

# ICWA and Family First Prevention Services Act

**ALLIANCE**  
*for* **CHILDREN'S**  
**RIGHTS**



**CALIFORNIA**  
**TRIBAL FAMILIES**  
**COALITION**



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# Goals for the Presentation

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- Introductions
- Overview of FFPSA—Parts I & IV
  - Prevention Services
  - Reducing Congregate Care
- CA Implementation Efforts & How to Engage



# What is the Family First Prevention Services Act?

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- The FFPSA is a **federal law**. It was included in the Bipartisan Budget Act of 2018 (H.R. 1892) and signed into law on February 9, 2018.
- **The Goal:** Keeping kids in families, and specifically:  
“To enable states to **use Federal funds** available under parts B and E of title IV of the Social Security Act to provide **enhanced support** to children and families **and prevent foster care placements** through the provision of mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services.
- FFPSA is budget-neutral. Funds for prevention services come from cost savings from avoiding congregate care placements and delaying federal funding to AAP.
- The majority of states, including California, **delayed implementation until October 2021**.

# Tribal Focus for FFPSA and Consultation Key Points

- Aligning FFPSA with ICWA:
  - Inquiry and Notice
  - Active Efforts
  - Placement
- This includes ensuring Prevention Services include:
  - Culture,
  - access to culture,
  - Tribal identities,
  - family support
- Input and consultation in state plan
  - Framing Needs
  - Candidacy and method for determining/defining imminent risk
  - Evidence Based Practices – Clearinghouse Opportunities
  - Data reporting and evaluation requirements
  - Work to decrease foster care placement
  - Work to increase kinship support
  - Increased child wellbeing.

# Prevention Under FFPSA

# What We Mean By Prevention

## Prevention

- The term “prevention” refers to programs and services designed to prevent abuse, neglect and exploitation from occurring in the first place

## Intervention

- “Prevention” has become a catch-all term, often used to describe ***interventions*** that respond after the occurrence of maltreatment has been confirmed
- Much of the “prevention” in the context of Family First is actually intervention to prevention of *foster care entry*, not prevention of *maltreatment*



KNOW



SEE



RESPOND

# Summary of Prevention Services

Opens Title IV-E for specified services to be provided at state option:

- **Mental health** and **substance abuse prevention** and treatment services provided by a qualified clinician
- **In-home parent skill-based programs** that include parenting skills training, parent education and individual and family counseling
- Prevention services can be given for **up to 12 months**
- Evidence-based program that is included in the IV-E Prevention Services Clearinghouse and 50% of funding on a well-supported program
- **Title IV-E is payer of last resort**
- **Per child claiming**
- **Ongoing continuing evaluation**

# What does Prevention mean for Tribes?

- Culture, access to culture, identities, family support
- Active efforts
- Leveraging funds, especially when programs are “not supported” – to make the program more robust
- Collaborative activities between tribes and counties to provide services



# Potential programs

- Specific interventions:
  - Motherhood and Fatherhood is Sacred
  - Family Group Conferencing
  - Positive Indian Parenting
  - Gathering of Native Americans (GONA)
- Programs offered by:
  - CA Rural Indian Health Board
  - Friendship House
  - CA Public Health Department
    - CA Reducing Disparities Project
  - Joint Jurisdiction Wellness Court
  - Indian Health Services
- Programs with trainings offered by:
  - Native Wellness Institute
  - White Bison
    - Firestarter Program
  - Indian Country Child Trauma Center, including cultural adaptations of:
    - Parent-Child Interaction Therapy
    - Trauma-Focused CBT
    - Treatment for Children with Sexual Behavioral Problems

# Selection of Service Types for Implementation Oregon and Washington's Example

<b>Service Examples</b>	<b>Title IV-E Clearinghouse Rating</b>
Canoe Journey – Family	Not yet selected for review
Ceremonies and Rituals	Not yet selected for review
Cradle Boards	Not yet selected for review
Cultural Camp	Not yet selected for review
Domestic Violence Group Treatment for Men	Not yet selected for review
Family Unity	Not yet selected for review

# Who is Eligible To Receive New Optional Prevention Services?

- (1) A child who is a “candidate” for foster care;
- (2) For youth who are pregnant, parenting - or –
- (3) A parent or kin caregiver of the child who is a candidate for foster care is eligible regardless whether or not they meet AFDC income eligibility requirements required for Title IV-E reimbursement

# Definition of “Candidate”

For purposes of this title, “candidate for foster care” means the following:

- A child who is identified in a prevention plan as being at imminent risk of entering foster care (same as prior definition of candidacy), but who can remain safely in the child’s home or in a kinship placement as long as services available under the new title that are necessary to prevent the child’s entry into foster care are provided
- Includes a child whose adoption or guardianship arrangement is at risk of a disruption or dissolution that would result in a foster care placement

# Inquiry and Notice

- FFPSA provides funding to support services for “candidates” for foster care. The definition of “candidate” and who makes the determination of candidacy is currently being discussed during stakeholder engagement and tribal consultation.
- “Candidate” determination could affect the inquiry and notice requirements. As a result, tribes may not have the opportunity to be involved in determining types of services for family or taking over to provide prevention services through their own programs.
- Tribes must decide when inquiry and notice must be triggered.



