June 12, 2015

The Honorable Orrin G. Hatch
Chair
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
221 Dirksen Senate Office Building
Washington, DC 20510

Subject: Discussion Draft on Investments in Prevention, amending Title IV of the Social Security Act

Dear Chairman Hatch and Ranking Member Wyden:

I write on behalf of the American Bar Association in response to the Committee’s request for comments regarding Senator Wyden’s Discussion Draft on Investments in Prevention, legislation concerning the amendment of Title IV of the Social Security Act. The ABA, with over 350,000 members from across the nation, has long been committed to improving the lives of our nation’s most vulnerable children and families. Dating back to 1988, the ABA House of Delegates has approved policies that address key services and support to children and families involved in the child welfare system.

The draft legislation would provide for further investment in programs to prevent the need for placement of a child in the foster care system as well as the provision of services to families to help keep children safe and supported at home with their families. We commend Senator Wyden and the Committee and are strongly supportive of its effort to advance meaningful legislation to address the desirability of allowing children to remain in their homes with their families. We also recommend amendments listed below to strengthen protections and support for those families in crisis and in need of support and services.

The ABA strongly supports the amendment of Title IV Sections B and E to permit spending upfront on services that would help reduce the prevalence and length of foster care placements by encouraging stability in the child’s home. Additionally, the use of performance based reimbursement rates will ensure that the funding allocated for this kind of programing is targeting those families in the greatest need. Alteration of the formula will ensure the receipt of more services to children and families in the riskiest geographical areas, i.e. neighborhoods with high rates of poverty, child maltreatment, and placements in foster care. We believe that enactment of funding reforms will result in the reduction of children being placed in the foster care system, which will permit them to remain in their homes. Therefore we recommend the following changes to strengthen and improve the Discussion Draft.
Legal Representation Improves Outcomes for Families

1. In Section 3(a)(B)(iii) line 19, add the word “legal” before “services.”
2. Additionally, in Section 3(a)(B)(v) line 7 add the phrase “legal services” after “respite care.”

High quality legal representation for children and parents improves outcomes, reduces foster care placements, and lowers government costs. If investment is made in quality legal services, systemic functioning will improve: more families will receive individualized services, fewer children will suffer the trauma of unnecessary removals, children removed from home will be returned sooner and with fewer disruptions, and taxpayer dollars will be saved. A crucial step toward securing quality representation would be allowing a portion of costs for representation to be Title IV-E reimbursable, an option already available for agency attorney costs.

Additionally, the provision of representation during the child abuse investigation stage helps to ensure that parents have access to the services necessary to maintain a safe and stable home for the child. Non-profits such as New York City’s Center for Family Representation (CFR) and the Detroit Center for Family Advocacy (CFA) have implemented successful preventative programs where clients are provided with a multidisciplinary team which includes an attorney, a social worker, and a parent advocate.

CFR’s data since 2007 shows that more than 50% of CFR clients’ children were able to avoid placement into the foster care system and even in those cases where foster care could not be avoided the median length of a child’s stay with the assistance of CFR was only 1.8 months (Betsy Gwin & Elizabeth Thornton, High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes For Families and Potential Cost Savings, 46 Family Law Quarterly No. 1 (Spring 2012) page 143)). Additionally, the re-entry rate of the children of CFR clients into the foster care system was only 1% (Family Law Quarterly, Vol. 46, No. 1 (Spring 2012) page 144)).

CFA’s clients were most often faced with housing issues such as eviction and landlord-tenant disputes. From 2009 to 2012, CFA had served 50 families during the child protection investigation, and every family’s case was closed with the child living with a permanent family outside of the child welfare system due to the implementation of these preventative services (Family Law Quarterly, Vol. 46, No. 1 (Spring 2012) page 144-146)).

Inclusion of Anti-Poverty Services Among Time-Limited Family Services

3. In Section 3(a)(B)(iii) line 20 remove the word “or” and add the phrase “, mental health needs, and employment assistance” after “inadequate housing.”
4. Also, in Section 3(a)(B)(v) line 7 add “in-home services” after “child care.”
We recommend that Section 3(a)(B)(iii) be amended to address the various services required for anti-poverty support as a method of encouraging stability in the child’s home. Currently, most IV-E funding is available to states only after a child enters foster care and cannot be used to help families after reunification. Funding to prevent the need to remove children from home or to successfully reunite and stabilize their family is limited. Allowing IV-E funds for prevention and other services to help reunify and maintain stability of families after permanency, would reduce the number of children entering foster care, shorten family involvement in the system, and help prevent re-entry. The discussion draft of this proposed bill identifies many services and supports critical to assisting families and preventing a child’s removal; however, it omits services critical to creating stability in a child’s home, including mental health services, employment assistance, and in-home services.

Thank you for your consideration of these comments. Should you have any questions or want additional information concerning our comments, please feel free to contact Bruce Nicholson, Senior Legislative Counsel (202-662-1769; bruce.nicholson@americanbar.org) or Mimi Laver, Director of Legal Education, ABA Center for Children and the Law (202-662-1736; mimi.laver@americanbar.org).

Sincerely,

Thomas M. Susman