Independent Assessor?
- Is QRTP being used as a treatment rather than a placement?
- Is the QRTP facilitating family participation in the child’s treatment?
- Aftercare plan for 6 months following discharge
- Citations: Sec. 475A(c)(2) and ACYF-CB-IM-18-02
Support Transition-Aged Youth

- **Extends Chafee services to age 23** (previously 18-21)
  - *Only applies to states that extend foster care to age 21
- **Extends ETV eligibility to age 26** (previously 23)
  - 5 year limit on participation
- **Requires agency to provide youth official documentation** to prove they were in foster care – needed for accessing Medicaid to age 26.
Advocate’s Opportunities

- Educate clients and court partners about expanded eligibility for Chafee services
  - Youth who have experienced foster care at age 14 or older
  - Youth who have aged out of foster care at age 18 or older
  - Youth who left foster care for adoption or guardianship at age 16 or older
  - In applicable states, Chafee services until 23 years old and ETV funds until 26 years old
- Request court orders for foster care status and vital documents
- Encourage youth participation in CFSR, PIP, APSR and other agency efforts
- Argue for/ against Reasonable Efforts to transition to adulthood
- Citations: ACYF-CB-IM-18-02 and ACYF-CB-PI-18-06
Additional Family First Changes

- Electronic ICPC system (all states by FY2028)
- State plans to prevent child abuse and neglect fatalities (Oct 1, 2018)
- New competitive grants to recruiting and retaining foster parents ($8 million between FY2018 - FY2022)
- Reauthorizes Adoption and Guardianship Incentive Program
- Delays the Title IV-E Adoption Assistance phase-in for children under two
Systemic Advocacy Opportunities

- Join your state’s Family First implementation efforts
  - Help develop service array in your community
  - Share success stories with skeptics
- Participate in Advisory Groups: CFSR, PIP, Child Fatality Reviews
- Engage in court partnership teams
  - Review trends, barriers, data
- Connect with your Court Improvement Program (CIP) Lead
- Develop and attend trainings: QRTP requirements (required), trauma, primary prevention, etc.

“The Children’s Bureau strongly encourages state, county, and tribal child welfare agencies to engage their partner courts, attorneys, providers, prevention service providers, communities, parents and children with lived child welfare experience, and other critical stakeholders to work together to create a shared vision for what child welfare should look like in your jurisdiction.”
Learn More

• Review HHS’s written guidance:
  • April 2018 (Overview)
  • May 2018 (IV-B and Chaffee)
  • July 2018 (IV-E)
  • November 2018 (IV-E Prevention and Kinship Navigator)
  • February 2019 (Model licensing)
  • March 2019 (Tribes)

• Visit CDF’s Website: https://www.childrensdefense.org/policy/policy-priorities/child-welfare/family-first/
  • Summaries, Implementation Timeline, Statutory Language
  • Family First Implementation Guide - *Coming Soon!*

• New Family First Website: https://familyfirstact.org/
  • Summaries and federal guidance
## Family First Quick Snapshot

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Questions?
What’s Happening in Your State?

• What does your state data show are the primary reasons kids are removed from their families and placed into foster care? How long are children in foster care?

• Does your state have a plan or have they established a working group on FFPSA implementation?

• What prevention or treatment programs are already being used in your state? Do they meet FFPSA requirements? If not, what needs to happen to get there?
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The Family First Prevention Services Act
Historic Reforms to the Child Welfare System will Improve Outcomes for Vulnerable Children

February 2018

On February 9, 2018, President Trump signed into law the landmark bipartisan Family First Prevention Services Act, as part of Division E in the Bipartisan Budget Act of 2018 (H.R. 1892). Family First includes long-overdue historic reforms to help keep children safely with their families and avoid the traumatic experience of entering foster care, emphasizes the importance of children growing up in families and helps ensure children are placed in the least restrictive, most family-like setting appropriate to their special needs when foster care is needed. Family First builds on the original version of the bill passed in the House of Representatives in June 2016 (H.R.5456).

SUBTITLE A. INVESTING IN PREVENTION AND FAMILY SERVICES

Part 1 – Prevention Activities Under Title IV-E
(Sections 50711, 50712, 50713)

Beginning October 1, 2019, states will have the option to use Title IV-E funds for prevention services for eligible children at risk of foster care placement and their families.

Eligibility for Prevention and Family Services and Programs (Sec. 50711):
- Children who are “candidates” for foster care, meaning they are identified in a prevention plan as being at imminent risk of entering care but can safely remain at home or in a kinship placement if provided services that prevent entry into foster care. This includes children whose adoption or guardianship arrangement is at risk of disruption or dissolution that would result in entry into foster care.
- Children in foster care who are pregnant or parenting.
- Parents or kin caregivers of candidates for foster care where services are needed to prevent the child’s entry into care or directly relate to the child’s safety, permanence or well-being.

Duration of Prevention and Family Services and Programs (Sec. 50711):
- Title IV-E dollars can only be used to provide services for a maximum of 12 months beginning on the date the child is identified in a prevention plan as a candidate for foster care or a pregnant and parenting foster youth in need of services. Children and families can receive these services more than once if they are later identified again as a candidate for foster care.

No Title IV-E Income Eligibility Requirement for Prevention and Family Services and Programs (Sec. 50711):
- Eligible children, youth, parents and kin caregivers are eligible for prevention services and programs regardless of whether they meet the AFDC income-eligibility requirements required for Title IV-E reimbursement.

Types of Prevention and Family Services and Programs (Sec. 50711):
- There are several types of services and programs eligible for Title IV-E reimbursement for not more than a 12-month period:
Mental health and substance abuse prevention and treatment services provided by a qualified clinician.

In-home parent skill-based programs, which include parenting skills training, parent education and individual and family counseling.

Services and programs can be funded with federal dollars for not more than a 12-month period that begins on either the date on which a child is identified in a prevention plan as a candidate for foster care or as a pregnant or parenting youth in foster care in need of prevention and family services and programs.

The services and programs must be trauma-informed.

The services and programs must meet certain evidence-based requirements that follow promising, supported, or well-supported practices as defined in the bill. (Modeled from evidence-based criteria similar to that used by the California Evidence-Based Clearinghouse for Child Welfare.)

The Secretary of the Department of Health and Human Services (the Secretary) will release guidance no later than October 1, 2018 on the practice criteria required for these services or programs and a “pre-approved” list of services and programs that meet these requirements. This Secretarial guidance will be updated as often as necessary.

Prevention Plan Requirements (Sec. 50711):

To receive the prevention services and programs, each candidate for foster care and pregnant or parenting youth must have a written prevention plan that specifies the needed services for or on behalf of the child. The services or programs identified in the prevention plan need to be trauma-informed.

Candidates for foster care must have a written prevention plan that identifies the strategy for the child to remain safely out of foster care and the list of services or programs needed for the child or on behalf of the child.

Pregnant or parenting youth in foster care must have a written prevention plan that includes their case plan, list of services or programs needed to ensure that a youth is prepared or able to be a parent, and a foster care prevention strategy for any child born to that youth.

State Plan Requirement (Sec. 50711):

States that choose to take the option to use Title IV-E funds for prevention will need to include in their state child welfare plan a prevention services and programs plan component that details how the state will monitor and oversee the safety of children who receive Title IV-E prevention services or programs, including through periodic risk assessments for each child receiving them; describe the services and programs the state intends to provide and whether they are promising, supported, or well-supported; describe the outcomes the state intends to achieve; discuss how the state will evaluate its provision of each prevention service or program offered; describe how it will continuously monitor its provision of these prevention services and programs and use the information learned to refine and improve its practices; and describe how child welfare workers will be trained and supported to effectively carry out Title IV-E prevention services and supports.

The prevention services and programs plan component must be updated every five-year period for which the plan component is in operation. The state plan must be approved by HHS to draw down the new federal prevention funds.

Federal Reimbursement for Prevention Services and Programs (Sec. 50711):

Federal financial participation (FFP) for the prevention services and programs will be phased in to allow for careful analysis of the progress being made in the delivery and outcomes of the services.
Beginning October 1, 2019 and before October 1, 2026, the FFP available to states will be 50 percent for the prevention services and programs that are promising, supported, and well-supported practices.

Beginning after September 30, 2026 the FFP will be the state’s Federal Medical Assistance Percentage (FMAP) for the prevention services and programs that are promising, supported, and well-supported practices.

- At least 50 percent of the expenditures reimbursed by federal funds must be for prevention services and programs that meet the requirements for well-supported practices.
- States cannot receive federal reimbursement for a promising, supported, or well-supported practice unless their state plan includes a well-designed and rigorous evaluation strategy for that practice; however, HHS can waive this requirement for any well-supported practice if the evidence of its effectiveness is compelling and the state meets certain continuous quality improvement requirements.
- States will be allowed to use Title IV-E funds for training and the administrative costs associated with developing the necessary processes and procedures for these services (including expenditures for data collection and reporting), based on a 50 percent reimbursement rate. These service, training and administrative costs are “delinked” from the AFDC income eligibility requirement for Title IV-E.