# Partnering with the State on Plan Development

- Possibilities of where Tribal children/families be served- a majority of Indian children are in state jurisdiction.
- Overall engagement and consultation into State plan
- Local/county- agreements, consultation, etc.



## Where children can be living:

- In the home of the parent(s)
- In the home of kin caregiver until child can be safely reunified
- In the home of kin caregiver who child will live with permanently
- In a licensed residential treatment facility for substance abuse if
  - Recommendation for placement is specified in the child's case plan before the placement
  - The treatment facility provides, as part of the treatment for substance abuse, parenting skills training, parent education, and individual and family counseling
  - The substance abuse treatment, parenting skills training, parent education and individual and family counseling is provided under an organizational structure and treatment framework that is trauma-informed

Where can the child be living while preventative services are provided?



# Advocate to Ensure ICWA Placement Followed (No Removal, No Court)

- ICWA Placement Preferences must be followed.
- Additional Considerations:
  - Safety is the primary factor.
  - Ongoing support for child and caregiver:
    - Lack of financial resources for caregiver
    - Services provided in rural locations.
- Advocacy Points
  - One way tribes can become involved with this is at the Plan level.
  - Another way is for tribes to be involved in consultation when the child is identified as a candidate for prevention services.

# Prevention Plans for Pregnant & Parenting Youth

- Must be included in the child's case plan
- Must list the services or programs to be provided to or on behalf of the child to ensure the youth is prepared or able to be a parent
- Must describe the foster care prevention strategy for any child born to the youth
- Must comply with other requirements that the HHS Agency Secretary may establish





