

FAMILY FIRST PREVENTION SERVICES ACT (FFPSA) AND WISCONSIN LEGISLATIVE UPDATE

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Introductions

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Overview

- FFPSA Purpose and Provisions
 - Title I: Placement Prevention Services
 - Title II: Ensuring Appropriate Placements
 - Qualified Residential Treatment Programs (QRTP)
- WI QRTP Implementation
- WI Legislative Update

Family First Prevention Services Act (FFPSA)

What is FFPSA?

- On a basic level:
 - FFPSA recognizes that, whenever safe and appropriate to do so, children and families are best-served through in-home preventative services, AND
 - If a child must be removed from his/her home, they are in the least-restrictive, most family-like and appropriate setting that meets their needs

What is FFPSA?

- From a legislative perspective:
 - Enacted as part of the federal Bipartisan Budget Act of 2018
 - Major reform to Title IV-E reimbursement to emphasize in-home preventative services and appropriate placements
 - **DID NOT CREATE EXTRA \$\$\$**
 - Effective date: October 1, 2019
 - States allowed to delay for up to two years
 - Wisconsin deferred implementation to October 1, 2021

Why FFPSA?

- Focus on preserving the family unit as a priority – “family” first
 - ▣ Reduction in trauma of removal
 - ▣ Short stays (<30 days) – was removal necessary?
 - ▣ Incentivizing prevention, rather than removal
- Intervention before removal
 - ▣ Trends in drug dependence (especially opioids) leading to child welfare systems involvement
- Funding evidence-based practices—what works
- Ensuring children placed out of home are in the least-restrictive setting for their needs and that any treatment is effective
- Being with family or in a family-like setting is what is best for kids!

Two Main Components of FFPSA

1. Preventative Services
2. Ensuring Appropriate Placements
 - ▣ Qualified Residential Treatment Programs (QRTP)
 - ▣ Court Improvement Program (CIP) funds shall be used to provide training to judges, attorneys, and other legal personnel in child welfare cases on federal child welfare policies and payment limitations with respect to children placed in non-family foster homes

Title I: Prevention Services

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Imagine a world where we spend money to keep families together, rather than tear them apart

Title I: Prevention Services

- Opens up Title IV-E reimbursement funds for specified services:
 - Mental health
 - Substance abuse prevention and treatment
 - In-home “skill-based programs” (parenting skills training, parent education and individual and family counseling)

Title I: Prevention Services

- Services can be provided for up to 12 months (per family/per episode) to:
 - A child who is a “candidate for foster care”
 - There exists an immanent risk that the child will enter foster care, but can remain safely in the home as long as services or programs are provided that can maintain the child in-home
 - A child in foster care who is pregnant or parenting
 - A parent or kin caregiver of the child

Title I: Prevention Services

- Services can be provided when the need of the child, parent or caregiver for the services or programs is directly related to either:
 - ▣ The safety, permanence or well-being of the child,
OR
 - ▣ Preventing the child from entering foster care
- 12-month clock starts from the date a child is identified in a “prevention plan” as either:
 - ▣ A child who is a candidate for foster care, or
 - ▣ A pregnant or parenting foster youth in need of the services

Title I: Prevention Services Evidence Standard

- Prevention services will need to be trauma-informed and evidence-based for the state to receive payment
 - ▣ Interventions classified, based on evidence, as “promising,” “supported,” or “well-supported”
 - ▣ At least 50% must be spent on “well-supported” services
 - ▣ Individually subject to “well-designed and rigorous” evaluation

Title II: Ensuring Appropriate Placements

Title II: Ensuring Appropriate Placements

- Children in foster care have the right to be placed in the least restrictive setting relative to their needs
- Evidence is overwhelming that children do best in a family-like setting
- When a child cannot be safely placed in a family-like setting, there should be appropriate treatment options available

Title II: Ensuring Appropriate Placements Approved Placements

- Any placement longer than two weeks, Title IV-E funding only allowed for the following placements:
 - Foster Homes (including relatives)
 - Specialized placements for pregnant or parenting youth
 - Specialized placements for victims of sex trafficking
 - Supervised independent living for youth 18+
 - Family-based residential treatment facility for substance abuse
 - Qualified Residential Treatment Programs (QRTP)

Qualified Residential Treatment Programs Requirements

- Has a trauma-informed treatment model
- Has a registered or licensed nursing and other licensed clinical staff onsite
- Facilitates outreach to the child's family members and their participation in the child's treatment program
- Provides discharge planning and family-based aftercare supports for at least six months after the child is discharged
- Licensed in accordance with the state standards for child-care institutions providing foster care
- Is accredited

