

# Summary of Proposed Hatch-Wyden Child Welfare Legislation

Updated: December 2, 2015

## Overview

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Committee staff for Chairman Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR) of the U.S. Senate Committee on Finance have outlined at a high level the compromise legislation they are currently drafting in child welfare. The timeline moving forward as outlined by these staff is to bring this legislative proposal before the U.S. Senate Committee on Finance for its consideration in January 2016 as part of a markup session that also would consider tax legislation.<sup>1</sup>

The below summary is based on a verbal presentation by U.S. Senate Committee on Finance staff on Friday, November 20 as well as additional written materials provided by Committee staff and is intended to provide a high-level overview of the provisions as currently being considered. This remains a bill very much in draft form and further revisions are possible as discussions continue and cost implications are released by the Congressional Budget Office. As further written details are provided and information made available, this summary will be updated.

U.S. Senate Committee on Finance staff also indicated that they are not actively working with their staff counterparts in the U.S. House of Representatives, but see conversations with the U.S. House of Representatives as a next step in the process moving forward.

## Legislative Proposal Summary

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Current Title: The Family First Act

As currently outlined, the legislative proposal would have two sections – one to provide funding for prevention services as well as other legislative changes, and one to outline federal policy around placement setting for children in foster care.

### Section 1 – Provisions around prevention services

Would include numerous provisions to create in the Title IV-E program an option for states, as well as tribes who administer a Title IV-E program, an option to operate a statewide prevention program. Effective date for this section is October 1, 2017.

- Would amend Section 471 to create a new subsection E outlining the provisions for this program.

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<sup>1</sup> Earlier versions indicated the markup was scheduled for December 2 and subsequently December 9. However, the tax legislation markup has been postponed until January 2016 and so this version updates this information.

- Would require eligible states and tribes to outline their program to provide preventive services, based on the construct below, with a requirement that the U.S. Secretary of Health and Human Services (HHS) approve the outlines of the plan (as already done for the title IV-E foster care program).
- Would allow state and tribes to provide specific services, and receive federal reimbursement for up to 12 months for children, parents or kin caregivers, who are defined as “candidates” for entry or reentry into care by the state or tribe, or are a pregnant or parenting youth in foster care. Federal reimbursement for these services would not be available for children in foster care, or their parents or kin caregivers
  - o No income criteria would apply for eligibility for reimbursement for the prevention program. The legislative proposal makes no changes to current income criteria for eligibility for reimbursement under the title IV-E foster care program.
  - o Services eligible for reimbursement in this new program would be substance abuse prevention services, mental health services, and in-home parent skill based programs defined to include parent training as well as individual and family counseling.
  - o To be eligible for reimbursement, the services must be specified in advance in the child’s prevention plan which also identifies the permanency goal for the child. Services provided must be linked to the placement and permanency goals and must be trauma-informed.
- Would specify that prevention services eligible for reimbursement must be evidence-based, with the federal financial participation (FFP) phased in over time as follows:
  - o Beginning 10/1/2017, FFP is 40% and services eligible for reimbursement must be promising, supported, or well-supported (with definitions for each of these categories defined in law)
  - o Beginning 10/1/2020, FFP is 50% and services eligible for reimbursement must be supported or well-supported
  - o Beginning 10/1/2023, FFP is the state or tribes FMAP and services must be well-supported.
    - Staff provided that the definitions for the above three categories align very closely with the definitions for these categories as specified in the California Evidence-Based Clearinghouse for Child Welfare. Specifically, in the supported and well-supported categories the requirement that programs be evaluated with a randomized-controlled trial would be adjusted to allow for other evaluation techniques.
- Would also establish and reimburse for up to 12 months specific services for kin caregivers who are caring for relative children who cannot be cared for by their birth parents and are identified by the state or tribe as a “candidate” for foster care.
  - o Services eligible for reimbursement for kin caregivers would be short-term financial support and access to kinship navigator programs.
  - o Would specify that these specific kinship services would be reimbursed at the state or tribe’s FMAP rate with eligibility phased in over time based on the age of

the candidate child. These specific kinship services also would not be subject to the evidence-based requirement.

