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Informational Letter

Transmittal:	18-OCFS-INF-06
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Policy and Planning Development Child Welfare and Community Services
Date:	December 19, 2018
Subject:	Family First Prevention Services Act (FFPSA) (P.L. 115-123)
Suggested Distribution:	Directors of Social Services Child Protective Services Supervisors Preventive Services Supervisors Child Welfare Supervisors Foster Care Supervisors Adoption Supervisors
Contact Person(s):	See Section V
Attachments:	Timeline of Key Actions for the Family First Prevention Services Act (FFPSA) (P.L.115-123) Summary of Key Provisions in the Family First Prevention Services Act (FFPSA)

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
18-OCFS-LCM-04 18-OCFS-ADM-16 18-OCFS-ADM-17 18-OCFS-LCM-07		18NYCRR 443.1(j)	P.L. 115-123	OCFS Eligibility Manual for Child Welfare	2019 New York State Annual Progress and Services Report

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I. Purpose

This Informational Letter (INF) serves as an introduction to the Family First Prevention Services Act (FFPSA) for local departments of social services (LDSSs) and voluntary authorized agencies (VAs), and to outline key provisions that impact child welfare.

II. Background

On February 9, 2018, President Trump signed the Bipartisan Budget Act of 2018 (P.L. 115-123) into law, which includes the FFPSA. The FFPSA makes significant changes to various sections of Titles IV-E and IV-B of the Social Security Act (SSA) with the intent to keep children safely at home with their families and, when that is not possible, to utilize the least restrictive form of placement appropriate for the needs of the child.

FFPSA reforms federal financing to prioritize family based foster care over residential care by limiting federal reimbursement for certain residential placements. The FFPSA also incentivizes the use of prevention services by authorizing Title IV-E reimbursement for evidence based, time-limited preventive services for a specific population to prevent foster care placement or support the safety, permanency or well-being of the child. In addition, the FFPSA provides new federal funding opportunities for kin navigator programs. The FFPSA also provides additional support under Title IV-B, including the establishment of an electronic interstate case processing system.¹

The New York State Office of Children and Family Services (OCFS) has reviewed the provisions of the FFPSA and has engaged partners throughout the state, including LDSSs, VAs, advocacy groups, and other state agencies, to implement a comprehensive plan that adheres to the time frames identified by the FFPSA. OCFS also conducted an informational webinar on the basic provisions of the FFPSA, which can be found at

<https://ocfs.ny.gov/main/fostercare/titleiv-e/FamilyFirst/familyFirst.asp>

Included in the program implications section below is a more detailed description of the FFPSA key provisions as well as the associated deadlines. This release reflects guidance received to date from the federal Department of Health and Human Services (DHHS), Administration on Children, Youth and Families (ACYF). OCFS expects to receive additional guidance from ACYF and will address such guidance in subsequent releases.

This INF serves as an introduction to the FFPSA and its impact on child welfare.

III. Program Implications

As OCFS continues to await federal guidance on various key provisions, New York State has requested a two-year delay. If granted by the federal government, the implementation dates for provisions including Title IV-E reimbursement for prevention services and the limitations on Title IV-E reimbursement for congregate care placements would be delayed until September 29, 2021. This delay would provide New York State the time necessary to implement the mandates of the FFPSA after final federal guidance is received.

¹ See [18-OCFS-ADM-17, Requirements for Use of the National Electronic Interstate Compact Enterprise \(NEICE\)](#).

Prior to the FFPSA, Title IV-E reimbursement was authorized only for foster care maintenance payments, administration, training, adoption assistance, and the Kinship Guardianship Assistance Program (KinGAP). The FFPSA allows, for the first time, Title IV-E funds to be used for preventive services and programs. Reimbursement is allowed for up to 12 months of mental health services, substance abuse treatment, or in-home parent skill-based training. The FFPSA defines who is eligible for services, and requires that services meet a specific evidence based threshold. Eligibility is discussed later in this document.

The FFPSA also reforms federal financing to prioritize family based foster care over residential care by limiting federal reimbursement for certain residential placements. Title IV-E reimbursement is limited to two weeks for placements in non-foster family home settings unless such setting is a Qualified Residential Treatment Program (QRTP). A QRTP is a congregate care setting that must meet specific requirements including an independent assessment of the need for such placement, trauma-informed model of care, and have on-site registered or licensed nursing or clinical staff who are available 24 hours a day and seven days a week. The QRTP requirements are discussed later in this document.