Qualified Residential Treatment Programs Agency's Role & Responsibilities

- Within 30 days of placement, a “qualified individual” must conduct an assessment
- Assemble a family and permanency team for the child
- Document additional information in the child’s case plan regarding family engagement and the assessment
- Submit evidence at each status review and permanency hearing supporting the placement, treatment needs, and other efforts
- Submit documentation to federal DHHS when child placed in QRTP for more than 12 consecutive/18 non-consecutive months

Qualified Residential Treatment Programs Court's Role & Responsibilities

- Within 60 days of placement in a QRTP, the court (or administrative body designated by the court):
 1. Consider the assessment made by an independent, qualifying individual
 2. Determine whether:
 - Needs of the child can be met in foster family home and, if not, whether QRTP provides most effective and appropriate level of care in least restrictive environment
 - Placement in QRTP is consistent with the goals for the child, as specified in permanency plan
 3. Approve or disapprove the placement

Wisconsin QRTP Implementation

Wisconsin QRTP Implementation Timeline

- 2021 WI Act 42
 - Applies to CHIPS, JIPS, delinquency, and post-TPR placements
 - Drafting instructions developed through collaboration between DCF and CCIP as part of QRTP Workgroup
 - Delayed due to COVID-19 and abbreviated 2019-20 legislative session
 - Signed by Governor on May 21st
 - Effective dates:
 - May 22nd – DCF rulemaking authority (incl. certification process for QRTPs)
 - September 29th – all other provisions (incl. court approval process)
 - NOTE: Short timeframes may not allow certification prior to effective date

Wisconsin QRTP Implementation Timeline cont'd

- Circuit court and DCF forms will be created and modified prior to implementation
 - Updates to requests/notices that may place a child/juvenile in a QRTP
 - Two new forms:
 - JD-1826 - Request for Qualified Residential Treatment Program Placement Findings
 - JD-1827 - Findings and Order for Qualified Residential Treatment Program Placement
 - Records Management Committee: August 6th
- Juvenile benchbook to be updated

Wisconsin QRTP Implementation Timeline cont'd

- Training for judicial officers, county agencies, attorneys and other stakeholders:
 - This presentation!
 - Judicial District Trainings – August/September for those counties inviting CCIP to present
 - Judicial Engagement Team (JET) Meetings – TBD; as invited
 - 2021 Conference on Child Welfare and the Courts – September 22-24
 - Includes a number of sessions related to FFPSA/QRTP for judicial, legal, and child welfare agency stakeholders
 - Webinar – Early October
 - Will be held live via Zoom and recorded for later viewing on wicciptraining.com
- New e-learning activity on QRTP – Early October

2021 WI Act 42

Overview

- Congregate care placements remain the same (group home, shelter home, residential treatment center), *but* those placements may be *certified* as a QRTP
- Additional court findings under FFPSA are required when the child/juvenile is in a placement certified as a QRTP
- Additional information required for permanency plan and dispositional court report when youth is in a placement (or recommending placement) certified as a QRTP

2021 WI Act 42

Definitions

- **“Qualified Individual”**
 - Performs the QRTP “Standardized Assessment”
 - Adopts definition in Federal Act – trained individual or clinician
 - WI is requesting waiver to allow this individual to include state or county child welfare staff
- **“Standardized Assessment” -- CANS**
 - Tool determined by DCF to assess strengths and needs to determine appropriateness of placement in QRTP
 - Does not apply to foster home placements

2021 WI Act 42

Assessment

- Standardized Assessment contents:
 - Whether proposed placement is most effective and appropriate level of care in the least restrictive environment
 - How the placement is consistent with the short- and long-term goals for the child, as specified in the permanency plan
 - Reasons why the child's needs can/cannot be met by the child's family or in a foster home.
 - Shortage/lack of foster homes is not an acceptable reason for determining that the child's needs cannot be met in a foster home
 - Placement preference of the family permanency team under § 48.38(3m) and, if the recommended placement is not the preference, why that placement is not preferred

2021 WI Act 42

Agency Procedures

- Whenever placed (or proposed to be placed) in a QRTP setting, including when subject to TPC Order, Consent Decree, Dispositional Order:
 - Agency to provide assessment and recommendation to parties entitled to receive petition at time of hearing OR if unavailable at that time, no later than 30 days from date of placement
- For change in placement:
 - Agency to provide...at time of notice OR if unavailable at that time, no later than 10 days from date of the notice
 - BUT the agency can request extension up to 30 days from date of the notice for good cause

2021 WI Act 42 Court Findings

- Judge or court commissioner may authorize placement in a QRTP at:
 - ▣ Temporary Physical Custody Hearing
 - ▣ Consent Decree
 - ▣ Dispositional Hearing
 - ▣ Change in Placement (pre- or post-disposition or post-TPR)
- If occurs through Notice of Change in Placement (out-of-home to out-of-home), hearing only required if objection to change in placement, generally
- If the assessment is not available at the time the placement order is made, the court shall defer the QRTP findings for no more than 60 days after the placement is made