- States or tribes who chose to operate a prevention program also would be eligible for reimbursement for administrative or training costs associated with this prevention program at 50%. As with the preventive services, no income eligibility criteria would apply to this aspect.
- States or tribes who administer the program would be required to report data as specified in the proposal.
- States or tribes also would be subject to a maintenance of effort provision.

*Other provisions in this section would*

- Provide federal reimbursement for title IV-E foster care maintenance payments made on behalf of a child who is placed in a residential family drug treatment program with a parent who is receiving treatment
- Provide short-term crisis intervention services to help support a family in crisis or to support kinship placements
  - o Would create a capped mandatory funding amount for this short-term service from within the Title IV-B program, with this set-aside amount TBD.
- Rename within the Title IV-B-2 Promoting Safe and Stable Families (PSSF) program the “time-limited family reunification services” to “family reunification services.” Also removes the current law limit which says services under this category may only be offered to or on behalf of children who have entered foster care within the last 15 months and permits these services for any child in foster care and allows them to be provided for up to 15 months *after* a child is reunited with the biological family.
- Require the Secretary of HHS to establish, by regulation, national model foster care licensing standards for relative caregivers. States or tribes who deviate from these standards would be required to explain why they deviate.

Section 2 – currently titled “Ensuring the Necessity of a placement that is not a foster family home. Effective date for this section is October 1, 2019.

- Would specify that after 2 weeks in care, FFP would only be provided for placements in a family foster home (defined), qualified residential treatment program (QRTP, also defined), a facility for pregnant and parenting teens, or an independent living arrangement.
  - o Foster family home was described to define that there be no more than 6 foster children in the home, with exceptions for a parenting youth in foster care, siblings, meaningful relationships, or a child with a severe disability.
  - o Quality residential treatment program (QRTP) also is defined, and was described (at a minimum) to be a program with a clinically, recognized treatment model, that can provide the treatment as identified by the assessment through licensed and clinically-trained staff. Would further require that the QRTP involve the

child and family in the treatment, and that the program provide post-discharge services and support for at least 6 months. QRTPs also for FFP would be required to be licensed and accredited by a nationally-recognized body.

- Would require an assessment to be completed 30 days after placement in a QRTP,
- Would require that within 30 days of the placement, a qualified individual (defined) must make an assessment (defined) that the QRTP is the appropriate placement, and if the assessment determines the QRTP is not the appropriate placement require the change in placement (up or down) must be completed within an additional 30 days.
  - o Would require that the assessment is done in conjunction with a team of individuals, comprised to include among other relatives, fictive kin, professionals including medical and mental health professionals, teacher, and/or clergy.
    - Assessment is defined as a functional needs assessment using a valid assessment tool that is age appropriate and evidence-based.
    - Qualified individual is defined and was described to be a trained professional or licensed clinical worker who is not an employee of the state or tied to the QRTP, although would allow the Secretary to waive if appropriate.
      - o Staff described the intent of the definition as working to ensure those with a vested interest in the placement are not making the determination of the appropriateness of the placement.
  - o Would require that within 60 days of a placement in a QRTP, a court must review and approve the placement. Further specifies that the appropriateness of the placement should be reviewed at each status review and permanency hearing for the child to document it remains the appropriate placement.
  - o Would specify that for youth 13 years and older placed in a QRTP for 12 months consecutive/18 months non-consecutive, the state agency must notify the parents, kin caregivers or others involved with the child that the child has a private right of action to the least restrictive environment. For youth under 13, this notification would be required after 6 consecutive months.
    - There is in current statute a requirement that a child in foster care be placed in the least restrictive environment. Court rulings around this requirement have not been consistent. This provision would clarify Congressional intent that this private right of action does exist for youth in foster care.

*Other provisions in this section would*

- Require protocols in the state child welfare plans to prevent inappropriate diagnosis of youth in care to inappropriately place them in a QRTP.
- Specify data and evaluation requirements around these provisions.
- Require the Government Accountability Office (GAO) to issue a report to Congress related to the impact of this policy on the juvenile justice system. Staff expressed their

interest in being sure states are not shifting children from congregate care settings to the juvenile justice system with this policy change.