A non-foster family-home setting that is not a QRTP may still qualify for Title IV-E reimbursement beyond two weeks if it is a

- setting for prenatal or post-partum youth,
- supervised setting in which the youth is living independently,
- specialized setting for sex-trafficking victims or those at risk of being trafficked, or
- licensed residential family-based treatment facility.

Other provisions of the FFPSA also support the goals of keeping children at home and in the least restrictive setting. These include, among others, creating federal grants under Title IV-B to support foster parent recruitment, establishing model licensing for foster family homes, supporting kinship navigator programs, and preventing inappropriate diagnoses of children that result in non-foster family home placements.

New York State is already in compliance with many of the requirements in the FFPSA. Other provisions will require changes on the state and local level. In many cases, further federal guidance is needed. This INF will lay out major provisions of the FFPSA chronologically by their effective date, indicating where the state is in compliance as well as any corresponding state policy directive that has been released.

A. Effective retroactive to January 2018

1. Protocols to prevent inappropriate diagnoses (P.L. 115-123, Section 50743)

- The Title IV-B Health Care Oversight and Coordination plan must include procedures to prevent children in foster care from being inappropriately diagnosed with mental illness or other disorders leading to inappropriate non-foster family-home placements.
- **New York State has met this requirement as described in the 2019 *Annual Progress and Services Report (APSR)*.**

2. Delay of adoption assistance phase-in (P.L. 115-123, Section 50781)

- The delinking of Title IV-E adoption assistance for children under the age of two from Aid to Families with Dependent Children (AFDC) income eligibility requirements is delayed until June 30, 2024. Children who do not reach the age of two within the federal fiscal year in which their adoption assistance agreement is signed will need to meet the 1996 AFDC income eligibility requirements.
- Title IV-E eligibility will not be impacted for children
 - whose adoption assistance agreements were signed between October 1, 2017, and January 1, 2018;
 - who entered into adoption assistance agreements between January 1, 2018, and February 9, 2018, but lost their eligibility because of FFPSA; and
 - whose sibling is Title IV-E eligible.
- **New York State has met this requirement as described in the 2018 update to OCFS's [Eligibility Manual for Child Welfare](#). Part B., "Adoption Assistance Eligibility" (page 69) describes the steps required for LDSS compliance.**

B. Effective February 2018

1. Modifications to the John H. Chafee Foster Care Independence Program (P.L. 115-123, Section 50753)

- The name is changed to the John H. Chafee Foster Care Program for Successful Transition to Adulthood.
- Extends availability of Education and Training Vouchers (ETVs) until a youth is 26 years old, and limits the duration a youth can receive an ETV to five years.
- Authorizes Chafee funding until youth is 23 years old for youth who have
 - aged out of foster care at age 18, 19, or 20;
 - exited foster care to adoption or guardianship after attaining age 16; and
 - experienced foster care at age 14 or older and who have exited care for reasons other than adoption, guardianship, or aging out.
- **New York State is not opting into the above provisions to expand the use of Chafee funding or ETV at this time.²**
- Youth who have been in foster care for at least six months, who are being discharged from foster care by reason of reaching 18 years of age or older, must be provided with documentation proving they were in foster care.
- **New York State has met the requirement to provide proof of foster care; steps for LDSSs compliance are described in [18-OCFS-ADM-16; Providing Foster Care Placement Verification to Youth 18 Years of Age or Older Existing Foster Care](#).**

²See [18-OCFS-LCM-07, Federal Fiscal Year 2018 Independent Living Allocations](#).

2. Services for children under the age of five (P.L. 115-123, Section 50772)

- The state requirement to describe services to address the developmental needs for children in foster care under the age of five is expanded to include children being served in-home or in a community-based setting.
- **New York State has met this requirement as described in the 2019 APSR.**

C. Effective October 2018

1. Title IV-E payments for children with parents in licensed residential family-based treatment facilities (P.L. 115-123, Section 50712)

- Title IV-E foster care maintenance payments are authorized for 12 months for Title IV-E eligible children placed with their parents in licensed residential family-based treatment facilities.
- The treatment facility must provide parenting skills training, parent education, and individual and family counseling under a trauma-informed treatment framework.

