Family First Prevention Services Act:
Tools to Support Legal Community Implementation

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Mission: To promote access to justice for children and families.
Structure:
• Nonprofit entity within an Association of 400,000 legal professionals.
• 16-person team of attorneys and core staff.
• Work on grant projects across the country unified by two themes:
  • improving legal representation, and
  • improving legal systems that impact children and families’ lives.
• Approach:
  – Collaboration and coalition building (local, state, regional and national)
  – Leveraging voice and impact of larger ABA and legal profession.

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This presentation will:
✓ Lay the context for why your role as an attorney, judge, or court professional matters so much in ensuring successful implementation of the Family First Act.

✓ Help you understand the goals and specific details of the Family First Act.

✓ Provide you with guidance and tools to engage in Family First implementation in your community both in and outside the courtroom.
Overarching Themes:
• Why – Supporting children in families (birth families, kin families, foster families)
  o Investing in prevention and family services;
  o Prioritizing placement with kin or in a foster family home;
  o Ensuring the quality of residential treatment in group settings, including through family engagement
• How – Funding incentivizes system change (“show me the money”)
  o Shifts in how federal funding can be used, including new opportunities and new restrictions on reimbursement to states under Title IV-E of the Social Security Act.

Survey Responses
• In 2019, the ABA Center on Children and the Law conducted a survey of 500 judges and attorneys to gauge understanding of Family First and the potential impact on their roles.
  71% of respondents believe the impact of the Family First Act will be “very positive” or “mostly positive” for children and families
Survey respondents also noted concerns including:

- insufficient access to prevention services
- a lack of oversight by the courts
- potential conflicts between law and agency policy
- legal community has been largely absent from state implementation planning

Most consistent law = Law of unintended consequences
(e.g., foster care drift, legal orphans, AFDC link)

- Synonyms
  - Unplanned, unexpected, inadvertent, side effects, “bloopers”, “cure worse than the disease”
- How can we avoid unintended consequences?
  - Plan, expect, prepare for side effects
- Who is key in that process?
  - Lawyers, judges, court improvement programs who understand how the law will play out in court and individual cases.

What can the Legal Community do?
- New tools and responsibilities in direct practice.
- Roles in shaping implementation policies and plans.

More info: Two pager on FFPSA legal community roles
The ABA has developed two resources to help:

- **A Legal Guide to Implementing Family First in Practice (Coming soon)**
  - How to use Family First to advocate for clients and inform judicial decision-making.
  - Breakdown of each provision most relevant to legal practice with roles of attorneys and judges.
  - Guidance on sources to cite when using Family First to inform legal arguments/decisions.

- **Tool for Engaging the Legal Community in Implementing Family First (Newly Released)**
  - To facilitate dialogue between child welfare agency implementation teams and the legal community to address potential consequences and maximize positive impact for children and families.
  - Recognizing Family First serves as a vehicle to discuss longstanding child welfare topics such as family engagement, group home placements, kin caregiving, and transition age youth.
Many Provisions Relevant to Legal Community

- Prevention services
- Child and parent placement in residential treatment
- Extended timelines for reunification services
- Foster family homes
- Model Licensing Standards
- Qualified Residential Treatment Program placement
- Data tracking on juvenile justice
- State protocols to prevent inappropriate diagnoses of youth
- Group care employee background checks
- Interstate placement system compatibility
- Foster family recruitment and retention

It all feels a little overwhelming…

Our goal is:

To help you think about and understand the implications of Family First and feel confident about your role implementing it to maximize positive impact for children and families.

Throughout the presentation please continue to ask yourself:

» How can we ensure this law does what it intends to?
Part I - Before a petition has been filed:
  - Prevention Services

Part II - After a petition has been filed and a child is in foster care in a:
  - Family-based substance use treatment setting with a parent
  - Foster family home setting
  - Four types of group settings
    - Protocols for mental health diagnoses
    - Preventing risks of juvenile justice involvement

Part III - The child or youth’s transition out of foster care:
  - Reunification services for the family
  - Older youth supports

Part IV – Additional Provisions with relevance for legal community

In the Legal Guide we’ve broken it down into four parts:

- New pathways open for federal reimbursement of prevention services:
  - Mental health services
  - Substance abuse prevention and treatment services
  - In-home parenting skill-based programs
- Available for “candidates for foster care”, their parents and caregivers, and pregnant or parenting foster youth.
- Candidate for foster care means "a child who is...at imminent risk of entering foster care... but who can remain safely in the child’s home or in kinship placement as long as services or programs... are provided."

