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November 27, 2018

New Mexico Family First Prevention Services Act Subcommittee: Federal Substance Use Disorder Services Grants and Potential for State FFPSA Implementation

Children and Families Program

NCSL



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Family
First
Prevention
Services
Act of
2018
(FFPSA)

**Federal Substance Use Disorder Services Grants - Potential for State
FFPSA Implementation**

Short Stays in Foster Care

Emergency Protective Custody

Expedited Kinship Care Licensing Laws

State Responses to FFPSA



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About NCSL

Bipartisan organization serving legislators and staff in all 50 states and territories

- Improve the quality and effectiveness of state legislatures
- Promote policy innovation and communication among state legislatures
- Provide state legislatures a strong, cohesive voice at the federal level



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Federal Substance Use Disorder Services Grants - Potential for State FFPSA Implementation



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Federal Legislation

- ☐ **Child Abuse Prevention and Treatment Act (CAPTA)**
- ☐ **Comprehensive Addiction and Recovery Act (CARA)**
- ☐ **2018 Opioid Package**



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Federal Legislation: CAPTA

The Child Abuse Prevention and Treatment Act (CAPTA)

- ☐ Requires states to have policies and procedures for hospitals to notify Child Protective Services (CPS) of all children born who are affected by illegal substance use or withdrawal symptoms resulting from prenatal drug exposure or indications of Fetal Alcohol Syndrome Disorder (FASD)
- ☐ Requires CPS agencies to develop a plan of safe care for every such infant referred to their agency and address the health and substance use disorder treatment needs of the infant



Federal Legislation: CARA

The Child Abuse Prevention and Treatment Act (CAPTA), as amended by the Comprehensive Addiction and Recovery Act in 2016 (CARA) –

- ☐ Removed the word illegal so CAPTA applies to all substance abuse
- ☐ Requires the plan of safe care to also address the treatment needs of affected family or caregivers
- ☐ Requires states to report in the National Child Abuse and Neglect Data System (NCANDS)
- ☐ Requires states to develop a monitoring system to determine whether and how the local entities are providing referrals to and delivery of appropriate services for the infant and affected family or caregiver
- ☐ Requires all children who are younger than three years who are substantiated victims of child maltreatment to be referred to early intervention agencies that provide developmental disabilities services



Federal Legislation: H.R. 6 - 2018 Opioid Package

At least 11 provisions addressing families and children, including:

- \$60 mil. set aside in CAPTA to provide support for states to collaborate and improve plans of safe care for substance-exposed infants.
- Requires HHS guidance to states (through technical assistance) on identifying opportunities to support family-focused residential treatment
- \$15 million to HHS to replicate “recovery coach” program for use in states
- Family First Support:
 - ❑ **Opioid package authorizes \$20 million in funding for HHS to award to states to develop, enhance, or evaluate family-focused treatment programs to increase the number of evidence-based programs that will later qualify for funding under *Family First Prevention Services Act*.**



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Federal Legislation 2018 Opioid Package (Cont'd)

Families and Patients in Crisis - Grants to states to expand services for patient and families impacted by substance use disorder

Sobriety Treatment and Recovery Teams (START) – Grants to states to establish or expand implementation of the START program, which pairs social workers and family mentors with a small number of families, providing peer support, intensive treatment and child welfare services



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State Statutes: Making and Screening Reports of Substance Exposure

- 24 states and D.C. include prenatal substance exposure in the definition of child abuse and/or neglect.
- 31 states and D.C. have specific procedures for reporting prenatal substance exposure.



State Response: Plans of Safe Care

- At least 8 states with statutes to define, coordinate, fund, or implement plans of safe care (CT, DE, MD, NH, ND, OK, PA, VA)
- Several states, have implemented various procedures within agencies to address plans of safe care
 - National Center on Substance Abuse and Child Welfare, In-Depth Technical Assistance



State Response: Parental Rights

- 19 and D.C. states include long-term alcohol or drug-induced incapacity of the parent as a ground for determining unfitness for purposes of termination of parental rights.
- Kentucky, Missouri, and Texas include prenatal substance exposure or neonatal abstinence syndrome in their grounds for termination of parental rights.