2. Expanding family reunification services (P.L. 115-123, Section 50721)

- The current 15-month time limit on the use of Title IV-B funds for family reunification services for children in foster care is eliminated.
- Family reunification services are authorized for 15 months after the child returns home.

3. Tracking and preventing child maltreatment deaths (P.L. 115-123, Section 50732)

- States are required to document steps taken to compile complete and accurate information on child maltreatment deaths to be reported to the National Child Abuse and Neglect Data System (NCANDS).
- States are also required to describe the steps taken to develop and implement a comprehensive statewide plan to prevent child maltreatment fatalities that involves and engages relevant public and private agency partners.

- **New York State has met this requirement as described in the 2019 *Annual Progress and Services Report* (APSR).**

4. Criminal record and registry checks for adults working in child care institutions (P.L. 115-123, Section 50745)

Delay permitted while NYS is seeking necessary statutory changes

- All employees working in a child care institution must receive a fingerprint-based criminal history records check, Statewide Central Register check (SCR), and a check of the child abuse register in any state that the employee has resided in the last five years. Such checks must be completed by October 1, 2018, unless a delay is permitted.
- These requirements apply regardless of the level of contact the employee has with children in the child care institution.

- Child care institutions include group homes, residential treatment centers, shelters, and other congregate care settings.

D. Effective April 2019

1. Model licensing standards for foster family homes³ (P.L. 115-123, Section 50731)

Delay permitted if legislation is needed.

- States must provide DHHS specific information about whether the state standards for certifying or approving foster family homes are consistent with model licensing standards identified by DHHS, and the reasons for any differences.
- States must also provide information about whether non-safety standards are waived for relative foster homes, in accordance with federal waiver authority.
- **DHHS must identify model licensing standards by October 1, 2018.⁴**

E. Effective September 29, 2021 (if the state's request for a two-year delay is granted)

The following provisions are effective October 1, 2019; however, New York State has requested a two-year delay to September 29, 2021. If granted, the delay applies to all provisions collectively.

1. Prevention activities under Title IV-E (P.L. 115-123, Section 50711)

If a delay is granted for the other provisions under this effective date, then Title IV-E reimbursement for prevention will also be delayed until September 29, 2021.

- New York State has the option to claim Title IV-E funds for the following services for up to 12 months to prevent children's entry into foster care:
 - Mental health and substance abuse treatment provided by a qualified clinician
 - In-home parent skill-based programs, which must include parenting skills, training, parent education, and individual and family counseling
- Eligible services may be provided to the following categories of people when the need for services is directly related to the safety, permanency, or well-being of the child, or to prevent entry into foster care:
 - Children who are identified as candidates for foster care who can safely remain at home or in a kinship placement upon the receipt of allowable services (a candidate for foster care is a child at imminent risk of entering foster care, whether or not the child would be eligible for Title IV-E, who could safely remain at home or in a kinship placement if services are provided to prevent the child from entering foster care⁵)
 - Children in foster care who are pregnant or parenting

³ The term "foster family home" as used in the FFPSA is a "foster family boarding home" as defined in New York State 18 NYCRR 443.1(j).

⁴ Final model licensing standards have not been released by ACF as of the time of this INF's publication.

⁵ See [18-OCFS-LCM-04, Federal Foster Care Candidacy Requirements](#).

- Parents or kinship caregivers of those listed above
- A prevention plan must be developed for each child that specifies the services and programs he/she will receive in advance of the provision of such services.
- Eligible services are reimbursable under Title IV-E for 12 months beginning the date the child is identified in the prevention plan as either a candidate for foster care or as a pregnant or parenting youth in need of services.
- Conditions for eligible services are as follows:
 - Must be trauma-informed as defined in the FFPSA
 - Must meet general practice requirements, including the following:
 - Having a written practice protocol and administration
 - No empirical basis suggesting a risk of harm
 - If multiple studies have been conducted, those studies support the benefits of the practice
 - Must meet one of the following three thresholds, and have a well-designed and rigorous evaluation strategy

Promising Practice: The definition includes that the practice is a superior practice as shown by at least one study, determined to be well-designed and well-executed, and using a control group.

