The Family First Prevention Act of 2018

When David Kelly, a top official within the Children's Bureau, spoke at a recent conference, he let everyone know that there are big changes taking place in our nation's approach to child welfare. He told the audience that the current child welfare system is "perfectly designed to devalue families and undermine communities." The result, he said, was that the system takes too many children into care and this must change.

The signing of the Family First Prevention Services Act (The Act)[1] in 2018 reflects the significant change in the federal government's approach to funding services for families struggling with issues of abuse and neglect. The Act focuses on prevention – preventing the unnecessary removal of children from their families. It reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The statute aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce placement of children in congregate care.

Under Title IV-E of the federal law, most federal funding has been distributed to foster families who received children into their homes and to assist adoptive families. Title IV-B funding has gone to prevention services, but those monies were much less than the uncapped services available from Title IV-E. The Family First Act changed the funding streams and the philosophy behind federal funding. Now prevention is the focus and Title IV-E funds can be used to prevent removal of a child from parental or relative care.

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The legislation is divided into three areas: Prevention Services, Foster Care Changes and Other Programmatic Changes. Eligibility for prevention services includes three categories:

(1) A child (and the caregivers) who is a candidate for foster care who can remain safely at home or in a kinship home and who is identified as being at imminent risk of entering foster care.

(2) A child in foster care who is pregnant or parenting.

(3) A child whose adoption or guardianship arrangement is as risk of a disruption/dissolution.

Imminent Risk means the child and family circumstances demand that a defined prevention plan is put into place within 30 days that identifies interventions, services and/or supports and absent these interventions, services and/or supports, foster care placement is the planned arrangement for the child.

Prevention Services

The candidate for foster care must have a written prevention plan which includes the following:

(1) Identification of a prevention strategy so that the child can remain in the home, live temporarily with a kin caregiver until reunification can be safely achieved, or live permanently with a kin caregiver.

(2) A list of services or programs to be provided to or on behalf of the child to ensure success of the prevention strategy.

The Title IV-E reimbursable services include (1) mental health prevention treatment services, (2) substance abuse prevention treatment services, and (3) in-home parent skill-based programs. These services must be trauma-informed and evidence-based. These services are for the parents and are not spent on the children.

The legislation specifies the different levels of proven quality that the services must have including (1) well supported, (2) supported and (3) promising. Specified services are listed in the legislation as "under review" for qualification. In May of 2019 eleven evidence-based services were

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released as approved.[2] Other services will be added to the list as they are proven to meet the criteria listed above. Of the programs cataloged in the federal Clearinghouse, many have achieved one of these three ratings. The legislation adds that one-half of state expenditures must go toward "well-supported practices," the highest ranking of the three classes. This class contains the smallest number of programs.

One of the challenges facing all states is the availability of trained personnel to deliver the services that are approved by the Clearinghouse. For example, Utah opted into the FFPSA on October 1st, 2019, indicating that the state would be asking for federal support for four evidence-based services approved by the Clearinghouse. Those services are Functional Family Therapy, Parent-Child Interaction Therapy, Trauma-Focused Cognitive Behavioral Therapy, and Parents as Teachers. None of these services currently exists in Utah. Therefore, Utah will have to develop those services to a level that they meet federal quality standards.

Hopefully, California will choose to elect to participate in the program as that will enable the state to draw down substantial federal dollars for services for parents. However, the state will have to modify its Title IV-E State Plan by demonstrating in writing that it has a system for choosing, implementing, and evaluating the time-limited services, and that caseworkers are trained to administer them. Moreover, the state will have to take additional steps to modify state law so that it is consistent with federal law.

Foster Care Program

The legislation declares that only certain homes will be eligible for IV-E payments. These include family and kinship foster homes, placements for pregnant or parenting youth, Qualified Residential Treatment Programs (QRTP) for youth with treatment needs, and family-based residential treatment facilities for substance abuse. The legislation disfavors congregate care except for QRTP placements. The guidelines for QRTP require a specified number of services as well as involvement with the family. The QRTP must have a licensed mental health professional, and placement involves a complex assessment process including collaboration and planning with the Department of Medical Assistance Services.

The QRTP is a 24-hour residential treatment provider working with a trauma-informed treatment model. It addresses clinical and other needs of children with emotional or behavioral disorders or disturbances and must be able to provide treatment identified in the child's assessment. The QRTP must have registered or licensed nursing staff on-site 24-7 and must involve the child's family members in treatment, if that is in the child's best interests. There must be discharge planning and after-care services available for six months. The QRTP must be licensed and accredited.

The QRTP must follow a trauma-informed treatment model designed to address the needs of children with serious emotional or behavioral disorders or disturbances and implement the treatment identified by the assessment. It must also facilitate and document family outreach, including how the family is integrated into the treatment process, including post-discharge. The QRTP must also require all staff to undergo and pass criminal background checks and abuse and neglect clearances.[3]

The assessment must be an evidence-based tool. Currently the Child and Adolescent Needs Survey (CANS) is mandated to be used by child welfare in California. The CANS is completed in conjunction with the Child and Family Team. The CANS must be completed within 30 days of the child's admission, must be completed by a qualified individual (QI), and finally must be approved by the court. The qualified individual must be a licensed mental health professional, not employed by DSS or any placement provider.[4] The QI must assess the child's strengths and needs, determine whether those needs can or cannot be met by family or relatives, and determine whether the QRTP will provide the most effective and appropriate level of care and is consistent with the short- and long-term goals of the child's foster care plan. The QI must develop the child's short- and long-term mental/behavioral health goals and work in conjunction with the Family and Permanency Team.

