Outline for Panel titled
“Prevention Services – What This Could Mean for the Field in the Longer Term & the Lawyer’s Role”

Summary of the Family First prevention services provisions:

The Family First Act provides an opportunity for states to seek match funding to pay for services to prevent a child’s placement in foster care through the provision of mental health services, substance abuse prevention and treatment, and in-home parent skill-based programs for the child or his or her caregivers. These services are intended to reduce the need for foster care placement by keeping children with their caregivers and are also intended to increase the use of kinship care arrangements.

States are not required to participate in the prevention services component of Family First and for those that elect to participate, there are limitations on which services will qualify for federal support based on existing evidence of their success in practice.

The prevention services provisions do not provide states with new money through Title IV-E, but do mark a new approach to providing federal support to state child welfare services because it allows federal funds to be used to support children and their families without a child being placed in foster care. Previously, federal funding was limited to supporting the costs of care and services only after a child had been placed in foster care. Additionally, prevention services funding is not income-eligibility limited the way foster care maintenance funding is, which provides broader potential impact.

The legal community has complex questions to address in states that implement the prevention services provisions of Family First. Three roles with a particularly important view on those questions are: agency counsel, dependency judges, and parent attorneys.

Questions that emerge for the legal community:

From an agency counsel perspective –

- What will prevention services look like? Will it go beyond a referral since the agency will have reporting requirements and money at stake both from its own budget and from IV-E support?
- Is there a difference between reasonably available services and prevention services? Will that distinction matter for meeting the requirement of providing reasonable efforts?
- What legal review will be required by agency counsel when determining whether a family may be eligible for prevention services (i.e. determining whether a child qualifies as a candidate for foster care)? Where are states turning for guidance on the definition of candidacy?
- Who will be responsible for tracking that prevention services are being provided once a family has been identified as being eligible for prevention services? What role might that individual play later on in a case if a petition is filed?
• What are the legal challenges in planning for prevention services in a state plan (e.g., questions about confidentiality and information sharing among different agencies such as child welfare and mental health and substance abuse treatment providers)?
• Will prevention services ever be considered something that people are entitled to as part of the child welfare legal process if they present mental health, substance abuse or parenting skills challenges?
• What kind of tracking will the agency be responsible for when looking at the effectiveness of prevention services on case outcomes?

From a judicial perspective –

• What impact will the provision of prevention services have on a case if the child does enter foster care in the future? Will the provision of prevention services weigh against the family at the initial hearing?
• What if prevention services could have been provided but were not?
• What impact will prevention services have on judicial review of reasonable efforts to prevent the child's removal?
• What kind of motions practice could be involved (i.e., motion to compel the Department to provide services to a family?)
• What happens if the jurisdiction doesn’t have prevention services available?
• What role might the courts have in determining the next legal step after prevention services conclude if a child has been placed with kin during that period (e.g., safe reunification, custody or guardianship to kin or licensing of kin as a foster parent)?

From a parent attorney perspective –

• What impact will prevention services have on the legal process if services are provided before a petition has been filed and before an attorney has been appointed to the case?
• Is there a risk of prevention services being used as evidence that weighs against reunification if the case does reach the petition stage and services are used to show non-compliance with a form of pre-case plan?
• How can prevention services help keep clients out of the system and keep kids home without feeling like a compliance tool? What role can parents’ counsel play in facilitating the positive benefits and making sure parents and children receive effective services and not just a referral before a petition is filed?
• Is there an opportunity to leverage the new federal IV-E funding for parent and child counsel as part of pre-petition legal representation during prevention services?
• What disparities might exist in access to prevention services? For mothers and fathers? For rural and urban situated families? For families in Medicaid expansion states and in those that have not taken the expansion?