Maintenance of Effort for Foster Care Prevention Expenditures (Sec. 50711):

- There is a maintenance of effort (MOE) requirement on “foster care prevention expenditures” to avoid states substituting their current state/local prevention dollars with the new Title IV-E funds.
  - States cannot spend less than they did on state foster care prevention expenditures in FY2014 (or at the option of a state where the child population in 2014 was less 200,000, FY2015 or FY2016, whichever the states chooses) both for funds that are matched and for funds not matched by the federal government.
  - States will need to report to HHS on their state foster care prevention expenditures for FY2014 under TANF, Title IV-B, SSBG and other state programs. The MOE requirement does not apply to state spending on prevention under certain Title IV-E waivers. States will need to report these state expenditures every year to ensure compliance with the MOE. HHS will specify the prevention services and activities that should be counted under TANF, Title IV-B, SSBG and other programs.

Performance Measures and Data Collection on Prevention Services or Programs (Sec. 50711):

- States will need to collect and report the following data to the Secretary for each child receiving (or adult receiving on the child’s behalf) prevention services or programs during the 12-month period beginning on the date when the child is identified in a prevention plan:
  - The specific services or programs provided and the total expenditure for each.
  - The duration of the services or program provided.
  - In the case of a candidate for foster care, the child’s placement status at the beginning and end of the 12-months, and whether the child entered foster care within two years of being determined a candidate.

- Beginning in 2021, and annually thereafter, the Secretary will establish national prevention services measures on the following indicators based on the data reported by the states:
  - Percentage of candidates for foster care who do not enter foster care during the 12-month period when the prevention services or programs are provided (to them or on their behalf) and through the end of the succeeding 12-month period.
  - Per-child spending of the total amount of expenditures for the prevention services or programs (to or on behalf of the child).
• The Secretary will establish and annually update the prevention services measures based on the median state values for the 3 most recent years, and will take into account differences in state prices using the Bureau of Economic Analysis of the Department of Commerce or other such appropriate data. HHS will make available to the public each state’s performance measures.

Eligibility for Indian Tribes, Tribal Organizations (Sec. 50711):
• Tribes with an approved Title IV-E plan have the option to use Title IV-E funds for prevention services and programs. HHS will specify the requirements applicable to tribes, which will be consistent with state requirements, to the extent possible, but allow for cultural adaptation that best fits the context of the tribal community.
• For each tribe, organization, or consortium that takes the option for prevention services and programs, HHS will establish specific performance measures on the prevention services, which will be consistent with the state performance measures, to the extent possible, but also take into consideration the factors unique to the tribe, organization or consortia.

Technical Assistance and Best Practices [Sec. 50711(d)]:
• HHS will provide technical assistance and best practices to states and tribes on the prevention services and programs, including how to plan and implement a well-designed and rigorous evaluation of promising, supported, or well-supported practices. HHS will evaluate research on promising, supported and well-supported practices and establish a clearinghouse of these practices and their outcomes. HHS may also collect data and conduct evaluations on the prevention services and programs to assess how these services are reducing the likelihood of foster care placement, increasing the use of kinship care placements, or improving child well-being.
• HHS must submit to the Senate Finance and the House Ways and Means Committees periodic reports on the prevention services and programs, which will also be made available to the public.
• There is $1 million appropriated to HHS to carry out these provisions in FY2018 and each year afterwards.
• This requirement is effective upon enactment of the law.

Other (Sec. 50711):
• A child who is with a kin caregiver for more than six months and meets the Title IV-E eligibility requirements will continue to be eligible for Title IV-E foster care payments at the end of the 12 months.
• Services and programs provided to or on behalf of a child will not be counted against that individual as receipt of aid or assistance in regards to their eligibility for other programs.
• U.S. territories are eligible for the new Title IV-E prevention funding.

Federal Reimbursement for Children in Residential Family-based Substance Abuse Treatment with a Parent (Sec. 50712):
• States can get Title IV-E reimbursement for not more than 12 months for a child who has been placed with a parent in a licensed residential family-based treatment facility for substance abuse, regardless of whether the child meets the AFDC income-eligibility requirement for Title IV-E. Additional requirements include:
  o The child’s case plan has to recommend this placement;
  o The substance abuse treatment facility must provide parenting skills training, parent education, and individual and family counseling; and
  o The treatment and related services must be trauma-informed.
• This requirement is effective on October 1, 2018.
Reimbursement for Evidence-Based Kinship Navigator Programs (Sec. 50713):
- States can receive Title IV-E reimbursement for up to 50 percent of the state’s expenditures on kinship navigator programs that meet the evidence-base requirements of promising, supported, or well-supported practices, without regard to whether those services were accessed on behalf of children who meet the AFDC income-eligibility requirements for Title IV-E.
- This requirement is effective on October 1, 2018.

Part II – Enhanced Support Under Title IV-B
(Sections 50721, 50722, 50723)

Changes to Use of Title IV-B Services for Family Reunification Services (Sec. 50721):
- Eliminates the current 15-month time-limit on the use of Title IV-B funds for family reunification services for children in foster care. However, clarifies that a child returning home also will now have access to 15-months of family reunification services beginning on the date the child returns home. Changes the name of the program from “Time-Limited Family Reunification Services” to “Family Reunification Services.”
- This requirement is effective on October 1, 2018.

Improving Interstate Placements (Sec. 50722):
- No later than October 1, 2027, states will need to use an electronic interstate case-processing system for exchanging data and documents to help expedite the interstate placement of children in foster care, adoption or guardianship. U.S. territories, Indian tribes, tribal organizations and tribal consortiums are exempt from this requirement.
- Provides funding authority ($5 million for FY2018, with funds that remain available through FY2022) under Promoting Safe and Stable Families to help states develop electronic interstate case-processing systems. States will need to submit to HHS an application that details how the grant will support the state in connecting with the electronic system, including how the grant will help it reduce times to permanency, improve administrative processes and reduce costs in the foster care system, and ensure secure exchange of data and timely placement decisions, strategies for integrating programs and services across state lines. In providing funds, HHS shall prioritize states not yet connected with the electronic interstate case-processing system. Funds must be used to support a connection to the system or enhancing or expediting services provided under the system.
- Not later than one year after the final grant year, HHS will submit to Congress and make available to the public a report on how the system has changed the time it takes to complete interstates placements, how many cases were processed inside and outside the electronic system, state implementation progress, how the system affected other metrics related to child safety and well-being, and how the system affected administrative costs and caseworker time spent on interstate placements.
- HHS will work with the Secretariat for the Interstate Compact on the Placement of Children and the states in assessing how this system can be used to better serve and protect children that come to the attention of the child welfare system by connecting the system to other data systems. For example, how it can help children who have been identified as victims of sex trafficking or missing from foster care, or help expedite background check requirements in Title IV-B.

Improving the Regional Partnership Grants to Help Families Affected by Substance Abuse: (Sec. 50723)
- Amends the Regional Grant Partnership (RGP) in Title IV-B, Subpart 2, by specifying the various partners that need to be a part of the collaborative agreement (interstate, state, or intrastate), including:

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The mandatory partners for all partnership grants, which must include the state child welfare agency and the state agency responsible for administering the substance abuse prevention and treatment block grant.

The mandatory partners for partnership grants that serve children in out-of-home care, which must include the appropriate courts that work with these families.

The optional partners, which may include Indian tribes, tribal consortium, nonprofit and for-profit child welfare service providers, community health and mental health providers, law enforcement, school personnel, tribal child welfare agencies and any others related to provision of services under the partnership.

- Tribes entering into a RGP may (but are not required to) include the state child welfare agency as a partner, but are not allowed to partner only with tribal child welfare agencies. If the tribe is working in a partnership grant that serves children in out-of-home care they may include a tribal court in lieu of other judicial partners.

- Extends RGPs for an additional five years (FY2017 – FY2021). The amount per grant per fiscal year can be no less than $250,000 and no more than $1,000,000.

- RPG grants will be awarded in two phases: first, a planning phase (not to exceed two years, and not to exceed $250,000 or the total anticipated funding for the implementation phase); second, an implementation phase.

- Payments won’t be made until the Secretary determines that sufficient progress has been made in meeting the goals of the grant and that the members of the partnership are coordinating together.

- Amends the RPG application requirements, including:
  - Modifying the goals for RGPs, including the addition of goals that improve substance abuse treatment outcomes for parents and families, as well as children, and focus on safe, permanent caregiving relationships for the children, an increasing reunification rate, and facilitate the implementation, delivery and effectiveness of the new prevention services in Title IV-E.
  - Adding a description for a sustainability plan at the end of the grant.
  - Adding information about how the proposed activities are consistent with current research or evaluations on effective practices.

- Amends the performance indicators to reflect child safety and parent well-being, and try to make the indicators consistent with the outcomes measures for the new Title IV-E prevention services.

- Modifies the reporting requirements to include semi-annual reports to HHS on the services provided, progress made in achieving goals, and number of children and families receiving services.

- This is effective on October 1, 2018.