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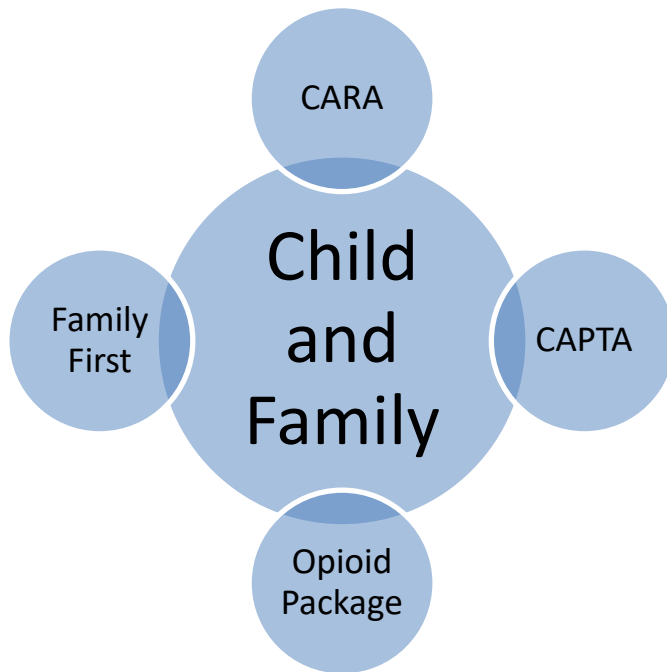


Considerations for Lawmakers

- ☐ What substance abuse services are in place already?
- ☐ How many families currently receive services?
- ☐ What will it take to ramp up the services?
- ☐ What will it take for adult residential facilities to receive children?
- ☐ What are the barriers? Are there timeframes or other requirements or barriers that need to be adjusted or addressed?
- ☐ What are the confidentiality barriers that need to be addressed?
- ☐ What are plans of safe care being developed?



Considerations for Lawmakers (cont'd)



- ☐ Which populations can benefit from each source of funding?
- ☐ Are there restrictions/conflicts among different sources of funding?
- ☐ Who are the stakeholders to bring to the table to ensure funding is used effectively?
- ☐ Consider applying for the Opioid Package grants. What will that take?