Family-Based Substance Use Treatment Setting
- Federal Title IV-E maintenance payments for children placed with a parent while in a licensed residential treatment facility for substance abuse.
- The facility must provide trauma informed parenting skills training, parent education, and family counseling.
- Goal of maintaining parent child relationship, especially for infants and young children with high bonding needs in lieu of separating parent and child during substance use recovery.
- Fills key budget issue for development of family based facilities where there was no stream of government funding to support child’s placement.
- List of facilities across the country by of the Volunteers of America: Family Based Residential Treatment Directory
Part II - After a petition has been filed and a child is in foster care in a:

**Foster Family Home Setting**
Defines a “foster family home” to be one that is the home of an individual or family licensed or approved by the State who meets the standards established for licensing or approval and:

- Provides 24-hour care for the child;
- Adheres to the reasonable and prudent parent standard; and
- Cares for no more than six children in foster care. Exceptions:
  - A parenting youth in care to remain with his or her child;
  - Siblings to remain together;
  - A child with an established meaningful relationship with the family to remain with the family; and
  - A child with a “severe disability” whose needs can be met a family with special training or skills.

**Group Setting**
States may no longer use federal Title IV-E funds to pay for a child’s stay in a group setting after a two week period unless that setting falls within the following four categories:

1. Settings specializing in providing prenatal, post-partum, or parenting supports for youth;
2. Supervised independent living settings for youth ages 18+;
3. High-quality residential care settings for youth who are victims or at risk of becoming victims of sex trafficking; and
4. Residential placements to meet the therapeutic needs of children and youth with serious emotional or behavioral disorders or disturbances, a qualified residential treatment program (QRTP). Many requirements articulated for creation, maintenance, and monitoring of QRTPs, including assessment of need and court review of placements.

**Court Review of QRTP Placements**
Within 60 days of QRTP placement:
- Court review to approve or disapprove of the placement
- Court to determine if placement is “most effective and appropriate level of care for the child in the least restrictive environment” consistent with the permanency plan
- Can child’s needs be met in foster family home?

At every status & permanency hearing:
- State must submit evidence:
  - Ongoing assessment confirms need for residential treatment
  - Specific treatment or service needs that will be met
  - Length of time child expected to need additional treatment
  - Efforts made to prepare child to transition to a family
Part III - The child or youth’s transition out of foster care

Reunification Services for the Family

• Allows states to access Title IV-B funding for reunification services for up to 15 months after a child returns home from foster care.

• Significant change: previously, federal support for reunification services was limited to 15 months, beginning on the date the child entered foster care.

Older Youth Supports

• Through the Chafee Program (renamed the John H. Chafee Foster Care Program for Successful Transition to Adulthood), Family First:
  – Extends eligibility to age 23 (from 21) the financial, housing, counseling, employment, education, and other appropriate supports and services to former foster care
  – Extends eligibility to ages 14-26 (from 16-23) for Education and Training Vouchers.
• Youth exiting care must now also be provided with documentation that they had previously been in foster care

Placement with a Parent in a Family Based Substance Use Treatment Setting

• What does this provision do?

This provision changes federal law to allow maintenance payment reimbursements for the cost of caring for a child who resides with a parent in a family-based residential facility licensed to provide substance use treatment for adults.
Sample Section: Placement with a Parent in a Family Based Substance Use Treatment Setting

• Why was this provision included?

This provision was included in the Act to recognize children should remain with their parents when it is safe to do so and remaining together while parents receive treatment can improve overall outcomes for children.

• How does this provision work?

- The law requires that the child be "placed" in foster care
- The placement recommendation must be specified in the child’s case plan before the placement
- The treatment facility must provide, as part of the treatment for substance abuse, parenting skills training, parent education, and individual and family counseling; and
- The treatment framework must be trauma informed
- States can access this federal funding for up to 12 months.