**Part III – Miscellaneous**  
*(Sections 50731, 50732, 50733)*

**Improving Licensing Standards for Relative Foster Family Homes (Sec. 50731):**

- HHS will identify reputable model licensing standards for foster family homes not later than October 1, 2018, and no later than April 1, 2019 states will need to submit to HHS:
  - Whether their licensing standards are in accord with HHS’ model standards, and if not, why they deviate and a description of why that model standard is not appropriate for the state.
  - Whether they waive certain licensing standards for relative foster family homes, and if so, a description of the standards they most commonly waive. If the state does not waive standards for relatives, they must describe the reason for not doing so.
  - If the state waives licensing standards for Relatives, a description of how caseworkers are trained on this waiver and whether the state has developed a process or tools to help
caseworkers in waiving the non-safety standards to help place children with relatives more quickly.
  o A description of how the state is improving caseworker training or the process on licensing standards.

Developing Statewide Plans to Prevent Child Abuse and Neglect Fatalities (Sec. 50732):
  • Requires states to document in their state plan for the Title IV-B Child Welfare Services program
    the steps they are taking to track and prevent child maltreatment fatalities, including:
      o How the state is compiling complete and accurate information on these fatalities, including
        information on deaths from relevant organizations (i.e. State vital statistics department, child
        death review teams, law enforcement agencies, offices of medical examiners or coroners).
      o How the state is developing and implementing a comprehensive, statewide plan to prevent
        child maltreatment fatalities that engages public and private agency partners, including
        those in public health, law enforcement and the courts.
  • This requirement is effective on October 1, 2018.

Modernizing the Title and Purpose of Title IV-E (Sec. 50733):
  • Changes the name of the Title IV-E program from “Part E—Federal Payments for Foster Care and
    Adoption Assistance” to “Part E—Federal Payments for Foster Care, Prevention, and
    Permanency.” The purpose of Title IV-E is also amended to reflect the new use of federal funds
    for prevention services and programs.
  • This requirement is effective immediately upon enactment.

PART IV. ENSURING THE NECESSITY OF A PLACEMENT THAT IS NOT IN A
FOSTER FAMILY HOME
(Sections 50741, 50742, 50743, 50744, 50745, 50746)

Beginning October 1, 2019, states must take steps to safely reduce the inappropriate use of
congregate/group care for children. States have the option delay the effective date for up to two years;
however any state that does so must also postpone seeking Title IV-E prevention investments for the same
period of time.

Restrictions on Federal Reimbursement for Placements Other than Foster Family Homes (Sec. 50741):
  • Beginning with the third week of a child entering foster care, states will only be eligible for Title
    IV-E foster care payments on behalf of a child in the following settings:
      o A foster family home of an individual or family that is licensed or approved by the state,
        and is capable of adhering to the reasonable and prudent parent standard, provides 24 hour
        care for children placed away from their family, and provides care to six or fewer children
        in foster care (exceptions to this limit can be made to accommodate parenting youth in
        foster care to remain with their child, keep siblings together, keep children with
        meaningful relationships with the family, and care for children with severe disabilities).
      o A child-care institution (defined as a licensed private or public child-care institution with
        no more than 25 children) that is one of the following settings:
        ▪ A Qualified Residential Treatment Program (QRTP)
        ▪ A setting specializing in providing prenatal, post-partum, or parenting supports for
          youth.
        ▪ A supervised setting for youth ages 18 and older who are living independently.
A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims. (Child-care institutions do not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children determined to be delinquent.)

- Children who are placed with a parent in a licensed residential family-based substance abuse treatment facility for up to 12 months. (As reflected in Sec. 50712 mentioned above.)

Restriction on Title IV-E payments does not prohibit payments for administrative expenditures incurred on behalf of the child in a child care institution.

Qualified Residential Treatment Programs (QRTP) (Sec. 50741):

- A Qualified Residential Treatment Programs (QRTP), is defined as a program that:
  - Has a trauma-informed treatment model designed to address the needs, and clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances, and can implement the necessary treatment identified in the child’s assessment. (See the section below for more information on the assessment.)
  - Has registered or licensed nursing staff and other licensed clinical staff who can provide care, who are on-site consistent with the treatment model, and available 24 hours and 7 days a week. The QRTP does not need to have a direct employee/employer relationship with required nursing and behavioral staff.
  - Facilitates family participation in child’s treatment program (if in child’s best interest)
  - Facilitates family outreach, documents how this outreach is made, and maintains contact information for any known biological family and fictive kin of the child.
  - Documents how the child’s family is integrated into the child’s treatment, including post-discharge, and how sibling connections are maintained.
  - Provides discharge planning and family-based aftercare supports for at least 6 months post-discharge.
  - The program is licensed and nationally accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Council on Accreditation, or others approved by the Secretary.

Assessment to Determine Appropriateness of Placement in a QRTP (Sec. 50742):

- Within 30 days of a child being placed in a QRTP setting, a qualified individual must assess the child’s strengths and needs using an age-appropriate, evidence-based, validated, functional assessment tool to determine if the child’s needs can be met with family members or in a foster family home, or in one of the other approved settings (i.e. facilities for pregnant or parenting youth or independent living facilities) consistent with the short- and long-term goals of the child and their permanency plan. HHS will release guidance on valid assessment tools. The qualified individual will also need to develop a list of child-specific short- and long-term mental and behavioral health goals.
  - The assessment must be done by a “qualified individual”, who is a trained professional or licensed clinician who is not a state employee or affiliated with any placement setting in the state. However, this requirement may be waived by the Secretary upon request of a state certifying that trained professional or licensed clinician can maintain objectivity in the assessment process.
  - If the assessment is not completed in the first 30 days of the child’s placement in a QRTP the state can no longer receive federal reimbursement for foster care maintenance payments for that child while they are in that placement.
• The qualified individual must conduct the assessment in conjunction with the child’s family and permanency team, which may include parents, relatives, fictive kin, appropriate professionals (teachers, medical and mental health providers, 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.
  o The state will need to document in the child’s case plan their efforts to identify and include a family and permanency team for the child, contact information for the team (including other family and fictive kin who aren’t in the team), evidence that meetings were held at a time convenient for the family and permanency team, evidence that the child’s parent provided input if reunification is the permanency goal, evidence that the assessment was made in conjunction with the team, the placement preference of the team that acknowledges the importance of keeping siblings together, and if the team’s placement preference is different than that of the qualified individual the reason why the recommendations are different.

Steps Taken After a Determination is Made that a Child Should Not be Placed in a QRTP (Sec. 50741):
• If it is determined by an assessment of court order that a QRTP placement is not appropriate for a child, then the state has an additional 30 days from the time that determination is made to transition the child down to another placement 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. These funds appear to be able to assist with the transition.

Steps Taken After a Determination is Made that a Child Should Not be Placed in a Foster Family Home (Sec. 50742):
• If it is determined that a QRTP placement is appropriate for a child, the qualified individual needs to document in writing why the child’s needs cannot be met by her family or in a foster family (shortage of foster family homes cannot be an acceptable reason), why a QRTP will provide the most effective and appropriate level of care and in the least restrictive environment, and how it is consistent with the short- and long-term goals of the child.
• Within 60 days of a placement in QRTP the court must review the assessment and approve or disapprove of the QRTP placement.
• For children who remain in a QRTP, at every permanency hearing the state agency will need to submit evidence:
  o Demonstrating the ongoing assessment that the child’s needs continue to be best met in a QRTP and it is consistent with the child’s short- and long-term goals.
  o Documenting the specific treatment or service needs that will be met by the QRTP and the length of time the child is expected to need those treatment and services.
  o Documenting the efforts made to prepare the child to exit care or to be placed in a foster family home.
• For children in a QRTP for 12 consecutive or 18 nonconsecutive months (or for more than 6 consecutive months for children under age 13) the state will need to submit to HHS the most recent evidence and documentation supporting this placement with a signed approval by the head of the state.

Protocols to Prevent Inappropriate Diagnoses (Sec. 50743):
• States will need to establish as part of their health care services oversight and coordination plan procedures and protocols to ensure children in foster care are not being inappropriately diagnosed
with mental illnesses, disorders or disabilities that may result in the child not being placed with a foster family home. This is effective as if enacted January 1, 2018.

- HHS will evaluate these procedures and protocols and the extent to which states comply and enforce them, identify best practices, and submit a report on the evaluations to Congress not later than January 1, 2020.

Training State Judges, Attorneys and Other Legal Personnel about New Restrictions (Sec. 50741):
- The Court Improvement Program in Title IV-B, Subpart 2, is amended to include training to judges, attorneys, and other legal personnel in child welfare about the new changes made to federal policy and reimbursement for children placed in settings that are not foster family homes.
- This is effective as if enacted January 1, 2018.

Assuring Changes in Federal Reimbursement Do Not Impact the Juvenile Justice System (Sec. 50741):
- States will need to include in their state plan a certification assuring that the state will not enact or advance policies or practices that will result in a significant increase in number of youth in the juvenile justice system because of the new restrictions on federal reimbursement for children not placed in a foster family home. This provision is effective on October 1, 2019.
- The GAO will do a study evaluating the impact on the juvenile justice system as a result of the new restrictions on federal reimbursement for children not placed in a foster family home. Specifically, the GAO will evaluate the extent to which children in foster care who are in the juvenile justice system and placed in a juvenile justice facility are there as a result of the lack of available congregate care placements. GAO must submit this report to Congress no later than December 1, 2025.

Criminal Records Checks and Checks of Child Abuse and Neglect Registries for Adults Working in Child-care Institutions and Other Group Care Settings (Sec. 50745):
- States are required to have procedures for background checks to be carried out on any adult working in group care settings where foster children are placed. This is effective on October 1, 2018.