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Short Stays in Foster Care

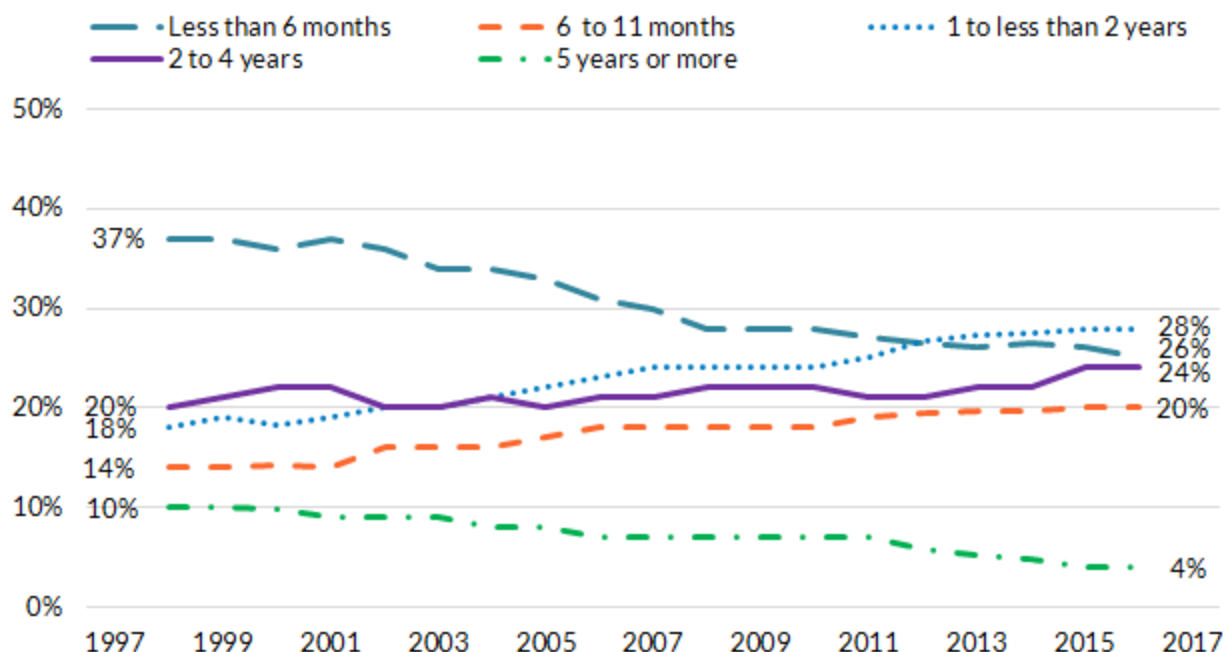


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Among Children Exiting Foster Care, Percentage by Length of Stay in Care: 1998-2016*



*Data for 2004 through 2016 are preliminary estimates. Revised estimates may be forthcoming.

Sources: Data for 1998-2002: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2006). *The AFCARS report: Final estimates for FY 1998 through FY 2002 (12)*. Washington, DC: Author. Retrieved from http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report12.htm. Data for 2003-2016: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. (2006-2017). *The AFCARS Report [2003-2016]*. Washington, DC: Author. Retrieved from

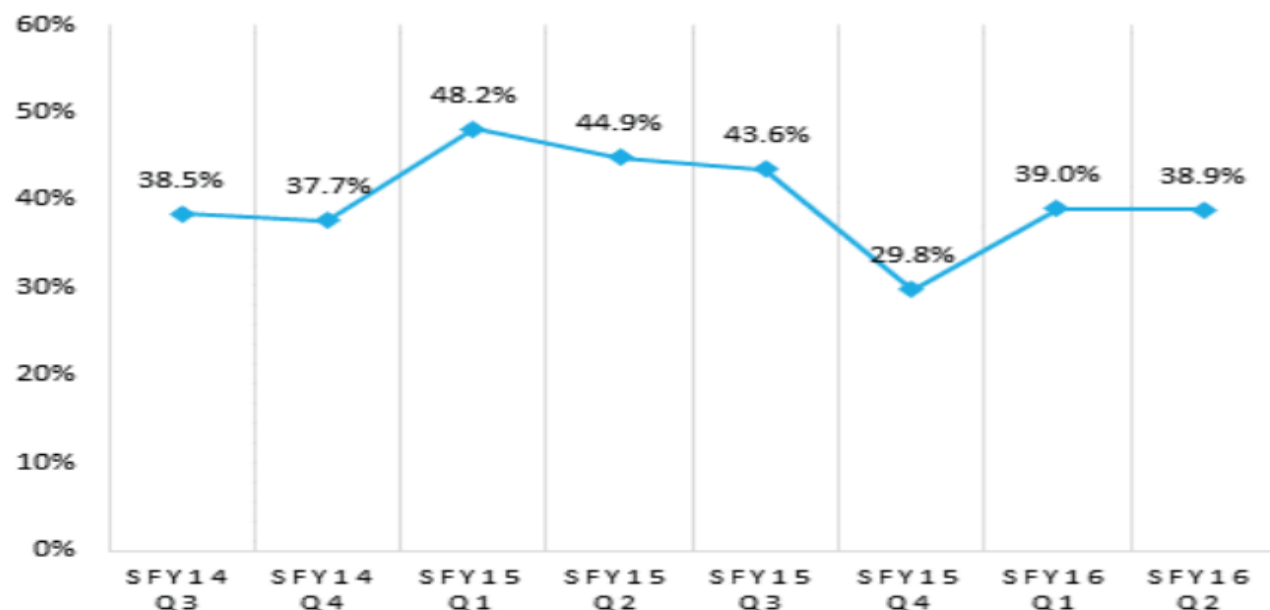


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K1 New Mexico "Short Stays" in Foster Care: Trends



