



**Statement by**

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**Before the**

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Committee on Ways and Means  
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Chairman Smith, Ranking Member Davis, and Members of the Subcommittee, thank you for inviting me to testify on behalf of the Department of Health and Human Services (HHS). I am Jerry Milner, the Associate Commissioner of the Children's Bureau, and the Acting Commissioner for the Administration on Children, Youth and Families. I am here today to discuss our progress in implementing the Family First Prevention Services Act (FFPSA).

Child welfare is my life's work. Before joining the Administration, I served as the Vice President for Child Welfare Practice at the Center for the Support of Families, providing assistance to states in improving services to children and families. My prior experience in child welfare also includes serving as Alabama's state child welfare director and working as a career employee in the Children's Bureau to implement and manage the Child and Family Service Reviews. I began my career as a case-carrying child welfare social worker.

Each of these experiences strengthened my conviction that we must re-envision child welfare in the United States as a system that strengthens families and breaks harmful cycles of trauma and family disruption, rather than waiting until children are hurt to respond. Foundational principles and values should guide our work in child welfare, including the recognition that all parents and families could become vulnerable with a twist of fate, that all families are worthy and deserve respect, that all children love their parents, and that everyone needs a little help at times in overcoming life's challenges.

In more than four decades of work in child welfare, I have seen too many situations where all the factors that place children at risk of serious harm went unaddressed by the child welfare system

until a serious injury, psychological damage, or something much worse occurred. These things do not typically happen because of lack of will or skill within the child welfare workforce, but rather because of the way our systems are designed and funded. Traditionally, the overwhelming majority of federal funds have been used for foster care. There are now more than 437,000 children in foster care and more than four million reports of maltreatment per year and the numbers are increasing. We spend only a tiny fraction of federal funds on preventing the maltreatment of children before they become known to child welfare agencies. It does not have to be that way.

President Trump signed FFPSA into law in February of this year. As you are aware, FFPSA sets aggressive timelines for the substantial changes contemplated by the legislation. I am pleased to report that we have made significant progress in implementation of its provisions and requirements, and we are committed to a timely and effective implementation.

Before describing our progress further, I would like to explain the central role that we believe FFPSA will perform in changing child welfare programs in the United States and our approach to implementation of the law.

### **Role of FFPSA**

By permitting, for the first time, states and tribes to use federal title IV-E funds to prevent children from entering foster care, FFPSA provides a pathway for the child welfare system to help some families to stay together rather than placing children in foster care. In fiscal year (FY) 2016, close to 10 percent of the children exiting foster care were in care for less than 30 days.

The percentage of such short stays has declined slightly over the past five years, but the question remains whether prevention services offered to many of the more than 24,000 children could have prevented them from being placed in foster care in the first place.

FFPSA provides a tremendous opportunity to make substantial improvements in the outcomes of children and families in the child welfare system. Such improvements, as FFPSA seeks to create, require shifts in long-held mindsets, a new vision of serving children and families, and a commitment to a different way of working with communities and the broader child welfare system. If states and tribes focus their efforts solely on meeting the technical requirements of the law, they may not achieve the goals of FFPSA. Successful implementation must also occur in communities and in collaboration with stakeholders that affect the lives of families in those communities every day, including the legal and judicial community, and public and private service providers. Communities know their residents' needs better than anyone in Washington, D.C., and we should assist them in supporting their families.

### **Approach to Implementation**

Our approach to FFPSA implementation allows for as much flexibility as the statute permits. We do not intend to regulate definitions of key concepts beyond what is in the statute, such as “candidate,” “imminent risk of foster care entry,” and “risk of sex trafficking.” We will also strive to provide maximum flexibility to states and tribes in claiming funding for prevention services.

While the law is prescriptive in terms of the evidence base required for allowable prevention services, we will seek to open the door of “promising” practices so that states and tribes using practices shown outcomes to support families and children in remaining together safely, while continuing to use those services while building the necessary evidentiary support. We will also look for flexibilities to incorporate basic community-based, family support services into the realm of reimbursable prevention services to the extent possible.

To prepare for implementation that meets the spirit and intent of the FFPSA, we are engaging stakeholders to hear their concerns, respond to questions, and assist states and tribes. Our efforts include: regional listening sessions with states and tribes; formal requests for public comment; site visits in many states to observe effective community-based prevention programs; national webinars; in-person discussions with our relevant grant clusters; participation in child welfare professional membership or association meetings; and individual meetings and calls with state and county child welfare leaders. We will also use our formal tribal consultation process to address tribal FFPSA issues. Our intent in making these significant efforts is to develop a thoughtful, well-informed, and comprehensive implementation plan that will best position all states, territories, and tribes for success.