Exceptions for States with a Title IV-E Waiver (Sec. 50746):
- States that have an active Title IV-E Demonstration Waiver when the changes in Title IV-E for group care go into effect will not be held to the changes if they are inconsistent with the terms of their waiver until the waiver expires.

Data and Reports on Children Placed in Settings Other than Foster Family Homes (Sec. 50744):
- States will need to collect data and report on the following data items for children in child-care institutions or other settings that are not foster family homes:
  - The type of placement setting (i.e. shelter care, group home, residential treatment facility, hospital or institution, setting for pregnant or parenting youth, etc.)
  - The number of children in the setting, and the age, race/ethnicity and gender of each child in the setting.
  - For each child, the length of stay in that setting, whether it was the child’s first placement, and if not, the number of previous placements, and whether or not the child has special needs.
  - The extent of specialized education, treatment, counseling, or other services provided in that setting.
- States will also have to report on the number and ages of children in these placements that have a permanency goal of Another Planned Permanent Living Arrangement (APPLA).
- This is effective as if enacted January 1, 2018, and will serve as a useful baseline as the new requirements for group care are implemented.
PART V. CONTINUING SUPPORT FOR CHILD AND FAMILY SERVICES
(Sections 50751, 50752, 50753)

Supporting and Retaining Foster Families for Children (Sec. 50751):
- Amends the definition of “Family Support Services” under Promoting Safe and Stable Families in Title IV-B, Subpart 2, to include community-based services that are designed to support and retain foster families so they can provide quality family-based settings for children in foster care. The current definition focuses primarily on services for the child’s family, and this change will allow for additional support for foster families.
- Creates under Title IV-B, Subpart 2, competitive grants ($8 million in FY2018 that remain available through FY2022) to states and tribes to support the recruitment and retention of high-quality foster families to help place more children in foster family homes. The grants will be focused on states and tribes that have the highest percentage of children in non-family settings.

Extending Child and Family Services Programs Under Title IV-B (Sec. 50752):
- Extends for five years (FY2017 through FY2021) the following programs:
  - The Stephanie Tubbs Jones Child Welfare Services Program (Title IV-B, Subpart 1).
  - The Promoting Safe and Stable Families Program (Title IV-B, Subpart 2) is extended at the current mandatory level of $345 million a year. Discretionary funding under Promoting Safe and Stable Families is also extended for five years, as well as the funding reservations for supporting monthly caseworker visits, Regional Partnership Grants, and funding for state Court Improvement Program Grants (mandatory funding).

Improving the John H. Chafee Foster Care Independence Program (Sec. 50753):
- Extends to age 23 the financial, housing, counseling, employment, education, and other appropriate supports and services to former foster care youth under the John H. Chafee Foster Care Independence Program (Chafee). The supports and services under Chafee are currently only available to youth between ages 18 and 21.
- The extension of Chafee services to age 23 only applies to states that have taken the option to extend foster care to youth to age 21, or states that HHS determines are using state or other funds to provide services and assistance to youth who have aged out that are comparable to those youth would receive if the state had taken the option to extend care.
- If a state has unspent Chafee funds remaining (i.e. at the end of the two-year period that funds are available to them), HHS can make those available to redistribute to other states that apply for additional funds, as long as HHS determines that those states will use the funds for the purposes stated. The amount redistributed to the states will be based on the “state foster care ratio” (i.e. the number of children in foster care in one state compared to the overall number of children in foster care nationally). Tribes can also participate.
- Extends to age 26 eligibility for Education and Training Vouchers under Chafee, which are currently only available to youth up to age 23, and clarifies that higher education vouchers are also available to youth who are at least 14-years old. Youth cannot participate in the voucher program for more than 5 years (whether or not consecutive).
- Changes the name of the program from the “John H. Chafee Foster Care Independence Program” to the “John H. Chafee Foster Care Program for Successful Transition to Adulthood.” Also makes several language changes throughout Chafee, including clarifying that these services can start for youth at age 14.
- Not later than October 1, 2019, HHS must submit to the House Ways and Means and Senate Finance Committees a report on the National Youth in Transition Database (NYTD) and other
relevant databases that track outcomes of youth who aged out of care or who exited care to adoption or kinship guardianship, including:

- Comparing the reasons for entering foster care and the foster care experience for 17-year-olds (i.e. length of stay, number of placements, case goal, discharge reason) to children who left care before turning 17.
- Characteristics of youth ages 19 and 21 who report poor outcomes to NYTD.
- Benchmarks for determining poor outcomes for youth who remain in care or exit care, and plans the Executive branch will take to use those benchmarks in evaluating child welfare agency performance in providing services to youth transitioning from care.
- Analysis of association between placement type, number of placements, time in care, and other factors related to outcomes at ages 19 and 21.
- Analysis of outcomes for youth ages 19 and 21 who were formerly in care compared to 19 and 21 year-olds still in care.

- Ensures that youth who age out of foster care are provided official documentation that proves they were previously in foster care. This information will be critical to youth who aged out who experience challenges accessing Medicaid to age 26, which they are now entitled to through the Affordable Care Act.

**PART VI. CONTINUING INCENTIVES TO STATES TO PROMOTE ADOPTION AND LEGAL GUARDIANSHIP**

*(Section 50761)*

Reauthorizing the Adoption and Legal Guardianship Incentive Program (Sec. 50761):

- Reauthorizes the Adoption and Legal Guardianship Incentive Payment program, which was set to expire in FY2016, for an additional five years (FY2017 through FY2021). The incentive program allows states to receive award payments based on improvements the state makes in increasing exits from foster care to adoption or guardianship.
- This takes effect as if enacted on October 1, 2017.

**PART VII. TECHNICAL CORRECTIONS**

*(Sections 50771, 50772)*

Changes to Data Exchange Standards to Improve Program Coordination (Sec. 50771):

- HHS, in consultation with an interagency workgroup, will designate data exchange standards around the information shared between different state agencies, including federal reporting and data exchange requirements.
- Includes a number of data exchange standard requirements, such as incorporating widely-accepted, computer-readable formats; the capacity to continually be upgraded; and to be implemented in a way that is cost-effective, efficient and effective.
- Two years after enactment HHS will issue a proposed rule that identifies federally required data exchanges; includes specification and timing of exchanges; addresses factors used to determine whether and when to standardize data exchanges; and specifies state implementation options and future milestones.

Changes to State Requirement to Address the Developmental Needs of Young Children (Sec. 50772):

- Amends the state plan requirement under Title IV-B, Subpart 1 to describe activities to reduce the length of time to permanency for children under the age of 5 and the activities the state undertakes...
to address the developmental needs of all vulnerable children under age 5 who receive services until Title IV-B or Title IV-E.

**PART VIII. ENSURING STATES REINVEST SAVINGS RESULTING FROM INCREASES IN ADOPTION ASSISTANCE**

*(Sections 50781, 50782)*

**Delay of Adoption Assistance Phase-in (Sec. 50781):**
- Temporarily suspends, from January 1, 2018 to June 30, 2024, the increased federal reimbursement under Title IV-E Adoption Assistance for certain children adopted under age two. The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-135) began to “de-link” a child’s eligibility for federal Title IV-E Adoption Assistance from the outdated AFDC program by creating a 8-year phase-out of the de-link, beginning in 2010 for youth ages 16 and older, and going down two years of age ever year until 2018 when all children with special needs who are adopted will be eligible for federal reimbursement. All children with special needs will be eligible for Title IV-E Adoption Assistance on July 1, 2024.
- In the interim, children with special needs under 2 years of age will continue to be eligible for Title IV-E Adoption Assistance if they meet the existing Title IV-E eligibility requirements or are eligible for state-funded Adoption Assistance payments.
- This is effective as if enacted January 1, 2018.

**GAO Study on Savings Resulting from the Increase in Adoption Assistance (Sec. 50782):**
- Requires the Government Accountability Office (GAO) to review states’ compliance with the various requirements of the adoption assistance federal reimbursement phase-in, specifically the:
  - Requirement that state savings generated from the phase-in are being used to provide services to adopted children and their families.
  - Requirement that the state will spend no less than 30 percent of the savings generated by the phase-in on post-adoption services, post-guardianship services, and services to support and sustain positive permanent outcomes, and that at least two-thirds of that 30 percent requirement be spent on post-adoption and post-guardianship services.
- The GAO must submit the findings of this study in a report to the Senate Finance and House Ways and Means Committees and HHS.

*The provisions in Parts I-III that are effective on October 1, 2018, and the provisions in Part IV that are effective as if enacted in January 1, 2018, if HHS determines that a state needs to enact legislation (other than appropriations) to bring its Title IV-E or Title IV-B plans into compliance with a requirement(s), the state is permitted to have additional time to do so. Specifically, the state would have until the first day of the first calendar quarter that occurs after the close of the first regular state legislative session that begins after the enactment of this act.
Signed on February 9, 2018, as part of the Bipartisan Budget Act of 2018 (H.R. 1892), the Family First Prevention Services Act (FFPSA) has the potential to radically change child welfare systems across the country. Primarily by dictating how federal child welfare funds (Title IV-E) can be used, the FFPSA seeks to create a child welfare system that increases its investments in prevention services, so youth and families do not enter the system in the first place, and in family- and community-based services and placements, so youth who enter the system are more likely to find family and permanency. It is hoped that changing the way Title IV-E funds can be spent will lead to state systems that better reflect a vision of child welfare service delivery that prioritizes prevention, seeks to keep children with families in the community, and provides a more comprehensive service array for youth as they transition to adulthood.