Unfortunately, the QRTP is not the same as a Short Term Residential Therapeutic Program (STRTP), the California version of a congregate care facility that the state currently supports. Under California law the STRTP is a residential facility operated by a public agency or private organization and licensed by the department that provides an integrated program of specialized intensive care and supervision, services and supports, treatment, and short-term, 24-hour care and supervision for children. A STRTP may have a specialized program to serve the unique needs of children, including, but not limited to commercially sexually exploited children, juvenile sex offenders, or children who are affiliated with or impacted by a gang.

Significant differences exist between the regulations for the state and federal programs. For California to qualify for federal funding, it will be necessary to modify the requirements for STRTPs so that they are consistent with federal regulations.

The Family and Permanency Team (FPT)

The FPT is another aspect of the new federal law. It is set up by the local department of social services. It includes appropriate family members, relative and fictive kin, professionals associated with family such as teachers, doctors, counselors, clergy. The parent must be involved in selecting the FPT if reunification is the goal. The FTP also must consider planning and placement options for the child including placement with siblings. The FTP works with the Qualified Individual to accomplish these goals. It must hold meetings at a convenient time and place for the family. This is akin to our Child and Family Team (CFT) process in California.

The Foster Care Plan

The Foster Care Plan is a description of DSS efforts to identify family and other members to be on the Family and Permanency Team. It includes

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contact information for all FPT members and evidence that FPT meetings were held conveniently for the family. It includes an indication that the child's parent was involved in selecting the FPT if reunification is the goal. It also includes evidence that the assessment by the QI was done according to law and in conjunction with the FPT. The Plan must include placement preferences of the FPT noting consideration of placement with siblings. Finally, if the FPT's placement preference differs from QI's assessment, the Plan must contain reasons why FPT's preference was not recommended by the QI.

Court Approval

Under The Act the juvenile court has a significant role to play. There must be a court hearing within 60 days of the child's placement in a QRTP. The court must consider the assessment and the QI's written report as well as the documentation in the Foster Care Plan.[5] The court must address whether the child's needs can be met in a family, foster family, or relative placement. The court must consider whether the QRTP is the most effective and appropriate placement and is consistent with the child's goals in the foster care plan. The court then determines whether there is a discharge plan and a provision for six months of after-care services. This will require an additional court hearing. The court's decision to approve or disapprove of the placement must be documented in the child's case plan.[6]

Judges have a duty to ensure that children under court jurisdiction are being properly assessed and are placed in the least restrictive setting that meets their needs. Accordingly, the court will either approve or deny the placement, and this order shall be included in the child's foster care plan. The court must review the child's continued placement at subsequent hearings and review evidence that continued placement is needed. The court will review documentation of specific treatment or services and length of time the services are expected to be provided as well as the agency's efforts to prepare the child to return home or to be placed with a relative or foster home. This is consistent with California law. Placement cannot last longer than 12 consecutive months or 18 nonconsecutive months (6 months for children under 13) unless approved by the state director of social services.

At these court hearings judges are expected to set clear expectations for family engagement, and individualized, detailed treatment and transition plans for the child to return home or to another permanent plan with community services and supports. Moreover, the court must ensure that the child and family are engaged in the development of the treatment and transition plans.

Conclusion

The FFPSA significantly changes child welfare law in the United States. It offers new funding for preventive services and for services designed to reunify children removed from parental care. As of October, 2019, eleven states have opted into the law.[7] It is unlikely that California will be able to opt into The FFSPA before the final cut-off date of October, 1, 2021. The legislature must make many statutory changes before the California statutory scheme is consistent with the federal law. However, the benefits offered by the new law are significant, so the state should be working diligently to modify its laws.

For the juvenile court to provide meaningful oversight of FFSPA implementation, it will be necessary for judicial officers and attorneys to study the federal legislation carefully as the juvenile court has an important role to play in the new law's implementation. The new law also provides that Court Improvement monies be made available for training for judges, attorneys, and others involved in the legal proceedings in child welfare cases.[8] There is no doubt that California's families will benefit from the substantial benefits the FFSPA offers, but it is also clear that there is much work to do before those benefits can be realized.

Endnotes:

1 Bipartisan Budget Act of 2018 (H.R. 1892), P.L. 115-123; 42 U.S.C. §§671(k), 672(j), 672(k).

2 The Title IVE Prevention Services Clearinghouse was established by the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) to systematically review research on programs and services intended to provide enhanced support to children and families and prevent foster care placements. The Clearinghouse was developed in accordance with the FFPSA.

3 FFPSA, Part IV, Sec. 50741(k)(4) amending §472 of the Social Security Act (42 U.S.C. 672) as amended by 50712(a)

4 The Title IVE agency may request that HHS waive the "Qualified Individual" requirement as part of the Title IVE plan submission, thereby allowing the individual to be an employee of the agency and/or connected to or affiliated with a placement setting in which children are placed by the agency. In doing so, the Title IVE agency must certify that the trained professionals or licensed clinician will maintain objectivity in determining the most effective and appropriate placement for the child. (http://www.acf.hhs.gov/sites/default/files/ch/pi1807pdf)

5 FFPSA, Part IV, Sec. 50742(c)(2) amending §475A of the Social Security Act (42 U.S.C. §675(a)).

6 FFPSA, Part IV, Sec. 50742(c)(2)(B) amending Section 475 of the Social Security Act (42 U.S.C. § 675(a))

7 https://chronicleofsocialchange.org/child-welfare-2/latest-family-first-tally-39-states-taking-delay-for-up-to-two-years/38513

8 FFPSA, Part IV. Sec. 50741(c) amending §471(a) of the Social Security Act (42 U.S.C. 671(a)).