• How can the legal community use this provision to inform legal advocacy and judicial decision making?

- As counsel for the agency
- As counsel for the child
- As counsel for the parent
- As a judicial decision-maker
As counsel for a child welfare agency (examples)

- Talk with the caseworker about whether placement with a parent during treatment may be advisable to facilitate a reunification goal and minimize the trauma of separation, especially in cases involving infants and young children.
- Consider application of federal law requiring children’s placement in the “least restrictive” most family like setting.

Sample Section: Placement with a Parent in a Family Based Substance Use Treatment Setting

As counsel for a child (examples)

- Evaluate how this placement option may serve your client’s interests when the case plan goal is reunification, especially in cases with infants and young children.
- Consider other placement options with family and whether those may constrain or facilitate the child’s time bonding with the parent.

Sample Section: Placement with a Parent in a Family Based Substance Use Treatment Setting

As counsel for a parent (examples)

- Talk with your client about this option and share details about where potential facilities exist.
- Consider implications of the treatment timeline for compliance with the Adoption and Safe Families Act requirement that agencies file for TPR after 15 months in foster care.
- If ASFA or other state timelines apply, work with agency counsel to consider whether residential placement with a parent could constitute “compelling reasons” not to seek TPR.
As a judicial decision-maker (examples)

- If the case plan includes a recommendation for the child to be placed with a parent in a residential substance use treatment setting, ask in court how this will best serve the child’s interests and the family’s reunification goals as well as meeting the “least restrictive” placement required under federal law.
- Consider how co-location of a child with a parent fits into the judicial inquiry about reasonable efforts to prevent removal and to facilitate reunification.

How can the legal community support implementation?

- Consult the directory of treatment programs and identify ones in your community.
- Use medical and legal research about trauma from family separation as well as research on effective treatments for substance use disorders to ensure all stakeholders understand the benefits.
- Work with legislators and policy makers to address potential implications of ASFA timelines.

Bonus: Consider citing information on the importance of early attachment and parent-child bonding

- Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families, Kimberly Howard et al., in 13 Attachment & Human Development 5 (2009) (explaining “a central component of attachment theory is the notion that caregivers must be present and accessible in order for their children to become attached to them.”)
- Effective Strategies for Courtroom Advocacy on Drug Use and Parenting by Ron Abrahams and Nancy Rosenbloom, Child Law Practice Today, October 2019 (citing studies showing opioid-exposed newborns who roomed-in with their mothers had significant improvements in health outcomes compared with children in neonatal intensive care units).
Sample Section: Placement with a Parent in a Family Based Substance Use Treatment Setting

Bonus: Consider citing key federal and state laws that may support co-location placement with a parent

- 42 U.S.C § 675(5) requires a child be placed in the least restrictive, most family-like environment while in foster care.
- 42 U.S.C. § 671 requires reasonable efforts to preserve and reunify families.
- 42 U.S.C. § 675 - defining the term “case plan” to include inter alia a description of safety and appropriateness of the placement, and a plan for assuring proper services.

QUESTION BREAK

Introduction to Tool for Engaging the Legal Community in Family First Implementation
Engaging with implementation teams

*Message refresher:* the legal community has been largely absent from state implementation planning.

*That’s ok!*

- Family First 1.0 has been focused on figuring out the financial landscape and how services may work in practice.
- Family First 2.0 is a perfect time to begin working through the legal implications.

- Also: The **Family First Transition Act** passed in December 2019 providing new resources to help states with implementation. Could seek to engage focus on the legal implications.

Getting to the Table

*What we have heard:*

Agency implementation teams want to learn from the Legal Community:

- To discuss the legal implications of the Act, and
- To use the Family First Act as a vehicle for discussing larger topics.

**Bottom line:** Without lawyers and judges involved it is very challenging for laws to have impact in practice.

How the ABA Seeks to Help:

- **Created the Legal Guide to Family First**
  - To inform attorneys, judges, and court personnel about the many sections and their roles.
  - Written for you!