For years, our federal financial structure has moved states in the direction of removal and placement and has done little to attack the use and overuse of group care. While financial incentives and disincentives are not the only movers of system change, they can be powerful ones. Title IV-E funds previously could be used for the cost of foster care maintenance for eligible children, administrative expenses to manage the program, training for staff and caregivers, adoption assistance, and kinship guardianship assistance. These funds could generally not be used for prevention services. This meant that the bulk of federal funds for child
welfare systems could be used only once a child entered the system, and once they did, the same level of reimbursement was allowed for family-based settings and group care. In addition, in the past, federal funds to support youth in the transition to adulthood have been capped at age 21.

The FFPSA changes significantly how federal funds can be used by states. It allows states to use IV-E funds for certain prevention services with the goal of keeping youth and families out of state custody and placement. It also limits the use of IV-E funds to pay for group care with the goal of enhancing a placement and service array that keeps youth in the most family- and community-based settings with the goal of moving them toward permanency. In addition, the FFPSA allows states to use federal funds to respond to the reality and research that shows that the transition to adulthood lasts into a young person’s mid-20s and that youth deserve support as they build their skills and pursue post-secondary education and training. To that end, the FFPSA allows states two options: to extend Chafee Program aftercare services to youth until age 23 if the state provides extended foster care (foster care past age 18) and to extend eligibility for education and training vouchers until age 26 for all states.

The FFPSA has the potential to drastically change the child welfare system in general, but the potential impact on older youth is significant. Not only are there large numbers of older youth in the child welfare system—171,162 youth in foster care, or 25 percent—but they make up a significant number of the youth who are in group care. 51 percent of these youth are aging out without being successfully reunified with their family or connected to another family through adoption or legal guardianship. It is clear that these youth are at great risk for poor adult outcomes because we have not collectively provided them the foundation of family and skills that every young person needs to succeed as he or she transitions to adulthood. Increasingly, older youth in foster care are receiving the attention they deserve, but identifying and implementing the policy and practice changes necessary to make a meaningful impact on their lives remains a challenge.

This three-part series—comprised of this article on prevention provisions and ones on reduction of group care provisions and improving transitions—takes a close look at how the FFPSA can be leveraged to bring benefit to older youth and suggests strategies to ensure that plans for implementation of the law keep older
youth as a priority and that the youth are not lost in the immense efforts to implement all provisions of the law. Several senators have written to the Children’s Bureau to request that additional guidance be provided to the states so that they have the information and capacity to ensure that the law benefits older youth. These three articles follow the lead and challenge of the Grassley letter to make sure older youth are front and center in FFPSA implementation work. While the FFPSA provides some new leverage points through financing reform, it is acknowledged that broader policy, practice, and philosophy shifts are needed to transform how we serve older youth and to achieve the positive outcomes they deserve. We hope that these strategies help transform the work we are doing to a positive rather than a negative approach: a commitment to get young people to the most the connected placements in the community that can lead to permanency. Please note that this series of articles does not provide a detailed summary of the FFPSA. Instead it highlights the ways advocacy can be done around select provisions to improve outcomes and opportunities for older youth. A very helpful and detailed summary of the FFPSA has been published by the Children’s Defense Fund: The Family First Prevention Services Act: Historic Reforms to the Child Welfare System Will Improve Outcomes for Vulnerable Children (Feb. 2018).

Prevention Provisions

The FFPSA provides states, territories, and tribes the option to use Title IV-E funds for prevention services that would allow “candidates for foster care” to stay with their parents or relatives. Prior to this law, IV-E funds could be used only once a child was removed from the home. States will be able to define candidates for foster care, but generally this will include youth at risk of entering or reentering the foster care system from the home of a parent, relative, or legal guardian. This includes disrupted permanency arrangements (for example, a disrupted adoption). As the Grassley letter urges, “candidates for foster care” should include youth between ages 18 and 21 who are eligible to reenter care under state law. (While guidance on this issue was requested, advocates in states with reentry should include this in implementation discussions.)

Under the FFPSA, states will be reimbursed for prevention services for up to 12 months and can provide two types of prevention services: (1) mental health and substance abuse prevention and treatment services provided by a qualified clinician
and (2) in-home parent skill-based programs, which include parenting skills training, parent education, and individual and family counseling. Services must be evidence-based (well-supported, supported, or promising) and trauma-informed to be eligible for reimbursement. This new use for IV-E funds can be a game changer and allows states to invest funds in and build capacity to prevent placement in meaningful ways.

In addition to being able to use IV-E for specific prevention services for “candidates for foster care,” states can also use IV-E funds to provide prevention services to youth in foster care who are pregnant or parenting. States are still restricted to the two categories of prevention services listed above but can provide them to pregnant and parenting young people in foster care regardless of whether their child is system-involved or at risk for involvement. These services can be provided for up to 12 months from the time a youth is identified as being in need of services.

Leveraging the Prevention Provisions for Older Youth

It is essential that states have the capacity to meet the needs of families with older youth if services are expected to truly prevent placement for teens and young adults. About 30 percent of youth who entered the child welfare system in 2016 were age 11 or older, while 10 percent were age 16 or older. As advocates are inquiring into their state’s capacity to provide trauma-informed and evidence-based prevention programs, they should also be asking whether programs have the skill set and expertise to support families with teens and adolescents. For example, are the available in-home parenting skills-based programs able to help parents understand adolescent development and trauma and how to productively respond to youth? Are the individual and family counseling programs able to respond to the dynamics of parents, teens, and young adults? Developing effective prevention services for families with teens and young adults also includes understanding the reasons these youth are coming into care. While older youth, like younger children, usually come into care for multiple reasons, the most common reasons for older youth are the Adoption and Foster Care Analysis and Reporting System (AFCARS) categories of neglect, child behavior problem, and caretaker inability to cope. Effective prevention services for older youth will need to respond to these removal
reasons and likely need to enlist the behavioral health system to formulate effective interventions. In addition, this is an area where getting feedback from youth and families about what they need—or needed—to remain together is essential. Advocates can play a key role in ensuring these voices are heard.

As mentioned above, for prevention services to be funded they must fall in the two service categories and they must be evidence-based (“promising,” “supported,” and “well-supported”). There is valid concern, including concern expressed in the Grassley letter, that there is a lack of programs targeting older youth that will meet the evidence-based criteria and that youth and families will not receive the benefit of the law because the research base is not yet where we need it to be. While we do advocacy at the federal level to see if federal guidance can provide some flexibility in this area, we recommend that advocates proceed to identify effective programs. If prevention programs that can meet the needs of families with older youth do not exist in sufficient numbers to meet the anticipated need, advocacy for issuing request for proposals (RFPs) is a recommended strategy. In addition, because the FFPSA funds only two categories of prevention services, advocacy for investment of state funds in prevention should be considered by advocates, especially to address the fact that entrance into the system is related to lack of income and housing to meet a child’s needs.

Leveraging the Prevention Provisions for Expectant and Parenting Youth in Care

The FFPSA allows states to use IV-E funds for prevention services for pregnant and parenting youth in foster care. As the Grassley letter suggests, this should include mothers and fathers at any time while they are in care. Youth in foster care have much higher rates of adolescent pregnancy and childbearing than their peers. Having one or more children at a young age has been shown to be correlated with barriers to educational attainment and adds to the challenges that youth face when they are making the transition to adulthood from foster care. The opportunity to enhance the services that these youth receive could aid in improving outcomes and opportunities for young parents who are very much in need of specialized support.

FFPSA prevention funds can be used for expectant and parenting youth in care without their children being candidates for foster care. This is a powerful provision
of the FFPSA that is at risk of getting lost in the important discussions around prevention in general. Advocates for older youth should make sure that stakeholders and policy makers are aware of this provision and that implementation planning includes how this provision will be leveraged to enhance the services and supports provided to expectant and parenting youth. There is often a lack of specialized services and placements for expectant and parenting youth in care, so these provisions could allow for specialized services that make a placement possible or make an existing placement more appropriate and supportive.

The Center for the Study of Social Policy (CSSP) has been leading efforts to improve our knowledge of and responses to expectant and parenting youth in foster care for many years and is continuing to provide expertise in implementing this provision of the FFPSA. In October 2018, CSSP released helpful FAQs on this issue and should be looked to for rich information on services and approaches to working with expectant and parenting youth in care. This way advocates can ensure that this provision is used to enhance the capacity of the system to support youth in care as parents and guard against their deeper involvement in the system as parents.

Individual Advocacy Strategies

The FFPSA provides us new leverage through financing incentives and disincentives to move the child welfare system to a goal that is not new: a system that front-loads services to prevent system involvement and meets family’s needs in the community. Our pre-FFPSA federal and state laws contain many provisions that aim to get us to this result. We can use the excitement and attention around the FFPSA and the new tools it provides to reinvigorate legal advocacy through enforcement of existing laws. We think these strategies not only complement FFPSA implementation work but may expand efforts in the states to invest more in prevention and community- and family-based care. Below are a few examples for attorneys who represent children and parents to consider in their trial court and appellate advocacy.

