

## TITLE IV-E FOR YOUTH IN THE JUVENILE JUSTICE SYSTEM

A Fact Sheet Prepared by the Youth Law Center

### What is Title IV-E?

Title IV-E of the Social Security Act provides federal matching funds to help states pay for foster care placements for children who meet federal eligibility criteria.<sup>1</sup>

The federal share, called “federal financial participation” (FFP), is equal to the Medicaid federal medical assistance percentage (FMAP) and pays part of the cost of foster care maintenance payments made by the state for the support of eligible children living in foster family homes or child care institutions.<sup>2</sup> FMAP is based on each state’s Medicaid matching rate and ranges from 50% to 83% of the foster care maintenance payments.<sup>3</sup> For more on Medicaid for youth in the juvenile justice system, see the Youth Law Center’s [fact sheet](#).

In addition, the federal government pays 50% of the cost of administering the Title IV-E program (such as salaries of caseworkers and administrators, office space, etc.) and 75% of the training costs associated with the program.<sup>4</sup>

### Does Title IV-E provide assistance for youth in the juvenile justice system?

Yes. Youth who have been adjudicated delinquent qualify for IV-E benefits if they meet all of the federal foster care criteria and are placed with a foster family or in a child care institution that meets the definition in federal law.<sup>5</sup>

### What are the federal foster care criteria?

Children are eligible for IV-E foster care benefits if:

(1) The youth is removed from home pursuant to:

(a) A voluntary placement agreement **or**

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<sup>1</sup> 42 U.S.C. §§ 670, *et seq.*

<sup>2</sup> 42 U.S.C. § 674(a)(1).

<sup>3</sup> 42 U.S.C. § 1396d(b). Medicaid FMAP rates are published in the *Federal Register*. For FMAP rates effective October 1, 2021 to September 30, 2022, see 85 Fed. Reg. 230 (November 30, 2020).

<sup>4</sup> 42 U.S.C. § 674(a)(3).

<sup>5</sup> U.S. Department of Health & Human Services, Administration for Children & Families, *Child Welfare Policy Manual*, (hereafter “Child Welfare Policy Manual”) Section 8.3A.1. Available at: [https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/index.jsp](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/index.jsp).

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(b) A judicial determination to the effect that:

- (i) Continuation in the home would be contrary to the welfare of the child, **and**
- (ii) Reasonable efforts have been made to prevent removal,
- (2) The state child welfare agency, or another public agency that has an agreement with the state child welfare agency, is responsible for the youth's care,
- (3) The youth has been placed in a foster family home or child-care institution as defined by federal law, **and**
- (4) The youth meets AFDC eligibility criteria.<sup>6</sup> (Emphasis added.)

### **What qualifies as a judicial determination that continuation in the home would be contrary to the youth's welfare?**

The law requires a “judicial determination **to the effect that** continuation ... would be contrary to the welfare of the child.”<sup>7</sup> (Emphasis added.) Although some courts use the exact language of the statute, these specific words are not required.

However, the determination must relate to whether continuation in the home would affect the child's welfare. For example, the federal Administration for Children and Families (ACF) has indicated that a finding that the child would run away or that a child poses a threat to the community would not meet the judicial determination requirement. However, a finding that the child is a threat to himself would qualify.<sup>8</sup>

### **What qualifies as a child care institution?**

A child care institution must be licensed or approved by the state and may **not** include:

- (1) A public child care institution for more than 25 children, or
- (2) Detention facilities, forestry camps, training schools, or other facilities operated **primarily** for the detention of children determined to be delinquent.<sup>9</sup> (Emphasis added.)

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<sup>6</sup> 42 U.S.C. § 672.

<sup>7</sup> 42 U.S.C. § 672(a)(2)(A)(ii).

<sup>8</sup> Child Welfare Policy Manual, Section 8.3A.1.

<sup>9</sup> 42 U.S.C. § 672(c).