This graph shows the percentage of children entering foster care in New Mexico who leave care within 8 days, for the last eight quarters. Source: sm0904



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Effects of Removals

- Each year 10% of children removed (nearly 25,000) placed in care, discharged within 30 days
- In some states 1 out of every 3 children removed discharged within 30 days
 - Children placed in unfamiliar environments, away from family, school, friends, community
 - Research indicates that this is harmful to children – uncertainty about their placements and why they are removed and uncertainty about adults with whom they are placed
 - Loss of trust in adults, relationships
 - Serious short-term and long-term effects on children's development.
- Complex trauma is particularly devastating - affects functioning, including attachment, cognition, mood regulation, behavior control, physiology, dissociation and self-concept
- Serious consequences for the normal development of children's brains, brain chemistry, and nervous system – putting them at risk for learning difficulties, drug abuse, teen pregnancy, risk taking behavior, and psychiatric and health problems later in life.
- Traumatized children and adolescents show changes in their levels of stress hormones similar to those found among combat veterans.



Role of Law Enforcement/CPS in Reporting and Investigations

- Initial report may be made to either CPS or a law enforcement agency and investigations may be conducted by the CPS agency, a law enforcement agency, or cooperatively by both agencies.
- In 5 states (Delaware, Missouri, Tennessee, Utah, and Virginia) and the District of Columbia (sexual abuse only) use multidisciplinary teams: representatives from CPS, law enforcement, prosecutors' offices, and health and mental health services who work to reduce trauma to child victims by avoiding the necessity of multiple interviews.
- In 20 states and the Virgin Islands, physical or sexual abuse or possible criminal conduct may be investigated by a law enforcement agency.
- In 13 states, including New Mexico, reports are referred to law enforcement agencies when the alleged perpetrator is a person other than the parent or other caregiver.
- Most states also require cross-reporting among professional entities such as social services agencies, law enforcement agencies, and prosecutors' offices.

Source: Child Welfare Information Gateway. (2017). *Making and screening reports of child abuse and neglect*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.



State Emergency/Protective Custody Laws

All states allow law enforcement officers to take emergency custody of children without a court order if an immediate danger exists.

- Twenty-six states limit such emergency removals to law enforcement officers.
- Twenty-four states also allow a caseworker to remove a child without a court order if the worker believes an imminent danger exists.
- Some states impose other requirements in those situations. For example, Maryland requires a law enforcement officer to accompany the caseworker.
- Many states also allow physicians or hospitals to take custody of a child without a court order if they suspect the child has been abused or neglected and would be in danger if returned to the parents.

Source: Montana, May 2016, Health and
Human Services Interim Committee



State Emergency/Protective Custody Laws (cont'd)

Law enforcement only

- CO, DE, GA, HI, ID, IA, KS, KY, LA, ME, MI, MN, MO, NE, NH, NM, ND, OH, OK, PA, SC, SD, VT, WA, WI, WY

Law enforcement or CPS

- AL, AK, AZ, AR, CA, CT, FL, IL, IN, MA, MD, MS, MT, NV, NJ, NY, NC, OR, RI, TN, TX, UT, VA, WV



Emergency Protective Custody (cont'd)

- Traumatic for child
- No legal counsel
- May not be able to locate a relative
- Siblings may not be placed together
- May not be placed in same school
- States vary in timeframes by which either custody expires or a court must make determination
 - 72 hours
 - 48 – 96 hours
 - 4 hours