1. **Enforce the reasonable efforts provisions.** Federal law requires the child welfare agency make reasonable efforts to prevent placement of children in foster care and to finalize the permanency plan if the child is placed. A recent article by Jerry Milner and David Kelly of the Children’s Bureau
reinforced the experience of many: The reasonable efforts provisions are not often invoked to leverage service delivery at the trial court or fair hearing level or at the appellate level, so that obligation can be clarified and enforced.

2 Enforce the requirements for fair hearings. Attorneys should advocate zealously for reasonable efforts to prevent removal or, if the facts warrant, for a finding that reasonable efforts have not been made. Federal law and regulation require that states provide a mechanism for fair hearings for denials of service and benefits under Title IV-E. Failure to provide appropriate pre-placement prevention services are among the issues that can be challenged in a fair hearing. Fair hearings provide an additional forum to consider challenges that could result in the improvement of prevention and reunification services for families with older youth who are not being served in a manner that responds to their needs. Because the FFPSA funds only two categories of prevention services and requires that they be evidence-based, the reasonable efforts requirement continues to be a vital legal requirement that can help ensure specific prevention services to families. When lawyers bring challenges in a coordinated way (such as organized efforts to identify cases for appeals and fair hearings), they can move jurisdictions to prioritize investments in prevention.

3 Enforce laws around disposition for youth in care who are pregnant and parenting to ensure appropriate placements and services and to ensure respect for the parental rights of young parents. All states have case law and statutory provisions to ensure that dispositions of dependent children meet their needs and serve their best interests. These should be used to force the provision of services that support older youth as emerging adults and as parents. When a youth in care has a child, the disposition must serve the needs of the changed status of the dependent child in terms of services and placement. If the placement and services are not appropriate and are not supporting the youth as a youth and as a parent, they should be challenged as not consistent with the law. In addition, any efforts to remove a dependent child’s child or infringe on the dependent child’s legal rights as a parent, either because she is in foster care or because of a lack of placement that can serve both, should be vigorously
It is clear that the FFPSA provides many opportunities to transform the child welfare system into a system of support that is focused on prevention and on supporting and strengthening families in the community. If we can achieve this goal, it will benefit all families, including families who are or can support and nurture older youth. The attention to older youth and the development of law and policies that support the transition to adulthood of youth in foster care have increased over time. Far too often, though, it seems that our laws and policies put attention on the challenges older youth face, but that reforms are not implemented in ways or at the scale needed to achieve the desired results: large numbers of youth achieving permanency and successfully transitioning to adulthood. The combined force of Fostering Connections to Success and Increasing Adoptions Act of 2008, the Strengthening Families Act, and the FFPSA should result in better outcomes for older youth. We hope this series of articles continues the discussion among advocates so that we can collaborate and plan for systematic and individual advocacy on behalf of older youth.

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This is the second of three articles on how the Family First Prevention Services Act (FFPSA) might be leveraged to the benefit of older youth. In addition to increasing investments in prevention services so youth and families do not enter the system in the first place, the FFPSA seeks to limit the use of group care by restricting the use of Title IV-E funds for group settings. The FFPSA continues to allow Title IV-E funds to be used to fund placements in a “family foster home,” defined as a home with 24-hour care for 6 or fewer children (with some exceptions), or a “child care institution,” defined as an institution for up to 25 children that is not a detention center. However, under the FFPSA, a child’s Title IV-E eligibility ends after two weeks of placement in a child care institution. Thus, placement in group settings lasting longer than two weeks generally will be ineligible for federal funding. States can continue to place youth in these settings but will have to fund them with state and local dollars.

There are, however, several group settings that are exempted from these restrictions. States can continue to draw down IV-E funds for settings described later in this article after two weeks even if they are provided in the form of child care institutions.
Older youth are at high risk for being placed in group care; one out of every four—171,162—youth in foster is at least age 14, and 34 percent of those youth are in group care placements. These placements compromise the ability of youth to find permanency and form healthy, lasting relationships with family and caring adults. They also compromise opportunities for youth to develop the skills they need to be successful in adulthood. Older youth are the ones most likely to positively benefit from the FFPSA’s efforts to reduce group care, but they are also the group that the system will say it is the most challenged to serve in family-based settings. Advocates must ensure that the needs of these youth are front and center in FFPSA discussions. We recommend that advocates take a three-pronged approach that works to ensure that

- the provisions that restrict group care are applied rigorously to older youth;
- the excepted settings are available in appropriate numbers, are of high quality, and prioritize permanency; and
- achieving permanency and supportive connections through enforcement of existing law, including the Strengthening Families Act permanency and normalcy provisions and the reasonable efforts requirements, continues and creates the framework for the right sizing of placements and services under the FFPSA.

Advocacy to Limit Group Care Placement

Much has been written about policies that can effectively reduce decisions to place youth in group care. These reforms tend to require more process and oversight before a placement in group care can occur. This can include special teamings that ask important questions about family and community connections as well as the efforts that have been made to serve the youth in the community. Requiring high-level approval and frequent reauthorization to continue placement can also force the system to think more creatively and carefully about options outside of group care. Policies that make certain reasons for group care placement unacceptable—such as the lack of a family-based setting—can also be powerful shifters of practice as can policies that prohibit group care placements for certain ages (for
example, under 12 or 18 and older) and that enforce time limits (e.g., no more than 3 months). While many states have instituted such reforms, advocates should examine what policies exist in their jurisdiction and consider whether policy or legal requirements of this sort should be part of FFPSA implementation efforts. It is possible that these reforms may be more effective in combination with the changed federal financing incentives as well as any additional reforms at the state level.

The FFPSA uses the federal IV-E financing structure to shift practice, but it is largely using a dis incentive to force change and doing it through a significant, but limited, funding stream. Title IV-E is the largest federal funding stream for child welfare activities, but states use a good deal of state and local funds to run their child welfare systems, and these funds are not governed by the FFPSA. Long-lasting change will likely require states to create a law and policy structure that is consistent across funding sources and that does not just push child welfare systems away from service delivery we do not want to see, but that pulls and supports them in building the array that is best for children and youth. Ideally, state funding schemes should mirror the federal dis incentives for group care but should also provide incentives and support so that the state can build sufficient alternatives. Advocates are encouraged to consider the following possible reforms:

- Enact a state funding formula that dis incentivizes group care and provides incentives for community-based supportive services and placements.

- Enact state law to allocate funds to provide financial and service support for kinship care arrangements (for example, subsidies, navigators, post-permanency support).

- Enact state law that allocates funds to train foster care and adoption caseworkers to support older youth permanency.

- Review and potentially revise the state’s Medicaid Plan to ensure the funding of services that can support an enhanced placement array for older youth.

- Enact state law to provide funding and training to recruit and retain skilled caregivers.
Advocacy to Support Caregivers for Older Youth

To be successful in reducing group care placements, states need to build up and enhance their placement and service array. Working to recruit kin and non-kin caregivers is essential to this goal as is investing in retention and support of caregivers, which will also assist with recruitment. One of the best ways to determine what caregivers need to support youth of varying ages and needs is to simply ask them. Advocates can play a role in getting this feedback and presenting it to policy makers. Initiatives like the Quality Parenting Initiative (QPI) provide a model for this type of inquiry as well as a structure for supporting caregivers through policy and practice. This model seeks to both enhance and specify the standards for caregivers and provide them the support they need to achieve those standards.

The FFPSA requires that states show that their licensing standards for family foster care are in accord with model standards that have been promulgated by the Children’s Bureau. States will have to explain if there are areas where requirements are waived or amended for relative caregivers seeking to be licensed. It is recommended that advocates use this opportunity to create and enhance licensing standards that support caregivers in acquiring the skill and community support they need to provide excellent care for children, including older youth. High expectations should be mirrored by high support. In addition, these standards should address ways to resolve barriers that relative caregivers may face in being licensed or being approved for services and support that are not related to safety.

Advocacy to prohibit discrimination against lesbian, gay, bisexual, transgender, and questioning youth or foster and adoptive resources is a civil rights issue, but it is also a permanency and FFPSA issue. Advocates should leverage the FFPSA’s push to expand family-based placements as an opportunity to urge the elimination of any laws, policies, or practices that support discrimination of foster and adoptive resources and to institute prohibitions on discrimination.

Advocacy to Build a High-Quality Placement Array by Developing the Excepted Settings
The restrictions on using Title IV-E funds for group care have several exceptions. The following are settings that are exempted from the group care restrictions for the purpose of IV-E funds:

- A qualified residential treatment program (QRTP).
- A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims.
- A supervised setting for youth ages 18 and older who are living independently.

While the first three excepted settings do not specify age, it is likely that older youth will be considered for these excepted settings more often than younger children. Advocates should ensure that these excepted settings are of high quality and serve an important and needed role in the placement and service continuum. Advocates should also ensure that these settings do not become barriers to developing family-based settings for older youth or as a reason to not pursue permanency.