Our goal is to provide guidance and instruction in a format and timeline that enables the Children’s Bureau, states, and tribes to meet statutory deadlines. Through an initial information memorandum published on April 12, we provided an overview of the FFPSA provisions and requirements.

## **Amendments to Title IV-B of the Social Security Act**

Our first program instruction to states and tribes was published on May 31 and addressed the amendments to title IV-B of the Social Security Act and the Chafee Foster Care Independence Program (now renamed as the John H. Chafee Foster Care Program for Successful Transition to Adulthood) and Education and Training Vouchers (ETV) Program. States and eligible tribes submit plans to operate both the title IV-B and Chafee programs in their five-year Child and Family Services Plans, and update these plans annually through the Annual Progress and Services Reports (APSR). This guidance document serves as an addendum to instructions for submission of the 2018 APSR and includes instruction on the following provisions:

- Implementing procedures and protocols to ensure that children in foster care are not inappropriately diagnosed and placed in settings that are not foster family homes as a result;
- Providing services and activities that address the developmental needs of all vulnerable children under the age of five;
- Compiling accurate information on child maltreatment deaths and developing comprehensive plans to prevent child maltreatment fatalities. Tracking trends, planning service improvements, and preventing child maltreatment deaths;
- Redefining “family support services” and “family reunification services”;
- Revising the population of children and youth that may be served by the Chafee Program; and
- Extending ETV eligibility up to age 26, and adding a five-year limit on receipt of vouchers.

States and tribes, where applicable, must describe how they intend to comply with these provisions no later than August 15, 2018.

### **Amendments to the Title IV-E Foster Care Maintenance Payments Program**

Our program instruction on the amendments to the title IV-E Foster Care, Prevention, and Permanency Program was published on July 9. It instructed states and eligible tribes on how to amend their title IV-E plans to submit evidence of compliance for the following provisions:

- Delaying the Adoption Assistance phase-in that de-links Aid to Families with Dependent Children eligibility from program eligibility criteria;
- Providing proof that a youth was in foster care;
- Permitting time-limited placements in a licensed residential family-based treatment facility for substance abuse;
- Conducting criminal record and child abuse and neglect registry checks for all adults working in child care institutions;
- Adhering to model licensing standards for foster family homes;
- Preventing states and tribes from implementing new policies that increase the juvenile justice population;
- Limiting title IV-E payments to children placed in child care institutions; and
- Implementing requirements for placements in qualified residential treatment programs (QRTP).

The program instruction also provides instructions to states and tribes that opt to delay some of these provisions, as permitted by law. Timelines for demonstrating compliance vary

significantly based on the statutory effective dates of the provisions and/or the applicable delayed effective date.

### **Implementation of the Title IV-E Prevention Services Program**

To participate in the new title IV-E prevention services program, states and tribes will submit a plan to the Children's Bureau that describes how the state or tribe will carry out the program, the population served, and the approved evidence-based intervention(s). The Children's Bureau will provide information on how to submit these plans through a program instruction for states and another for tribes that we expect to publish in the first quarter of FY 2019.

Operation of a title IV-E prevention services program will require use of an approved set of evidence-based interventions that fall into one of three levels of evidence set forth in the statute. The statute requires HHS to develop and publish criteria for determining what level of evidence interventions meet and are, therefore, approved for title IV-E funding. HHS is also required to create a clearinghouse of the criteria and approved interventions.

We are procuring contract support to create the clearinghouse that will be responsible for identifying interventions that satisfy the criteria for reimbursement under the title IV-E prevention services program and expect to award a contract in the coming weeks. We are developing the criteria for systematically reviewing programs and services this summer. Further, we are engaged in a broad consultation effort on development of the criteria. This effort began with a notice for public comment published in the *Federal Register* on June 22.



Our intent is to include the criteria and an initial list of programs and services identified for review by the clearinghouse in the program instruction, which we will publish in the first quarter of FY 2019. Contracted support will administer the clearinghouse, which includes ongoing review and identification of interventions eligible for reimbursement under the title IV-E prevention services program, and, to the extent that any of the appropriated funds for the clearinghouse are available, for limited support to states in evaluating their services.

### **FFPSA Implementation Challenges**

In addition to the opportunities for improving child welfare through FFPSA implementation, I also want to share the implementation challenges. Based on extensive contacts with state child welfare leaders and other stakeholders, we have heard concerns about the availability of the array of prevention services needed to be effective and about developing alternative placement options for children in congregate care. Some states that have had the flexibility of the title IV-E waivers for long periods of time are also concerned about the loss of flexibility when the waiver authority expires next year, and how their current work will be supported under FFPSA.

Through our analysis of the legislation, our interactions with states and tribes, and our initial implementation efforts, we have identified the following important implementation challenges.