Emergency Protective Custody (cont'd)

Some states have protocols, MOUs

- California – MOU for the process; expires on the close of judicial business on 5th court day following issuance or 7th calendar day from issuance
- Oklahoma – By 2010, Department, in consultation with law enforcement, to develop and implement system for joint response
 - Contact persons
 - May require joint training for law enforcement and child welfare staff
 - Protocol for a safety evaluation **at the scene; if a safety evaluation does not determine an imminent safety threat, the child is to be returned home**
 - Reception centers for children for when department is unable to respond at the scene
 - A protocol for transporting the child to a relative, kinship home or foster home (department uses a shelter only when these are not available)



Emergency Protective Custody (cont'd)

Colorado –

- Court may issue verbal or written temporary protective custody orders or emergency protection orders, or both.
- Each judicial district shall be responsible for making available a person appointed by the judge of the juvenile court, who may be the judge, a magistrate, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the court to issue such orders.

Georgia –

- Physician takes custody
- DFCS must take physical possession of child within 6 hours; if child placed in foster care, preliminary protective custody hearing must be held within 72 hours
- Child must be returned home if not placed into foster care by a judge or court officer



Strategies to Address Unnecessary Removals

Examine data to determine how many children agencies remove from their homes, only to discharge them within 30 days of removal.

Evaluate local and state practices.

Are community dynamics or cultural biases favoring removal over family preservation practice?

Is the late appointment of attorneys perpetuating this removal process?

Are judges personally reviewing and vetting removal petitions?

Are attorneys poorly trained and not paying as much attention to cases at the outset?

Do law enforcement and other stakeholders need education on the trauma and loss children experience whenever they are removed to foster care?

Examine the legal and statutory removal framework, which can differ significantly across geographies.

Ensure accountability of removal decisions through the appellate courts as long as statute or court rule provides immediate access.

(Source: American Bar Association, January 2018, *Timely Permanency or Unnecessary Removal? Tips for Advocates for Children Who Spend Less Than 30 Days in Foster Care*
https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/may-june-2017/timely-permanency-or-unnecessary-removal--tips-for-advocates-for/)



Considerations for Lawmakers

- ☐ How long has NM been experiencing high rates of short stays? What are the trends over time? (see previous slide)
- ☐ What are the ages and races of the short stay children in comparison to length of stay?
- ☐ Who are the sources of reports for the short stayers?
- ☐ What are causes of their emergency removals?
- ☐ Are they returned home because they reach the 72 hour threshold?
- ☐ Do the short stayers return to care? At what point in time?
- ☐ What areas of the state seem to be generating most of the short stays?
- ☐ Where are the short stayers placed? In foster care, residential care, kinship care?
- ☐ Ask judges/court officials for their input, compare to other states.
- ☐ Ask law enforcement for their input.



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Expedited Kinship Care Licensing



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Kinship Care Licensing Waivers/ Expedited Licensing

The federal 1997 Adoption and Safe Families Act (ASFA) requires kinship/relative caregivers to meet the same licensing standards as foster parents

- Some states have created relative specific provisions, particularly around emergency placements and background checks
- 39 states, including New Mexico, have relative specific licensing provisions in statute, including age requirements and degrees of consanguinity
- 25 states have waiver or variance provisions in statute. These waivers are for relatives who may not be able to meet the standard of foster parent, but it would be in the best interest to place the child with them. At least 4 of those states allow for expedited licensing of relatives
 - Idaho, Missouri, New York and South Carolina



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Kinship Care Licensing Waivers/ Expedited Licensing (Cont'd)

Idaho Code § 39-1211A

(2) ...the department **may expedite** placement with a relative, issue a foster care license or grant a limited variance or waiver of a licensing standard or requirement if, in the department's judgment, the health and safety of the related child is not thereby endangered.

Mo. Ann. Stat. § 210.565

8...In addition, any person receiving a preference **may be licensed in an expedited manner** if a child is placed under such person's care.