Supported Practice: The definition includes that the practice is a superior practice as shown by at least one study, determined to be well-designed and well-executed, using a random-controlled trial or rigorous quasi-experimental design. The study must show sustained success for at least six months after the end of treatment.

Well-Supported Practice: The definition includes that the practice is a superior practice as shown by at least two studies, determined to be well-designed and well-executed, using a random-controlled trial or rigorous quasi-experimental design. At least one study must show sustained success for at least one year after treatment.

At least 50 percent of the amount paid to the state must be for prevention services that meet the “well-supported” practice criteria.

- DHHS to establish a clearinghouse of promising, supported, and well-supported practices.⁶
- Title IV-E reimbursement is available for 50 percent of expenditures for eligible services beginning September 29, 2021, (if a two-year delay is granted) and before October 1, 2026. Beginning after September 30, 2026, eligible services will be reimbursable at the applicable federal medical assistance percentage.
- Title IV-E reimbursement is available for 50 percent of administration and training costs.

⁶ ACYF-CB-PI-18-09, Attachment C sets forth the first services and programs under review by the Title IV-E Prevention Services Clearinghouse.

2. Limit on Title IV-E reimbursement for youth placed in non-foster family home settings (P.L. 115-123, Section 50741)

New York State has requested a delay of two years, from October 1, 2019, to September 29, 2021. If granted, Title IV-E reimbursement for prevention will also be delayed until September 29, 2021.

- Claiming for Title IV-E reimbursement for foster care maintenance payments is limited to 14 days each time a child is placed in a non-foster family home setting. This limitation applies only to children placed in a non-foster family home setting **on or after the effective date of this provision** (the date being dependent on whether a delay is granted). The only types of non-foster family home settings for which Title IV-E may be claimed beyond 14 days are
 - settings that specialize in providing prenatal, post-partum, or parenting supports for youth;
 - licensed residential family-based substance abuse treatment facilities where an eligible child is placed with a parent;
 - settings that provide high-quality residential care and supportive services to youth who have been found to be, or are at risk of becoming, sex trafficking victims;
 - supervised settings for youth who have reached the age of 18, in which the youth is living independently (such as supervised independent living programs); and
 - QRTPs that have met all the requirements specified below.
- Settings operated primarily for the placement of adjudicated youth are not subject to the Title IV-E limits described above. New York State must certify that policies significantly increasing the population in the juvenile justice system will not be enacted as a result.

3. Qualified Residential Treatment Program (QRTP) (P.L. 115-123, Section 50741)

New York State has requested a delay of two years, from October 1, 2019, to September 29, 2021. If granted, Title IV-E reimbursement for prevention will also be delayed until September 29, 2021.

The requirements described below apply only to children placed in congregate care settings on or after the effective date of this provision (the date being dependent on whether a delay is granted).

- A QRTP is a specific category of non-foster family home placement that qualifies for Title IV-E foster care maintenance payments. QRTPs must meet the definition of child care institution, including that they must be licensed and that criminal record and SCR checks must be conducted for all employees. A QRTP must
 - have a trauma-informed treatment model designed to address the needs of children with serious emotional or behavioral disorders;
 - have on-site registered or licensed nursing or clinical staff who are available 24 hours a day and seven days a week;
 - facilitate and document family outreach, including siblings, and document how the family is integrated into the treatment process, including post-discharge;

- provide discharge planning and family-based aftercare support for at least six months post-discharge; and
- be accredited by one of the following:
 - The Commission on Accreditation of Rehabilitation Facilities
 - The Joint Commission on Accreditation of Healthcare Organizations
 - The Council on Accreditation
 - Another independent, non-profit accrediting organization approved by DHHS

Assessment to Determine Appropriateness of Placement in a QRTP (P.L. 115-123, section 50742)