The QRTP is getting significant attention in FFPSA implementation discussions because it is likely the setting that will replace existing group homes, albeit in a transformed way. However, for a placement to be a QRTP, it must meet multiple requirements. These requirements are intended to ensure that placement is limited by specific treatment needs, that the placement can meet the treatment needs that cannot be met in a less restrictive setting, that the placement is capable of meeting an array of treatment needs, and that the goal from day one is to transition to family and the community. The FFPSA meets these requirements by developing a rigorous process to justify initial and continued placement and by requiring that placements have specific services, training, and capacity in place. Ideally, this process and requirements will ensure that older youth are placed in QRTPs only in rare circumstances for the shortest time possible. However, it is recommended that advocates raise questions about whether QRTPs can meet the needs of older youth.
and whether additional service provisions (such as the provision of transition services) or placements based on age should be developed.

Unlike QRTPs, the other excepted settings do not carry any particular requirements about initial or continued placement or about the service array and training of staff. States have the flexibility to develop and receive federal funding for group settings that serve pregnant and parenting youth and children and youth who have been found to be, or are at risk of becoming, sex trafficking victims. Advocates are encouraged to make sure there are discussions about the place of these settings in the state’s placement array and to explore developing standards for program and practice for these settings so they do provide high-quality services that meet the special needs of the targeted populations. It is recommended that advocates lead these discussions and recruit youth and service providers who have expertise in working with older youth and these two special populations. We encourage the development of standards that support good practice but are not so prescriptive that development of these settings is impossible. Finally, a crucial piece of these discussions includes how these two populations—pregnant and parenting youth and youth who are, or are at risk for being, victims of sex trafficking—can be served in family-based placement settings. The fact that states can provide care in a group setting for these two groups of youth does not in any way mean that it is the only, or even the most preferable, way to serve these youth. Advocates should ensure that implementation discussions address how serving these two groups of young people can be done in family settings.

Among the excepted placement options for federal funding is the placement category of “a supervised setting in which an individual lives independently.” This has been a IV-E reimbursable setting for youth who are in extended foster between ages 18 and 21 since the Fostering Connections to Success and Increasing Adoptions Act of 2008. The Children’s Bureau decided not to issue regulations on these settings but did provide some parameters indicating that states have a good deal of flexibility to develop settings that meet the age-appropriate needs of young adults:

For example, a title IV-E agency may determine that when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or
another housing arrangement meet the supervised setting requirement. We encourage the title IV-E agency to be innovative in determining the best living arrangements that could meet an older child’s needs for supervision and support as he/she moves toward independence. Further, we note that a title IV-E agency should continue to work with youth who are in supervised independent living settings to form permanent connections with caring adults.

While the majority of states provide extended foster care in some form, states continue to struggle with providing an age-appropriate placement array for young adults. Recent research shows some improvements, but much work remains to be done. We encourage advocates to ensure that discussions about the placement array for youth in extended foster care are a part of FFPSA discussions and presented as a strategy for alternatives to group care. Advocates can remind policy makers that states have great flexibility in what they can develop that will still allow them to draw down federal funds. Advocates should make sure the issue of quality is a core component of the discussion and that the placement array in extended foster care includes more independent settings as well as family-based settings.

Ensuring That Permanency Advocacy Is the Framework for the Expansion of the Placement Array

The focus of the group care provisions of the FFPSA are placement—reducing one type and increasing the provision of other types. These provisions use placement to get to permanency. We want youth in family- and community-based settings because we believe that in those settings they are more likely to be able to return home, reconnect and connect with kin or other community members, and achieve permanency.

In 2014, the Preventing Sex Trafficking and Strengthening Families Act (SFA), among other things, required that states crack down on the use of the permanency plan of “another planned permanent living arrangement” (APPLA) for older youth and put in place stringent requirements on when to use this permanency plan. It was believed that far too many older youth were being assigned the goal of APPLA and that this plan rarely resulted in permanency and often resulted in a youth aging
Leveraging the FFPSA for Older Youth: Reduction of Group Care Provisions

out of care without ever finding permanency. The SFA requirements sought to make the use of APPLA rare and to prompt discussion and case work that would result in APPLA not being needed at all.

While states changed law and policy to comply with the SFA, they are still in the process of changing practice and messaging around older youth permanency. We strongly recommend that advocates use FFPSA implementation efforts to continue with or reinvigorate work on this issue. Key to the older youth permanency provisions of the SFA was changing a philosophy that either all older youth were not cut out for family or that as youth got older, the focus needed to shift from permanency to preparation for adulthood. The SFA made clear that permanency is always the expectation and legal obligation until youth leave the system and that preparation for adulthood must occur alongside seeking permanency. We recommend that advocates use these legal requirements to underline the need to move older youth out of group care and to develop the types of alternatives for placement and services that are more conducive to achieving permanency.

The SFA also includes “normalcy provisions” focused on ensuring that youth are able to engage in normal, age-appropriate activities. The normalcy provisions of the SFA apply to all placement settings, including group care, and require that youth in care have access to age-appropriate enrichment, extracurricular, social, and cultural activities and experiences to the same degree as their non-placement peers. While these provisions have been in place since 2014, group care settings still struggle with their implementation, and oversight of implementation in group settings has been lax. Advocates are encouraged to inquire into the capacity of placements to comply with the normalcy provisions as the current placement array is being inventoried and a new array is being designed. It is likely that the facilities that are not able to provide normalcy to youth are exactly the ones that should either be eliminated or revamped.

The FFSPA provides new leverage through financing incentives and disincentives to move the child welfare system to a vision and goal that are not new: a system that provides age-appropriate and developmentally appropriate placement settings that are with family and in the community. Our pre-FFPSA federal and state laws contain many provisions that aim to get us to this result. We can use the new tools the FFPSA provides to reinvigorate legal advocacy through enforcement of existing
laws. Below are a few examples for attorneys who represent children and parents to consider in their trial court and appellate advocacy:

1 **Leverage reasonable efforts to finalize the permanency plan requirement to get youth the placement and services they need and deserve.** This could include requesting orders for a family-based placement to be developed or to provide services that would make a placement appropriate. This can be done at the trial court level or in a fair hearing. To have an impact on policy change, appellate advocacy could also be pursued. These challenges could be done along side assertions of the right to the least restrictive placement settings.

2 **Use state case law on disposition and any state law requirements related to placement to increase and enhance the placement options for older youth.** Statutory and case law in most states provides dispositional standards that require individualized determinations that are guided by the best interests standard. While these standards can be broad, advocates can use them, along with a good record supporting how the proposed placement will meet the youth’s needs, to argue for a court order for the best placement. (A few examples can be found in the Juvenile Law Center’s Transition to Adulthood Litigation Resources.) When the needed placement is not available or the service is not being provided, the court order can spur its development or expansion.

3 **Enforce the APPLA reduction provisions as a way to increase and enhance the permanency services provided to youth and ensure that youth are meaningfully engaged in permanency planning.** This could include the provision of trauma-informed services to address grief and loss, family finding and search technologies, child-specific recruitment, and reunification services.

4 **Enforce the normalcy provisions.** The federal law requires that the court make findings about whether older youth have regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities and whether their caregiver or placement is using the reasonable and prudent parent standard to further this access. Attorneys should be diligent in making sure these findings are made and that corrective action
The FFPSA provides a real opportunity to transform the child welfare system into one that can provide family-based settings for older youth and support them as they transition to adulthood. Because older youth are over represented in group care settings, they should benefit from the FFPSA if we work to develop the placements and services that are needed to provide high-quality alternatives. This will require further developing family-based settings and ensuring that any non-family-based settings are limited in ways that ensure quality and age appropriateness and that prioritize family, connections, and permanency.

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Leveraging the FFPSA for Older Youth: Improving Transitions

By Jenny Pokempner

This is the third of three articles—here are the first and second—one on how the Family First Prevention Services Act (FFPSA) might be leveraged to the benefit of older youth. The FFPSA seeks to respond to the transition needs of young people, recognizing that, in general, the transition to adulthood requires significant support and does not occur until a young person is in their mid-20s. The FFPSA also recognizes that successful transitions should begin early. To achieve these ends, the FFPSA expands the ages and time periods for which youth can be served. The following are some of the key changes:

- The John H. Chafee Foster Care Independence Program is now renamed the John H. Chafee Foster Care Program for Successful Transition to Adulthood to reflect the focus on supporting the transition to adulthood rather than a focus on the goal of “independence.”
- Transition to adulthood services begin at age 14 rather than 16.
- In addition to the existing requirement to provide young adults their vital documents and records, states must provide youth who exit the child welfare system at age 18 or older official documentation necessary to prove that the child was previously in foster care, to facilitate establishing eligibility and access to programs and services.
States with state-funded or Title IV-E–funded extended foster care (foster care past age 18) have the option to provide Chafee aftercare services to young adults until age 23 (from age 21).

States have the option to provide young adults Chafee education and training vouchers (ETVs) until age 26 (from age 23).

These provisions took effect in February of 2018. States must affirmatively take the options related to Chafee aftercare eligibility and ETV eligibility expansion, but states can do this at any time, according to a Children’s Bureau program instruction, by updating their Annual Progress and Services Report (APSR). No additional federal funds were allocated, but provisions were put in place to create a process for states to request unspent Chafee funds.