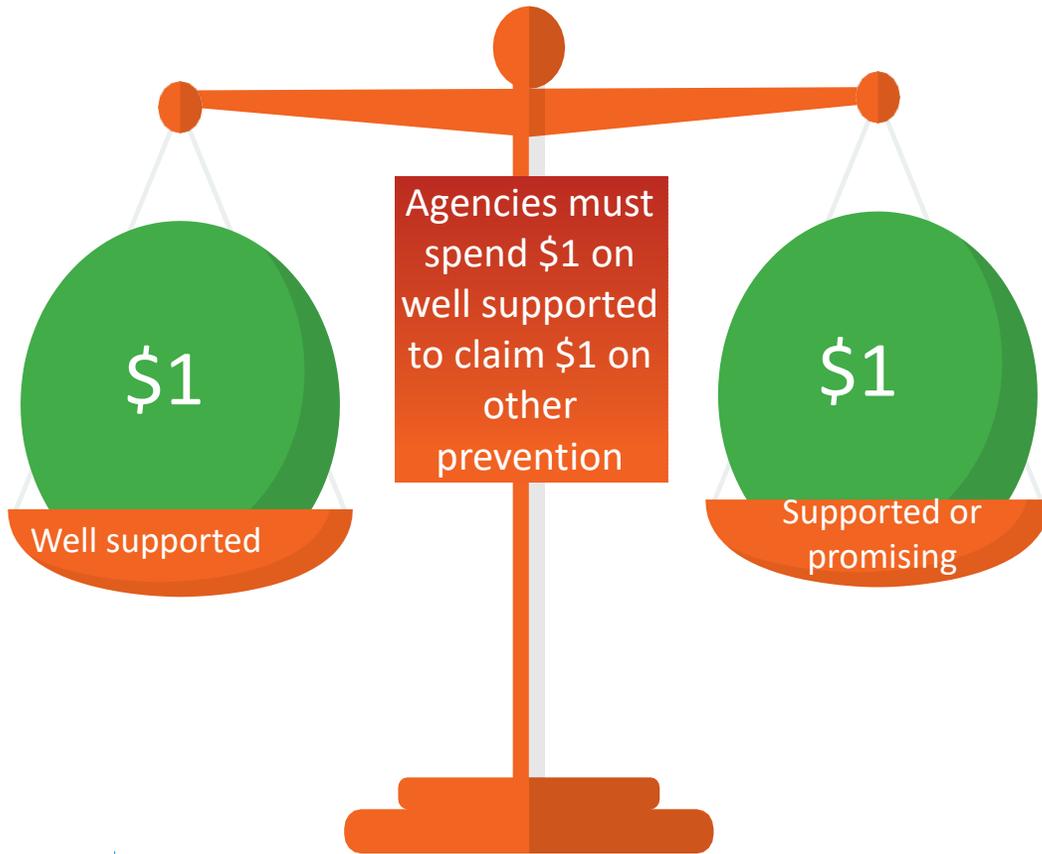
# Service Gaps and Limitations

- Services available through FFPSA are largely directed at the parent
  - Mental Health Counseling
  - Substance Abuse Treatment
  - Parenting Skills Training
- **Services are ONLY available to children kept out of foster care.** They do not include foster care payments, reunification services, case management, or representation and advocacy by an attorney who is charged with representing the best interest of the child.
- Nor do they include things kin caregivers need while families are receiving prevention services (monthly financial assistance, housing/rental assistance, respite care, crisis intervention services, child care).

# Aligning FFPSA with ICWA's Active Efforts

- Active efforts must be provided on a case-by-case basis and must be designed to prevent the break-up of the Indian family.
- Current language does not address this specific requirement for cases involving Indian children.
- County prevention services and prevention plan need to meet active efforts requirement.
- Tribes must be consulted regarding culturally appropriate prevention services.

# Evidenced-Based Programs



- Only prevention services that meet one of the three “evidence-based” (*promising, supported, and well-supported*) federal standards will be eligible for reimbursement. There are **29 programs** currently listed in the IV-E Prevention Clearinghouse that meet this standard.
- States are required to spend at least 50% of the total amount claimed for federal reimbursement for prevention services on “well-supported” programs, effective FY 2024. **10 programs** in the Clearinghouse are classified as “well-supported.”
- Many of these programs are funded by Medicaid.

# Evidence Based Practices - Ensuring the needs of Indian families are met through Services

- The service/ practice needs to be culturally relevant, meaningful, and/or supportive of the unique needs of culture, lifeways, traditions, and historical trauma.
- Additional Considerations:
  - Services that are accessible
  - Consideration for timeliness –need of the service
  - Culturally relevant programs might not be considered evidenced based.
- Advocacy Points:
  - Opportunity to provide input and consultation in the state and local county plans.
  - Consideration for Tribe to implement service, community based service provider, or the county.
  - Tribes to share - What needs to be in place to ensure the practice/services is meaningful and culturally applicable?

# Supporting Evidence Building in Child Welfare Project- Tribal partnership opportunity through CDSS- OTA

- ▶ **Work with Team of researchers to build evidence of a Tribally centered or adapted practice to meet the FFPSA requirements**
- ▶ Through the Urban Institute, Chapin Hall at the University of Chicago, and Child Trends
- ▶ Co-Principal Investigators: Mike Pergamit & Mark Courtney
  - ▶ Contracted by the Administration for Children and Families
- ▶ Objectives:
  - ▶ Identify child welfare interventions with **some evidence of effectiveness**
  - ▶ Conduct **rigorous impact evaluations\*** to raise the level of evidence
- ▶ \*Funding for services not available

# Implications for Child Welfare Systems

- In the initial years of implementation, Family First will only enable child welfare systems to draw down federal funds for a limited set of programs that have met rigorous evaluation criteria.
- States must work to identify additional programs for systemic review and inclusion in the Clearinghouse and engage partners in getting additional programs evaluated and reviewed

# State Plan Requirements

- For each 5-year plan period, the required prevention component must include:
  - **How the provision of services is expected to improve specific outcomes** for children and families
  - **How the state will monitor the safety of children receiving these services**, which must include periodic risk assessments during the time services are provided and a reexamination of the child's prevention plan if the state determines the risk of entering foster care remains high
  - **Very detailed information on the specific practices and evaluation methodologies the state plans to use** in its program

# Proportional Prevention Services

- FFPSA does not specify requirements for what families are eligible for prevention services; but the purpose is to keep children out of foster care.
- Additional Consideration:
  - Every county will control and make determinations as to which children are “Candidates.” For equity, prevention services should be provided in proportional to races represented in foster care. (i.e. If tribal children make up 20% of the children in foster care, 20% of prevention services should be directed towards tribal children.)
- Advocacy Point:
  - Ensure counties with disproportional rates, include plans:
    - Address culturally relevant services for Indian children,
    - How these families will be targeted,
    - Equitable access to services,
    - County agreement to programs,
    - Full-partnership means making sure there are no barriers to accessing services, and
    - Contracting with tribes to provide services.