N.Y. Fam. Ct. Act § 1028-a

(c) ...if the court determines that placement in foster care with the relative is in the best interests of the child, the court shall direct the local commissioner of social services, pursuant to regulations of the office of children and family services, to **commence an investigation of the home of the relative within twenty-four hours and thereafter expedite approval or certification of such relative, if qualified, as a foster parent. No child, however, shall be placed with a relative prior to final approval or certification of such relative as a foster parent.**

S.C. Code § 63-7-730

(A) ...the court **may order expedited placement of the child** with a grandparent or other relative of the first or second degree.



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Kinship Care Licensing Waivers/ Expedited Licensing (Cont'd)

20 states and the District of Columbia require that the relative providing out-of-home care must be licensed or certified as a foster family home

- 8 of these states allow temporary or provisional approval while the relative works to complete the requirements for full approval or licensure (Arkansas, Connecticut, Maryland, Massachusetts, Minnesota, Montana, North Dakota, and Rhode Island)
- In 7 states, licensure is not required by statute or regulation, but relative care providers may elect to be certified
- In 4 states, including New Mexico, statutes and regulations do not require kin care providers to be licensed.
- In all of the 20 states and the District of Columbia, before a child can be placed in the home of a relative, the child-placing agency must assess if the relative is “fit and willing”
- While all title IV-E programs must require all prospective foster and adoptive parents to undergo criminal background checks, laws in 31 states, the District of Columbia, Guam, the Northern Mariana Islands, and Puerto Rico require relatives to undergo a criminal background check that includes all adult members of the household. Child abuse and neglect central registry checks also are required.

Source: Child Welfare Information Gateway. (2018). Placement of children with relatives. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.



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Legislative Role in FFPSA

- **FFPSA - a monumental shift in child welfare funding and structure**
- **Legislators can play key roles in educating members, convening stakeholders, planning, implementation and oversight**
 - **Time is critical**
 - **Ongoing process**



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Legislative Role:

Conveners of Important Stakeholders

- ☐ Reach out to your state child welfare agency; they should not make these decisions re: FFPSA in isolation.
 - ☐ Set up regular meetings during the interim to discuss FFPSA, assess state needs/concerns, examine potential benefits, implementation issues, costs, oversight, set priorities.
-
- ☐ Child welfare, Medicaid, early childhood, courts, education, health and mental health, provider community, university and research partners, and others.
-
- ☐ Foster youth (including transitioning youth), birth parents, kin caregivers, foster and adoptive parents.
-
- ☐ Educate legislative colleagues, including members of Appropriations, Budget, Health, Education committees, and legislative audit, review, finance and similar departments.



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Legislative Role in Family First:

Planning, Implementation and Oversight

- ☐ Opportunity for long-range planning.
- ☐ Develop a process for planning, implementation and oversight.
- ☐ Encourage child welfare agency to take advantage of guidance released from federal HHS.
- ☐ Critical conversations on prevention: child welfare, Medicaid, Appropriations and Budget committees.

- ☐ Review existing policies, processes, standards.
- ☐ Examine CFSR results, plans in light of FFPSA.
- ☐ Look closely at FFPSA and other timelines.

- ☐ Review best practice in other states.
- ☐ Learn about evidence-based practice.
- ☐ Learn about the accreditation process.



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State Legislative Response: CO 2018 SB 254, Chap. 216 Legislation

1. ☐ 2018 CO SB 254, Chapter 216: Requires the state department to perform an analysis and cost projections to determine the fiscal impact of FFPSA. Child welfare allocation formulas must support the implementation of promising, supported, or well-supported practices as required by FFPSA.

☐ Each county must perform analysis of available in-home, family-like and out-of-home placements by July 1, 2019. By July 1, 2020, the department must report to the Joint Budget Committee on county utilization rates of those placements and provide an analysis of projected federal reimbursement pursuant to FFPSA.