#### *Start-up costs are a potential barrier for states*

Title IV-E is a cost reimbursement program and agencies must pay the full cost of prevention services upfront. Therefore, state and tribal access to start-up funding required for initial

participation in the title IV-E Prevention Services Program may be a barrier, as evidence-based interventions can be very expensive to implement.

*Availability of an adequate array of placement options for children in foster care*

While congregate care placements have declined nationally from 14.6 percent of the foster care population in 2012 to 12.2 percent in 2016, some youth currently in congregate care may be unable to succeed in a foster family home because they may have needs that cannot be addressed in a family setting. FFPSA reduces the types of allowable facilities to a few that focus on specialized populations such as pregnant youth, and may be insufficient for the full population of youth in foster care. HHS will work with states to help ensure all youth are placed in the most appropriate setting.

*Twelve-month availability of prevention services is too short for many families' needs*

States are rarely able to enroll families in programs and services immediately due to limited availability of services, wait lists, and other barriers. As a result, availability of federal reimbursement under the title IV-E Prevention Services Program is likely to be less than the 12 months from the time the state identifies the child as being in need of programs and services as allotted in the statute. States are also seeing a significant increase in the misuse of opioids and other substances, often resulting in more families encountering the child welfare system. While we anticipate that FFPSA can provide substantial funding for substance abuse treatment services to families whose children are at imminent risk of entering foster care, states will need to ensure they can promptly place families in these services to ensure they are taking full advantage of the twelve-month period of availability provided by the statute.

### *Review of all studies on prevention programs and services as part of the clearinghouse*

Although FFPSA statutory criteria and evidence review requirements closely align with existing evidence-based clearinghouses, significant differences exist that will likely make reviews time-consuming and resource-intensive. Many studies of relevant programs and services have not been reviewed in accordance with the statutory requirements. For example, FFPSA broadens the type of research that may meet criteria to include rigorous quasi-experimental research designs in addition to randomized control trials for designating well-supported and supported practices. Further, FFPSA requires the risk of harm to be assessed for studies (including case data) on programs and services. These requirements will result in a large number of studies needing to be reviewed with the new criteria.

### *Limited current availability of well-supported prevention programs and services*

FFPSA requires states to spend at least 50 percent of their IV-E prevention funding on well-supported programs. Few programs have been documented as well-supported to date and states will need to train and support child welfare staff to ensure successful implementation and fidelity to existing well-supported program models.

### *Difficulty determining which kinship navigator programs would meet statutory criteria*

FFPSA opens up title IV-E reimbursement for kinship navigator programs that meet one of the levels of evidence required in the prevention programs. To date, it is unclear whether any kinship navigator programs meet statutory criteria because they have not been included in existing evidence reviews. The clearinghouse will need to review studies on these kinship navigator programs to determine eligibility for IV-E reimbursement.

*Limited number of qualified residential treatment programs meeting the statutory criteria*

There are currently a limited number of QRTPs that meet the statutory criteria, FFPSA requires programs to be accredited by certain organizations, be trauma-informed, and provide aftercare services for six months following discharge, among other things. There are additional requirements, such as court approval, for children placed in these programs that may reduce or eliminate federal participation for children placed there.

*Limited availability of qualified individuals to assess placements in QRTPs*

In order to receive reimbursement for a child placed in a QRTP, a state must ensure that a child's placement is assessed by a "qualified individual" within 30 days of the start of the placement. States already struggle to meet existing needs and requirements given the low supply of qualified clinicians, and this may become more difficult under the new requirements.

While some of these challenges are undoubtedly complicated, we are committed to providing states and tribes with resources, guidance, and technical assistance to promote their success in complying with the FFPSA amendments and in taking advantage of this historic opportunity to access prevention funds and realign the child welfare system in the United States.

**Conclusion**

In addition to sharing information on our work to implement this legislation effectively and capitalize on the opportunity, I also would like to articulate the importance of working with families even further upstream through efforts to prevent maltreatment from occurring in the first place, as part of a broad continuum of prevention services and flexible funding.

In several jurisdictions, primary prevention efforts are contributing to reductions in reports of maltreatment, decreased numbers of children entering foster care, and improved overall well-being for children and families. FFPSA's funding stream to prevent unnecessary removals, coupled with the President's legislative proposal to provide additional flexibility to use title IV-E funds for primary prevention of maltreatment, would provide an expansive continuum of prevention efforts that could help to break the inter-generational cycles of unresolved trauma and maltreatment that are a part of so many children's and families' lives.

Creating a child welfare system that we can be proud of as a nation and that children, families and communities will see as a source of support and strength, as opposed to a system to fear, will take collaboration across the three branches of government, as well as with states and tribes. We have a collective duty and responsibility to ensure that federal policy and funding protects children to the best extent possible, which includes living in resilient, healthy families. I look forward to working with you as we continue to implement this landmark piece of legislation. I would be happy to answer any questions you have.