# Restrictions on the Use of Congregate Care

# Overview of Congregate Care Changes

With respect to congregate care, FFPSA primarily does the following:

- Changes the list of valid placement types for federal payment “**beginning with the third week** for which foster care maintenance payments are made on behalf of a child.”
- Creates a new placement type called a **Qualified Residential Treatment Program (QRTP)**
- Defines who QRTPs may serve and the types of services that they must offer to children and youth in care
- Places numerous requirements on the use of QRTPs for purposes of federal reimbursement
- Sets forth requirements on when and how children are to be assessed for placement in QRTPs, and who may do it

# FFPSA Placement Options

- FFPSA cuts off federal IV-E funding after 2 weeks for children who are placed in congregate care programs, with four exceptions:
  - “Qualified residential treatment programs” (QRTPs)
  - Specialized settings for pregnant or parenting youth
  - Transitional housing programs for youth 18 and older
  - Programs providing support services to CSEC youth
- Limits the number of children that can be served in a “foster family home” to 6, unless the home:
  - Allows parenting youth in foster care to remain with their children
  - Allows siblings to live together
  - Allows a child with a meaningful relationship with the family to remain with the family
  - Allows a family with specialized skills to care for a child with a severe disability

**Note: New restrictions on congregate care effective 10/1/21**

# Congregate Care Placements for Indian Children (with high needs in foster care)

- Child and Family Team (CFT) requirements triggered for congregate care placements, but does not include active efforts and ICWA placement preference requirements.
- Advocacy Point:
  - CFT requirements state “required CFT members” but for Indian children. Need to spell out that Tribes are required members.
  - CFT will create recommendations for the placement of the Indian child.

# QRTP Program Requirements

- Program must have a trauma-informed treatment model designed to address the needs of “children with serious emotional or behavioral disorders or disturbances” (doesn’t account for children with behavioral challenges but without a specific diagnosis)
- Registered or licensed nursing staff and clinical staff must be on-site “according to treatment model” and available 24/7
- Program must also:
  - Facilitate outreach to a child’s family and participation of the family in treatment
  - Provide post-discharge planning and support for at least 6 months
  - Be accredited through an approved accrediting organization

# Applying Cultural Standards

- Congregate care placements must have understanding of an Indian child's tribal customs and traditions.
- Advocacy Points:
  - Congregate care placements must seek culturally appropriate programs for Indian children.
  - Congregate care placements must consult with tribes to ensure needs of the Indian child are being met.

# QRTP Placement Assessments & Review

- Must be made within 30 days of initial day of placement
- "Independent assessor" (aka "qualified individual") must be a trained or licensed clinician who has no connection to the public agency or to direct service providers
- Court must review within 60 days of placement
- Ongoing review at each permanency hearing
- If child is in QRTP for more than 12 consecutive months (or 18 nonconsecutive months), or if child is under age 13 and has been in QRTP for 6 consecutive or nonconsecutive months, states must submit documentation to HHS and state director must sign for approval

# Qualified Individual

- The Qualified Individual is defined as “a trained professional or licensed clinician responsible for conducting the determination” that placement of a child in a short-term residential treatment program is appropriate.
- Additional Considerations:
  - QI must be required to conduct culturally appropriate assessment and have knowledge of Indian children and families (including bonding and attachment).
- Advocacy Point:
  - Tribes to be involved in the selection of the Qualified Individual for Indian children.
  - Must include that for an Indian child, there is good cause to deviate from ICWA placement preferences.
  - Qualified Individual akin to a Qualified Expert Witness for Indian children.

# Summary Considerations for Implementing FFPSA in California

# California Key Decision Points: Prevention Services



How to identify those eligible for services?

*Exploring use of an assessment tool*



Definition of candidacy ?



How do we ensure the capacity to offer the approved services?

*Exploring how to leverage community-based organizations such as service providers*

# 2021 Trailer Bill Language Implementing FFPSA

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- Trailer Bill Language (TBL) is language that implements the California State Budget Bill. It does not follow the same timelines as other policy bills.
- CDSS is developing a TBL to accompany California's implementation of FFPSA and is soliciting stakeholder feedback. Submit comments to [FFPSA@dss.ca.gov](mailto:FFPSA@dss.ca.gov).
- TBL is available [here](#) and includes:
  - Changes to STRTP requirements to align with federal QRTP requirements
  - A plan for family-based aftercare services
  - Updates case plan and CFT requirements
  - Language opting into the IV-E prevention services program

# Timeline

- **Statewide**
  - Legislative Consideration of TBL now through May?
  - CDSS plans to submit State Implementation Plan to Children's Bureau in July
    - Children's Bureau review can take up to four months
  - Counties must be prepared to implement October 1 or risk losing federal funds
- **TRIBAL CONSULTATION TIMELINE**
  - Tribal Consultation Scheduled for March 12, 2021
  - Comments due March 30, 2021



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