2021 WI Act 42 Court Findings

- After receiving the assessment and recommendation, the court must make findings as to:
 - ▣ Whether the needs of the child can be met through placement in a foster home
 - ▣ Whether placement of the child in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment
 - ▣ Whether the placement is consistent with the short-term and long-term goals for the child, as identified in the permanency planning
 - ▣ Whether the court approves or disapproves the placement

2021 WI Act 42 Assessment/Recommendation Not Available

- If the standardized assessment and recommendation by a qualified individual are not available to be submitted at the time of the hearing or a notice of change in placement, the agency must submit them within the prescribed timeframes along with the Request for Qualified Residential Treatment Program Placement Findings (JD-1826)
- Subsequently, the court will then issue the findings and approve/disapprove the QRTP placement using the Findings and Order for Qualified Residential Treatment Program Placement (JD-1827)

2021 WI Act 42 Court Findings

- Whether findings are made in the affirmative does not impact whether the placement can be made
 - Court may order the agency to change placement, but it is not required
 - If findings are not made in affirmative and/or the placement is disapproved, disqualification for Title IV-E reimbursement is the consequence

2021 WI Act 42 Court Reports

- Court report is required to include a statement whether placement is in QRTP, as well as the results of the standardized assessment and recommendation of the qualified individual

2021 WI Act 42 Permanency Planning

- Permanency plan must include information on the continued necessity of QRTP placement—safe and appropriate:
 - Ongoing assessment supports that needs cannot be met in foster care setting, the specific QRTP is least restrictive and most effective level of care, consistent with long and short term care needs in the permanency plan
 - Specific service and treatment needs to be provided in the QRTP and how long the child is expected to require those services and treatment
 - Efforts to prepare child for return home, placement with fit and willing relative, guardian, adoptive parent, or foster home
- Additional court findings not required, but must consider the above in determining the appropriateness of the continued placement

Wisconsin Legislative Update

Select Child Welfare and Youth Justice Legislation

2021-2022 Legislative Session

2021 WI Act 72 – “Ethan’s Law”

- Prohibits the out-of-home placement of a child/juvenile at disposition or post-disposition with a relative or other unlicensed person with a record of a crime against a child
 - Conviction, no-contest plea, or dismissed/amended as part of plea bargain
 - Specific crimes are enumerated in the Act
 - Exception for court finding, by clear and convincing evidence, that the placement is in the best interests of the child/juvenile
- Effective date: July 17, 2021

SB 29 & AB 138 – Adoption Reform

- Provides method for mother, father, or alleged/presumed father to consent to TPR in writing (vs. appearing in court)
 - Child under 1 year old only
 - Cannot be an Indian child
- Father, alleged father, or presumed father may consent to TPR prior to the birth of the child
- Allows payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption
- Passed the Senate; passed the Assembly Committee

SB 219 & AB 199 – Remote Proceedings

- Allows delinquency and criminal proceedings to be conducted by telephone or live audiovisual means
- Any action taken by the court or any party in such a proceeding has the same effect as if made in open court
- Introduced, in part, to address current statute requiring a juvenile to appear in person when entering an admission in a delinquency case
- Passed the Senate; no activity in the Assembly

SB 256 – Permanency Planning

- Allows agency to provide copy of a child's/juvenile's permanency plan and comments on the plan to the out-of-home care provider in the context of a permanency review and a permanency hearing
 - Not required that the agency provide
- Information required to remain confidential under federal or state law must be redacted
- Passed the Senate; no activity in the Assembly

SB 264 & AB 249 – TPC Hearing Timeline

- Excludes from the 24-hour time calculation for holding of Temporary Physical Custody (TPC) Hearing under Ch. 938 any days that the clerk of court's office is closed, if the closure is due to inclement weather or another unforeseen emergency
- Passed in the Senate Committee on Judiciary and Public Safety; referred to the Assembly Committee on Judiciary

SB 402 & AB 412 – Foster Parent Bill of Rights

- Sets forth a list of 17 rights that must be provided to foster parents when licensed
- Primarily dictates communication and information exchange between the foster parents and the child welfare agency
 - Notification of certain events or decisions, opportunity for input, preferred placement for re-entry, etc.
- Does not create any private right to action or claim for non-compliance with rights
- Introduced in the Senate Committee on Human Services, Children, and Families and the Assembly Committee on Children and Families

Budget Bill

2021 WI Act 58 – 2021-2023 Biennial Budget

- Provisions impacting child welfare/youth justice court practice:
 - Extension of 5-County CHIPS Parent Representation Pilot
 - Brown, Kenosha, Outagamie, Racine, Winnebago
 - Originally set to expire June 30, 2021
 - 2-year extension to June 30, 2023
 - Treatment Alternatives and Diversion (TAD) Program Expansion
 - Increased funding for treatment and diversion programs (treatment courts)

Questions?