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### **What is a facility “operated primarily for the detention of children who are determined to be delinquent?”**

This determination is made on a case-by-case basis. According to ACF, the following questions are relevant:

(a) Who operates the facility? (b) For what purposes does it exist? (c) Is it licensed or approved? If so, for what use and by whom? (d) From whom does it receive its major financial resources? (e) What type of children are residents? (f) Would it be viable without the need to house children adjudicated delinquent? (g) Is the facility physically restrictive? In addition to these questions, the Department would look to the specific facts of a given situation.<sup>10</sup>

### **Does placement in a detention facility disqualify a youth for IV-E?**

Not necessarily. The youth will not be eligible for IV-E while in the detention facility but may be eligible upon release if all other eligibility criteria are met.<sup>11</sup>

### **What are the benefits of Title IV-E for youth in the juvenile justice system?**

IV-E eligible youth are entitled to foster care maintenance payments made on their behalf and are categorically eligible for Medicaid.<sup>12</sup> Youth who are in foster care on their eighteenth birthday qualify for transitional Medicaid in those states that have elected this option.<sup>13</sup> Youth who are fourteen or older are entitled to an independent living plan.<sup>14</sup> Former foster youth are also eligible for transitional housing, education and training vouchers, including postsecondary training and education, and other transitional benefits under the Chafee Foster Care Program for Successful Transition to Adulthood.<sup>15</sup>

In addition, Title IV-E provides protections to reduce unnecessary out-of-home placements and support high quality case planning and regular monitoring of out-of-home placements.

Title IV-E requires states, with some exceptions, to make reasonable efforts to prevent or eliminate the need for out-of-home placement and to make it possible for youth to safely return home if removal is necessary.<sup>16</sup>

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<sup>10</sup> Child Welfare Policy Manual, Section 8.3A.8a.

<sup>11</sup> See, Child Welfare Policy Manual, Section 8.3A.4.

<sup>12</sup> 42 U.S.C. §§ 672(h), 1396a(a)(10)(A)(i)(I). State-by-state information is available online. See, for instance, a report published by the Office of Legislative Research in Connecticut, available at <https://www.cga.ct.gov/2005/rpt/2005-R-0810.htm>.

<sup>13</sup> 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XVII), 1396r-6.

<sup>14</sup> 42 U.S.C. §§ 671(a)(16) & 675(1)(D), see also 42 U.S.C. § 677.

<sup>15</sup> 42 U.S.C. § 677.

<sup>16</sup> 42 U.S.C. § 671(a)(15).

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States must develop case plans and case review systems for each child.<sup>17</sup> The case plan must, among other things, assure the youth receives safe and proper care; describe services to be provided to the youth, the youth's parents, and the foster care provider to facilitate return home and address the needs of the youth while in care; include the youth's health and education records; and, for youth fourteen years or older, describe programs and services that will help prepare the youth for independent living.<sup>18</sup>

The case review system must ensure that the youth has a case plan:

designed to achieve placement in a safe setting that is the least restrictive (most family-like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child.<sup>19</sup>

If the youth is placed out of state, the state must provide reasons why such a placement is in the best interest of the child and visit the child periodically or arrange for courtesy visits and reports by the state where the child is placed.<sup>20</sup>

The state must also review the youth's case at least every six months and provide other procedural protections.<sup>21</sup>

Because Title IV-E requires facilities to be licensed or approved by the state, youth may have additional rights under state licensing requirements, including protections related to basic health and safety and personal rights.

### **What are the benefits of Title IV-E for the juvenile justice system?**

Title IV-E provides federal resources to help pay for the cost of placements, administration, and training for agency staff and providers of care.<sup>22</sup> This funding can help to expand the range of available placement options for youth who cannot live at home. For example, Title IV-E funds can support relative, foster family, and group home placement. States can use Title IV-E funding to encourage the development of evidence-based practices, such as Treatment Foster Care Oregon (TFCO),<sup>23</sup> that provide effective treatment and reduce unnecessary incarceration.

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<sup>17</sup> 42 U.S.C. § 671(a)(16).

<sup>18</sup> 42 U.S.C. § 675(1).

<sup>19</sup> 42 U.S.C. § 675(5)(A).

<sup>20</sup> *Id.*

<sup>21</sup> 42 U.S.C. § 675(5)(B), *et seq.* See also 42 U.S.C. § 675(5)(C).

<sup>22</sup> See Child Welfare Policy Manual, Section 8.

<sup>23</sup> <http://evidencebasedprograms.org/programs/treatment-foster-care-oregon/>;  
<http://www.blueprintsprograms.com/funding/treatment-foster-care-oregon>.