Implementation and Planning Strategies

Advocates should ensure that case planning and court procedures are changed so that there is accountability in the provision of transition services beginning at age 14. Advocates should also ensure that there is a process in place so that documentation is being provided to youth to let them know their foster care status.

Because states have to affirmatively take the option to extend Chafee services until age 23 if the state has extended foster care, advocates should raise this issue with the state and seek stakeholder and youth input on this decision. While there are no additional funds provided to extend the age of eligibility, providing aftercare until age 23 reflects developmentally appropriate practice and can be done through state funds. The same is true of the extension of ETV eligibility.

It is likely that some states will be resistant to expanding eligibility without new funds; for that reason, advocates may have to take the lead in organizing the discussion and collecting information and data that speak to the need to provide services for longer periods of time as well as the feasibility of doing so. Pursuing these inquiries simultaneously will also set advocates up to push for an increased investment of state and local funds for aftercare services.

Individual Advocacy Strategies
- **Enforce the transition planning requirements in court and at case planning meetings.** The requirement for judicial review of transition planning is an excellent opportunity to ensure that older youth are being supported in skill development and permanency as they age. While court oversight of these provisions is required, it is not often marshaled to ensure that meaningful transition plans are developed and that orders are issued to correct plans that are not adequate. These challenges can be made from the time planning is required at age 14 to the time of discharge, which should not occur without a good plan or without the documents required under the law.

- **Ensure that your clients know about ETV and Chafee aftercare.** Attorneys should use their counseling role to provide clients information about programs and benefits that youth are eligible to receive while they are in care and upon discharge as part of the transition planning process. Recent data show that a small number of eligible youth receive education support as part of the Chafee services. Providing information, including information about ETV, can help promote access to higher education and training opportunities. Youth can use their ETV funds for an array of expenses related to the cost of attending a program of higher education and training. Also, youth are eligible for Chafee aftercare in any state in the country. (Eligibility for Chafee aftercare is based on where the youth resides.)

- **Make sure youth have proof of former foster care status and have their vital documents before they discharge from care at age 18 or older.** The FFPSA requirement to provide youth proof of foster care status when they discharge at age 18 or older has been in effect since February 2018. As part of the transition planning process, attorneys should inquire whether their client has been provided this documentation, and if not, they should ask for a court order that it be provided. It is also recommended that attorneys assist their clients in identifying a safe place to store these documents and other original vital documents that are provided as part of the discharge process and that they also store them digitally if possible.

**Conclusion**
The FFPSA offers opportunities to transform the child welfare system into a system that better supports youth as they transition to adulthood. Ideally, several provisions of the FFPSA will result in more youth leaving the system to permanency and not aging out. The Chafee aftercare and ETV provisions, however, provide states the opportunity to build a safety net of services and supports that more closely mirrors what youth in families receive as they transition to adulthood. While the FFPSA did not go far enough by mandating the extension of services or increasing the funding available, it does provide advocates an opportunity to develop the outlines and foundation of the service system we want to build for young people. Additional advocacy at the federal and state level will be needed to make this system as effective as possible.

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Earlier this summer the Children’s Bureau convened teams of up to ten individuals from every state, D.C., Puerto Rico, and the U.S. Virgin Islands to chart a new course for child welfare in the United States: strengthening families through primary prevention of child maltreatment and family disruption. The teams included representatives from the state child welfare agency, the legal and judicial community, and prevention partners. The main purpose of the meeting was to discuss and begin planning what child welfare system partners can do together to support primary prevention—to work upstream to address the root causes that make foster care necessary in the first place.

In some ways, primary prevention may be a concept that the legal and judicial community considers out of its purview, especially judges. It may be difficult to see the role of a judge in preventing the need for children and families to enter his or her courtroom. However, there is a critical and absolutely necessary role for judges in advancing primary prevention to prevent maltreatment. It is also clear that judges deal daily with the results of the lack of primary prevention nationally as reflected by increasing docket sizes, unmanageable attorney caseloads, multiple generations of the same family entering courtrooms, and children and families appearing in court with deep trauma histories and mental health and substance abuse challenges that have often gone unattended.
The combination of these factors means that families and children in the child welfare system require some of the most difficult and long-lasting efforts within the court system. They are complex, involve challenging social issues, and do not often lend themselves to bright line decision making. These difficulties are exacerbated by legal burdens that are vague, such as contrary to the welfare of the child, reasonable efforts, and of course, the best interest of the child. Implicit bias lurks as a constant threat to which all must remain vigilant, and the fear of making the wrong decision, one that may place a child in jeopardy of serious harm—or worse—is ever present. No one wants to see a child or family in the child welfare system experience tragedy. A concerted focus on primary prevention will help address the factors that leave families vulnerable, reduce the need for foster care, and help mitigate the vicious cycle with which we continue to struggle.

There are three key judicial strategies that can help disrupt the destructive cycle in which many families experience in the child welfare system: (1) mobilize judicial leadership to support and voice the importance of strengthening families to prevent child maltreatment, (2) ensure that reasonable efforts are truly made to prevent removal, and (3) where removal is necessary, ensure that reasonable efforts are truly made to finalize permanency plans. Each of the strategies require a strong judicial philosophy of and commitment to prevention.

Mobilizing judicial support for primary prevention requires judges to be strong voices for prevention outside of the courthouse. The National Council of Juvenile and Family Court Judges (NCJFCJ) has long been a proponent of the role of judges as leaders and conveners, and primary prevention is a topic in which both actions are vital. The status judges hold in their communities as leaders can have a powerful impact on bringing important community needs to light and bringing credibility to efforts that support families and increase parental resilience. Judges know firsthand the importance of programs and services that help children and families stay healthy and on the right track. Judges also regularly see the consequences of children and families not receiving the support they need early on—consequences that may have been diverted had families received legal services, concrete supports, or other services sooner. Active judicial support for programs and approaches that serve families before crisis arise can have an enormous impact.

Once families do make it to court, there are two critical judicial determinations required under the law that judges can use as tools to prevent trauma to children and families: reasonable efforts to prevent removal and reasonable efforts to finalize the permanency plan. We invite the legal and judicial community to view these findings as incredibly important decisions that can forever change the trajectory of children’s and parents’ lives—as moments where we can chose to support families and reduce trauma to children. We invite the legal and judicial community, including attorneys for children, attorneys for parents, agency attorneys, and judges in particular, to view reasonable efforts determinations as tools and opportunities to promote family safety and family unity as opposed to exercises in compliance with statutory requirements.

Research and brain science make very clear that parent child separation is traumatizing and can have severe effects on healthy child development. As a field, we know such trauma may last a lifetime and is a powerful adverse childhood experience that can lead to long-term health, relational, and self-sufficiency challenges. It is also highly traumatic for parents and can be a trigger for relapse or decompensation for those that may be in recovery or struggling with substance abuse or mental health issues. Knowing these facts should compel all of us to take primary prevention very seriously. If we concentrate efforts and resources further upstream, we can stem the tide of children entering foster care. Reasonable efforts to prevent removal and to finalize the permanency plan are tools that are available to prevent unnecessary trauma and help make sure children and parents receive the support they need to stay safe, well, and together.
One of the most important reasonable efforts to finalize permanency plans and reduce unnecessary trauma to children is robust family time/visitation practice for children in foster care with their families. Judges can set the expectation and change both culture and practice by ordering high frequency, high quality and meaningful family time as a part of all court orders absent the presence of clearly identified, current safety concerns. Where clear safety concerns are identified, family time should continue as possible with supervision. Family time in the home, homes of family members, relatives, or home-like settings is one of the best ways to help parents practice and learn to parent more safely and effectively. Family time is the single most effective way to maintain the integrity of the parent child relationship when children are in out of home placement and a powerful way to “normalize” foster care and reduce trauma to children.

It is high time to take a different approach in child welfare in the United States; our children, families, and communities deserve better. We ask all judges to take a leadership role and do all that you can in your courtrooms and communities to demonstrate commitment to strengthening families, preventing maltreatment, reducing parent and child trauma, and interrupting the intergenerational cycles of vulnerability and disruption we have come to know so well.

NCJFCJ IN THE NEWS

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David E. Stucki Elected Deputy-President of the Int’l Association of Youth & Family Judges & Magistrates

CNN 6/21/2018
Handcuffs, assaults, and drugs called ‘vitamins’: Children allege grave abuse at migrant detention facilities

THE OLYMPIAN 6/22/2018
Family separation a travesty to children

PSYCHOLOGY TODAY 6/22/2018
Damage of Separating Families

TIME 6/27/2018
I’m a Judge Who Decides if Children Should Be Separated from Abusive Parents. Here’s How Trump’s Immigration Policy Should Change

WESTWORD 7/20/2018
Biggest Challenges Facing Juvenile and Family Court Judges

DEPARTMENT OF JUSTICE 7/24/2018
Acting Director Katharine Sullivan of the Justice Department’s Office on Violence Against Women Delivers Remarks at NCJFCJ Annual Conference

BUFFALO NEWS 8/18/2018
Shackling of 8-year-old in Family Court prompts outrage, new policy

GAINESVILLE TIMES 10/3/2018
How federal grants will help GBI, Drug Courts in opioid fight