Eligibility for Federal Foster Care Benefits

Background: California child welfare advocates appreciate the efforts of **s**upporters of the Family First Prevention Services Act (FFPSA) to address concerns about an unintended negative effect of the FFPSA. The FFPSA, in allowing families to receive federally-funded preventive services while the child lives with a relative, would cause these children to lose eligibility for federal foster care benefits if they later need to enter foster care, because they would not have been physically residing in the home of removal in the 6 months prior to entering foster care.

Unfortunately, the proposed administrative fix for this flaw in the FFPSA would not be effective because it does not focus on the provision in federal law that actually creates the problem.

- **Current Law:** The rules for eligibility for federal foster care benefits are found in 42 U.S.C. § 672(a). The proposed administrative fix instead focuses on 42 U.S.C § 672(i), which pertains to the federal match for a state's administrative expenditures. Current law in subsection (a) states that in order for a child to be eligible for federal foster care benefits once a child enters foster care, the child must have "***been living in the home [of removal] within 6 months before the month in which the [voluntary placement] agreement was entered into or the [removal] proceedings were initiated***, and would have received the [AFDC as the program existed in 1996] in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1)[1] and application for the aid had been made.[2]"

- **Explanation:** Under this rule, children can only receive federal foster care benefits upon entry into foster care if they were ***physically living*** in the home of removal in the month the removal petition is filed (or the Voluntary Placement Agreement (VPA) is entered into) or in one of the six months prior to removal or the VPA. The impact of this rule is that any child who is not physically living in the home of removal within six months of that removal is rendered ineligible for federal foster care benefits. In other words, if a child is "removed" from a parent with whom the child has not ***physically resided*** within the last six months, for example because she or she has been living in the home of a relative while receiving preventative services under the FFPSA, the child is not eligible for federal foster care benefits. Clarifying that a child who has been living outside of the home of a

[1] The "relative referred to in paragraph (1)" refers to the home of the specified relative that the child is being removed from – in most cases this is the biological parents but could also be the adoptive parent or legal guardian.
[2] 42 U.S.C. § 672(a)(3)(A)(ii)(II).

parent for six months while receiving preventative services can still be removed from that parent, as opposed to from the relative with whom the child has been residing, does not overcome the problem. This is merely stating current federal child welfare policy regarding constructive removals.[3]

- As the proponents of the FFPSA correctly state, it is possible "to provide that a kinship placement does not change the home of removal and if a child in a kinship placement subsequently enters foster care then the home of removal would remain the parent's home." This is known as a constructive removal. However, clarifying that the removal remains the parent's home does not solve the problem. The problem is if the constructive removal occurs more than six months after the child has physically left the home of removal, the child is no longer eligible to receive federal foster care payments. In short, the clarification offered does not change the requirement that the child be physically residing in the home of removal.

- The FFPSA will render many children ineligible for federal foster care benefits because it allows the preventative services to be provided in a kinship setting. That kinship placement is not (and should not be) the home from which the child is ultimately "removed," if a removal becomes necessary. However, because federal law only allows children who are living in the home of removal in one of the six months prior to removal to receive federal foster care funding, the FFPSA will render all children who receive preventative services in a kinship home for more than six months ineligible for ongoing federal support if those preventative services do not work.

- The only way to fix this unintended consequence of the FFPSA is to amend the statute. We have offered amendments to fix this problem, but those suggested amendments have not been considered. We propose amending 42 U.S.C. § 672(a)(3) as follows:

  (3) AFDC eligibility requirement.—

  (A) In general.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

  (i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in ***his own*** home ***or the home of one of the specified relatives***, in

[3] See the Federal Child Welfare Manual 8.3A.11 at Question 1.

or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

(ii)(I) would have received the aid in ***his own*** home ***or the home of one of the specified relatives***, in or for the month referred to in clause (i), if application had been made therefor; or

(II) had been living in ***his own*** home ***or the home of one of the specified relatives*** within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

- Another possible fix would be to amend the FFPSA to **require** that any child receiving preventative services in a kinship setting be subject to a Voluntary Placement Agreement pursuant to 42 U.S.C. § 672(e) because VPAs are not allowed to extend beyond 180 days without a judicial determination to effectuate a formal removal. However, as drafted, the FFPSA does not limit preventative services to a child in a kinship setting to only those instances when the agency has entered into a Voluntary Placement Agreement. Currently, very few jurisdictions across the country utilize VPAs, and therefore the vast majority of children who receive preventative services in a kinship home would not be subject to a VPA and not be afforded any of the protections of a VPA.