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Some states have used Title IV-E and Medicaid funding to provide effective alternatives to incarceration through programs, such as Wrap Around initiatives, that combine comprehensive case management and treatment services in a family setting.<sup>24</sup>

### **What benefits does the Family First Prevention Services Act provide to foster youth and parents of youth eligible for foster care?**

The Family First Prevention Services Act (FFPSA) was signed into law on February 9, 2018, as part of the Bipartisan Budget Act of 2018.<sup>25</sup> The goal of FFPSA is to provide more federal resources to help families in crisis stay together, and limit federal funds for placing foster youth into congregate care. It has been hailed as the biggest change to the structure of federal child welfare finance since the establishment of the Title IV-E entitlement in 1980. There are two major components of the Act: prevention services to reduce the number of children entering foster care, and services limiting congregate care.<sup>26</sup>

### **What counts as a preventative service under FFPSA?**

Under the Act, states are now able to use Title IV-E funds for “time-limited” services aimed at preventing the use of foster care in maltreatment cases. These services are available to both parents or relatives caring for children who are candidates for foster care or foster care youth who are pregnant or parenting. These preventative services include:

- Services to address mental health challenges;
- Substance abuse treatment; and
- In-home parent skill-based programs.<sup>27</sup>

An agency can spend IV-E funding on prevention services for twelve months.<sup>28</sup>

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<sup>24</sup> Bruce Kamradt, Funding Mental Health Services for Youth in the Juvenile Justice System: Challenges and Opportunities, Nat’l Ctr. for Mental Health and Juv. Just. (December 2002). <https://files.eric.ed.gov/fulltext/ED478676.pdf>; Lisa Pilnik, Family First Prevention Services Act: Opportunities and Risks for Youth Justice and Campaigns to End Youth Incarceration, Act 4 Juv. Just. [http://www.act4jj.org/sites/default/files/resource-files/Family%20First%20Act\\_and\\_JJFinalForPosting.pdf](http://www.act4jj.org/sites/default/files/resource-files/Family%20First%20Act_and_JJFinalForPosting.pdf).

<sup>25</sup> See Alliance for Strong Families and Communities, “Overview of Provisions in the Family First Prevention Services Act,” <https://www.alliance1.org/web/news/2018/feb/overview-provisions-family-first-prevention-services-act.aspx>.

<sup>26</sup> See The Chronicle of Social Change, “A Complete Guide to the Family First Prevention Services Act,” <https://chronicleofsocialchange.org/finance-reform/chronicles-complete-guide-family-first-prevention-services-act>.

<sup>27</sup> 42 U.S.C. § 671(e)(1).

<sup>28</sup> *Id.*

### How does the Act impact funding for congregate care placements?

Under FFPSA, if a child is placed into a group home, that placement cannot receive any IV-E funding beginning with the third week of the child's placement, unless the child or home qualifies for specific exceptions. For children placed in child care institutions for longer than 14 days, states are only eligible for Title IV-E foster care payments on behalf of children in the following settings:

- A Qualified Residential Treatment Program ("QRTP");
- A setting that specializes in providing prenatal, postpartum, or parenting support for youth;
- A supervised setting for nonminors who are living independently;
- A setting that provides high-quality residential care and supportive services to youth who have been, or are at risk of becoming, sex trafficking victims.<sup>29</sup>

To date, the federal government has yet to issue specific guidance on requirements for the aforementioned specified categories. Title IV-E funding is not to be provided to detention facilities, forestry camps, training schools, or any other facility that operates primarily to detain children who have been determined delinquent.<sup>30</sup>

Finally, there are other components of FFPSA which have important consequences for youth in foster care. The Department of Health and Human Services must promulgate model licensing standards for foster family homes.<sup>31</sup> States will now have to certify whether their licensing is in accord with the model and if not, explain why.<sup>32</sup> The Act also extends the eligibility threshold for foster care youth to receive independent living and education training vouchers. For states that have extended foster care to include eighteen to twenty-one-year-olds, FFPSA increases the age limit for independent living programs to twenty-three.<sup>33</sup> For educational vouchers, FFPSA raises the age limit to twenty-six.<sup>34</sup>

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<sup>29</sup> 42 U.S.C. § 672(k)(1-2).

<sup>30</sup> 42 U.S.C. § 672(c)(2)(C).

<sup>31</sup> 42 U.S.C. § 671(a)(36).

<sup>32</sup> *Id.*

<sup>33</sup> 42 U.S.C. § 677(b)(3)(A).

<sup>34</sup> 42 U.S.C. § 677(i)(3).