- **Created the Tool for Engaging the Legal Community**
  - To facilitate discussion for child welfare agency implementation teams to work with the legal community to address and prepare for the Act’s legal implications.
  - Written for agencies, legislative and executive branch staff in the state, and you to use together!
The Tool is structured as a series of discussion questions based on the following sections of the law:

1. Prevention Services
2. Placement of a Child with a Parent in a Residential Substance Abuse Treatment Setting
3. Reunification Services
4. Foster Family Home Placements
5. Group Setting Foster Care Placements
6. Inappropriate Diagnosis Protocols

In a Nutshell:
The Act expands the timing of a family’s eligibility for reunification services available under Title IV-B.

- Previously, families were only eligible for federally funded reunification services for up to 15 months after the date when the child had been removed from the home.
- This meant children and parents were often no longer eligible for services after reunification had occurred.
- Family First changes that by permitting federal funding for reunification services during the child’s foster care placement without a time limit and allowing services funding for up to 15 months after the child returns home.

Sample Section: Reunification Services

Setting Standards: (discussion questions)

- Does your state have sufficient funding through Title IV-B to allocate additional resources toward reunification services after a child returns home?
- Should state law timelines for reunification services be changed to match these new federal timelines?
### Sample Section: Reunification Services

**Roles and Responsibilities: (discussion questions)**

- **Local Child Welfare Agency Roles**
  - Will the agency have ongoing responsibility for the child during reunification services after the child has reunified?

- **Attorney Roles**
  - Does the Family First Act’s change providing for 15 months of post-reunification services open up opportunities to advocate for earlier reunification?

- **Judicial Roles**
  - Can greater access to post-reunification services support reunification decisions earlier in the case?

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### One more message: Title IV-E Counsel Funding is Different from Family First Funding.

- The Children’s Bureau recently opened up Title IV-E funds for states seeking reimbursement for 50% of the cost of parent and child legal representation.

  **This funding for legal representation is distinct from prevention services funding under Family First.**

- Although distinct they may be complementary:
  - Legal representation funds could cover costs of legal counsel that supports families during pre-petition stages (e.g. housing, access to benefits, domestic violence).
  - Legal services can help ensure families understand their rights when consenting to voluntary Family First prevention services.

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### Additional Resources

- Collaborative website: https://www.FamilyFirstAct.org
- Children’s Defense Fund: Guide to Implementing the Family First Act

**ABA resources:**

- New Tool for Engaging the Legal Community in Implementing Family First (dialogue between child welfare agency implementation teams and the legal community)
- New FFPSA and Legal Representation Funding (clarifies the distinction between Title IV-E funding for legal representation and Family First prevention services)
- New Leveraging the Family First Prevention Services Act to Improve Use of Title IV-E Counsel (guides on using Family First provisions to promote guardianship assistance for children in kinship foster care)
- Two pager on FFPSA legal community roles
- Coming soon: Legal Guide with specific cites included
In Sum:

We hope you come away from this presentation with a better sense of:

- The goals and specific details of the Family First Act.
- Why your role as an attorney, judge, or court professional matters in ensuring successful implementation of the Family First Act.
- Increasing confidence about how to engage in Family First implementation in your community both in and outside the courtroom.
- Where to go for additional support in the implementation process.

Thank you and Follow up

Thanks for your interest in this topic!

- Contact us with any questions or requests for assistance.
- Encourage colleagues especially at the child welfare agency to check out these resources online.
- Share the tools with others.

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Final Polls

What legal education and training on Family First implementation would you like to see to help you in your jurisdiction?

- Overview of legal implications
- Training on how to use this law in practice
- Facilitated discussion between child welfare agency implementation teams and legal community
- Other?
Final Polls

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<th>Who should be the primary training or discussion group audiences?</th>
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<tr>
<td>• Caseworkers and supervisors</td>
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<td>• Agency counsel</td>
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<td>• Child and youth counsel</td>
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<td>• Parent counsel</td>
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<td>• Other judges – delinquency, family court, treatment courts, domestic violence</td>
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<td>• Other attorneys – domestic violence, kinship, housing, legal aid, delinquency</td>
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