

The Family First Prevention Services Act

(BTW, it's not about prevention at all!)

How does it change current law?

Allows spending Title IV-E funds on “prevention” services, meaning prevention of foster care.

Restricts spending on “congregate” or “residential” care, meaning any placement that is not a foster home.

“Prevention” Services

BEFORE: Title IV-E of the Social Security Act paid primarily for maintaining eligible children in foster care

AFTER: Title IV-E now pays for services to families and children before and after contact with the child welfare system.

- “Prevention Services”: Rationale for Change

“The fact that no IV-E funding can be used for prevention or post-reunification services has created a significant challenge to achieving better safety and permanency outcomes for children.”
(Casey Family Programs, White Paper, 2010,
<https://www.casey.org/need-for-federal-finance-reform/>*)*

This is a false narrative. These services were and are funded mainly by Medicaid and other sources like Title IV-B, TANF, Social Services Block Grant, and CAPTA funds.

Moreover, Title IV-E does not cover all foster care costs. The federal government reimburses states for 50 to 75% of the cost of foster care payments. But only 38% of foster children were eligible for federal reimbursement under Title IV-E in 2016, down from an estimated 54% in 1999.

“Prevention Services: Problems Created by Family First

Title IV-E is “payer of last resort” so states with more generous Medicaid plans and more participation in other federal programs have less opportunity to use Title IV-E funds for foster care prevention services.

States may claim federal reimbursement only for services that are “promising, supported or well-supported” as defined by Title IV-E Prevention Services clearinghouse. 50% must be for “supported” or “well-supported services” Starting in FY 2024, 50% must be for “well-supported” services.)

Services included in a state’s Medicaid plan must be paid for by Medicaid. So some states may have a problem accumulating the needed percentage.

Case management (a key part of family preservation and reunification services) and innovative programs that have not yet been evaluated are not covered.

“Prevention”: Proposed changes

Biden FY 2023 budget: Allow up to 15% of a state’s prevention services funding to be spent on emerging or developing services that do not currently meet the ratings criteria, but states must evaluate the services and either modify or cease using title IV-E funding if the evaluation shows the service to be ineffective.

Allow Title IV-E funding for case management.

Allow non-IV-E expenditures to count toward the 50%.

Residential Care

BEFORE: Title IV-E paid for all types of placements for children in foster care.

AFTER: Title IV-E does not pay after two weeks for any placement that is not a foster home except for special settings for pregnant and parenting and sex-trafficked youth, independent living, and a new category called Quality Residential Treatment Programs (QRTP).

Residential Care: QRTP's

QRTP's must meet numerous requirements, such as accreditation, 24-hour nurse coverage, and a "trauma-informed" approach. Moreover, a child must be assessed by a "qualified individual" as needing placement in a QRTP and that decision must be approved by the family court. Furthermore, a youth may not remain in a QRTP for more than 12 consecutive months without written approval from the head of the agency.

Residential care: Rationale for Change

Rationale: Researchers found that youth in family foster care consistently fared better than youth in residential care on a variety of outcomes, including mental health, education, and crime.

The problem with these studies is that they don't recognize that children placed in residential care tend to have worse problems to start with, so it is not meaningful to compare them with children placed in family foster care.

Residential Care: Problems Created by Family First

States are already struggling with a shortage of residential care options for “high-acuity youth,” both in and out of foster care, which is part of the national crisis in mental health services.

Many of these youth cannot function in a foster home, nor are there homes willing to take them.

As a result, foster youth in need of residential care are staying in offices, cars, and hotels, in emergency rooms and in hospitals beyond medical necessity.

IMD Exclusion: See next slide

IMD Exclusion

Title IV-E pays for room and board, but not health care for children in foster care. States generally cover these costs with Medicaid. But the “IMD exclusion,” a provision included in the original Medicaid legislation, prohibits federal Medicaid dollars for services to anyone under 65 who is a patient in an “institution for mental diseases” (IMD) except for in-patient psychiatric services provided to children under 21. An IMD is an institution of more than 16 beds, that is primarily engaged in caring for people with “mental diseases.”

Without a legislative fix, QRTP’s of over 16 beds may be considered IMD’s and children placed there will not be eligible for federal Medicaid funding for any of their care. States will then have to pay the entire costs of all care for foster children placed in these settings. In some states, all of the QRTP’s that have been approved have over 16 beds. They are hoping they will not be considered IMD’s by Medicaid.

Residential Care: Proposed Changes

Exempt QRTP's from the IMD exclusion, as requested by the Association of Children's Residential and Community Services.

The Biden budget proposes reducing reimbursement rates for placements in Child Care Institutions and Qualified Residential Treatment Programs to five percentage points below each state's FMAP rate. The goal is to further reduce incentives for residential care placement. This is a bad idea.

Further Reading

- On “Prevention Services”:
 - Marie Cohen, “Family First: A false narrative, a lack of review, a bad law.” *Child Welfare Monitor*, October 1, 2019, <http://childwelfaremonitor.org/2019/10/01/family-first-act-a-false-narrative-a-lack-of-review-a-bad-law/>
 - Elizabeth Jordan and Amy McKlindon, The Family First Transition Act Provides New Implementation Supports for States and Tribes. Child Trends, 2020, https://www.childtrends.org/wp-content/uploads/2020/03/Family-First-Act-Fact-sheet_ChildTrends_March2020.pdf
- On IMD
 - Marie Cohen, “Congress must take steps to ensure availability of therapeutic residential care,” *Child Welfare Monitor*, August 3, 2021, <http://childwelfaremonitor.org/2021/08/03/congress-must-take-steps-to-ensure-availability-of-therapeutic-residential-care/>.
 - Lisette Burton, ACRC, Letter to Congress re: IMD, <https://members.togetherthevoice.org/resources/Advocacy/Ensuring%20Medicaid%20Continuity%20for%20Youth%20in%20QRTPs%20Sign%20On%20Letter%207-23-21.pdf>



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