☐ Creates a child welfare services task force to analyze laws and rules to ensure alignment with FFPSA.



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State Legislative Response:

1. ☐ Senate Human Services Committee established a “Three Branch” work group to address policy, budget and communication needs related to the implementation of FFPSA.

OR Family First Implementation and Policy Work Group

- ☐ Central hub of communication
- ☐ Collaborate to identify actions for OR to meet requirements of FFPSA
- ☐ Meets monthly
- ☐ Staffed by legislative research office staff
- ☐ In-depth review of FFPSA
- ☐ Information on accreditation process
- ☐ Website – FFPSA legislation, timelines, meeting agendas, model licensing standards:

<https://www.oregonlegislature.gov/gelser/Pages/Family-First.aspx>



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State Legislative Response:

1. Virginia is using a “Three Branch” approach to implementing FFPSA, a structure that allows for participation by the legislative, executive, and judicial branches and has been used successfully in past efforts to improve the child welfare system in Virginia

Virginia

Three Branch Team

- How to calculate Virginia’s maintenance of effort level
- Defining the population at “imminent risk” of entering foster care
- Determining providers’ ability to meet the requirements of the new law - offering evidence-based practices for prevention services or to meet the requirements of a “Qualified Residential Treatment Program” for group homes or residential placements
- Determining resources necessary for implementation, to include technical support and training resources for localities

Expected implementation date of October 2019



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State Legislative Response:

1. New Mexico lawmakers address planning and implementation of Family First

New Mexico FFPSA Interim Subcommittee

-
- Joint interim subcommittee
 - Series of informational hearings
 - Address next steps in implementation
 - Examine maximizing federal dollars
 - Federal substance use disorder services grants and overlap with FFPSA
-



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State Legislative Response: Informational Briefings

1. ☐ Washington convened a work session, July 17, 2018
2. ☐ Included members of Early Learning and Human Services, Health, Appropriations committees
3. ☐ New Department of Children, Youth and Families
4. ☐ Medicaid Director
5. ☐ Washington State Institute on Public Policy (WSIPP), presented on evidence-based practice.

HI, IA, NE

- ☐ Hawaii convened an informational briefing June 19, 2018
 - ☐ Child welfare agency, Medicaid agency, other stakeholders
- ☐ Iowa - September
- ☐ Nebraska - October



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Next Steps and Questions for Lawmaker Consideration

- ☐ Identify what prevention services your state is currently funding.
- ☐ What is the quality of those services? Are they evidence-based?
- ☐ How will you build up your evidence-based services capacity to be eligible for IV-E reimbursement under FFPSA?
- ☐ Does your state already have a IV-E waiver? What are plans for the waiver?

What does congregate care look like in your state?

What is your foster family capacity? How many are licensed, trained and prepared to accept children? What is your plan to increase capacity?

Will your state request the two-year delay in implementing the congregate care changes?

Examine requirements for accreditation if your congregate care programs are not already accredited.

Examine current licensing standards, and waivers, for foster care in your state.



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Contact NCSL

Nina Williams-Mbengue at 303-856-1559 or Nina.mbengue@ncsl.org

NCSL Family First Prevention Services Act webpage:

<http://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx>

NCSL Child Welfare Webpage:

<http://www.ncsl.org/issues-research/human-services.aspx?tabs=858,51,16#16>

Resources

American Bar Association, January 2018, Timely Permanency or Unnecessary Removal? Tips for Advocates for Children Who Spend Less Than 30 Days in Foster Care:

https://www.americanbar.org/groups/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/may-june-2017/timely-permanency-or-unnecessary-removal--tips-for-advocates-for/

Center for Improvement of Child and Family Services

Portland State University, School of Social Work:

<https://ocfs.ny.gov/main/cfsr/Reducing%20the%20trauma%20of%20investigation%20removal%20%20initial%20out-of-home%20placement%20in%20child%20abuse%20cases.pdf>