- To qualify for Title IV-E reimbursement for foster care maintenance payments, an assessment must be conducted within 30 days of a child being placed in a QRTP to determine whether such placement is appropriate or whether the child's needs can be met in a less restrictive setting.
- The assessment must be conducted
 - by a trained professional or licensed clinician who is not a state employee or affiliated with any placement setting in the state;
 - using an age-appropriate, evidence-based, validated, functional assessment tool; and
 - in conjunction with a family and permanency team, including all appropriate family members, fictive kin, and family resources as well as persons selected by a child age 14 or older.
- If the assessment cannot be completed within 30 days of the child's placement, **no** federal reimbursement will be provided for foster care maintenance payments for any portion of the child's placement in the QRTP.
- If the assessment determines that the child should be placed in a QRTP
 - the assessor must document the reasons the child's needs cannot be met by his or her family or by a foster boarding home, and why a QRTP is appropriate;
 - a court must review and approve the assessment within 60 days of placement. If this does not occur, then Title IV-E foster care maintenance payments may only be claimed for the first 60 days of placement;
 - evidence must be submitted at each permanency hearing demonstrating why the QRTP continues to be the most appropriate placement, how the child's needs are being met, and the efforts made to prepare for the child to leave the QRTP; and
 - state or local agency approval is required for children in a QRTP for 12 consecutive months or 18 nonconsecutive months.
- If the assessment or court determines that the child should **not** be placed in a QRTP, then federal reimbursement is only allowable for an additional 30 days, to transition the child to a more appropriate placement.
- Title IV-E reimbursement may be claimed for administrative costs for the duration of the QRTP placement regardless of whether the assessment, documentation, and judicial determination requirements are met.

4. Definition of a foster family home (P.L. 115-123, Section 50741)

New York State has requested a delay of two years, from October 1, 2019, to September 29, 2021; if granted, then Title IV-E reimbursement for prevention will also be delayed until September 29, 2021.

- Foster family homes are defined as providing care for up to six children who are in foster care, except when more children are necessary to allow
 - a parenting youth in foster care to remain with his or her child,
 - siblings to remain together,
 - a child with an established meaningful relationship to remain with the foster family, or
 - a specially trained family to provide care to a child with a severe disability.

5. Assurance of nonimpact on the juvenile justice system (P.L. 115-123, Section 50741)

New York State has requested a delay of two years, from October 1, 2019, to September 29, 2021; if granted, then Title IV-E reimbursement for prevention will also be delayed until September 29, 2021.

- States must certify that policies significantly increasing the population in the juvenile justice system will not be enacted in response to the limitation of Title IV-E reimbursement for youth not placed in foster family homes.

F. Effective October 2027

1. Electronic Interstate Case Processing (P.L. 115-123, Section 50722)

- States must use an electronic interstate processing system to help expedite the interstate placement of children in foster care, guardianship, or adoption for the placement of children across state lines when children are in the custody of a state or county, being placed for private/independent adoption, or under certain circumstances, being placed by a parent or guardian in a residential treatment facility.
 - **New York State has met this requirement; steps for LDSS compliance are described in [18-OCFS-ADM-17, Requirements for Use of the National Electronic Interstate Compact Enterprise \(NEICE\)](#).**

IV. Local Preparation

The FFPSA places a greater emphasis on family-based care. Implementation will require both state and local changes, and OCFS will provide specific guidance as federal direction is received. OCFS has been convening with LDSSs and VAs to collaborate in developing a workbook to assist with implementation, which will be released upon completion.

Pending further direction, LDSSs and VAs should be assessing the FFPSA requirements against their current capacity and begin collaborating towards implementation of the new standards. Work that has been undertaken already,

including the development of kinship plans and the Foster/Adoptive Recruitment and Retention Plan, will assist in meeting the requirements of the FFPSA.

In preparation for implementation, LDSSs and VAs should consider the following:

- the range of preventive services available, including whether any evidence-based assessments have been conducted
- strategies for blind removals and triaging needs for foster care children/youth at the point of removal
- decision-making processes that determine the appropriate level of care for new admissions
- strategies to identify and utilize kin as resources at the time of removal, and on an ongoing basis after a non-kinship foster care placement is made
- the process localities and agencies use to support kinship care and relative foster homes
- the profile of children in care both in foster homes and congregate care
- the capacity of existing foster boarding homes to support an increase in the number of children being referred
- the availability of therapeutic foster boarding homes
- strategies for recruitment and retention of foster parents
- the number/percent of children in foster care in congregate care settings and whether such children could be stepped down to a family-based setting
- the current permanency plans for children/youth in congregate care, to determine services needed for discharge and after-care support

OCFS encourages the LDSS leadership to engage in discussions with the local family courts, contracted voluntary agencies, and advocates to develop a strong network of care and modify internal business processes to comply with the federal requirements.

V. Contacts

Any questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

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