



Recent Policy Changes Impacting Permanency Efforts

September 21, 2021

Luciana Svidler

Children's Law Center of California

svidlerl@clcla.org



CONTINUUM OF CARE REFORM & FAMILY FIRST PRESERVATION SERVICES ACT



CCR: MULTI-YEAR CALIFORNIA REFORM EFFORT

Primary Components:

- Child & Family Teams (CFT)
- Continuum of Family-Based Placements
- Resource Family Approval
- Short-Term Residential Therapeutic Programs

VISION



Children shouldn't have to move to access needed services. All systems share responsibility for youth and families.



Children and youth living with supportive families who have access to timely, relevant training, resources and a team of support.



Better outcomes for children, youth and families.

CCR is re-inventing recruitment of resource families and re-defining their role as a team member in meeting the needs of the child.



Higher levels of care, such as group homes, will only be for a specific period of time, as an intervention, not a placement.



FAMILY FIRST: MULTI-YEAR FEDERAL REFORM EFFORT

- Part of Bipartisan Budget Act of 2018 (P.L. 115-123)
- Considered landmark legislation because of changes to federal funding
- Comprised of 8 parts, but primary provisions are:
 - **Part I:** Expanded Title IV-E to include funding for front-end services to prevent the need for foster care
 - **Part IV:** New limitations and requirements on congregate care settings

“The title IV-E prevention program is part of a much broader vision of strengthening families by preventing child maltreatment, unnecessary removal of children from their families, and homelessness among youth. It provides an opportunity for states to dramatically re-think how they serve children and families.”

ACYF-CB-PI-18-09



CCR UPDATES





BUILDING THE CONTINUUM OF FAMILY BASED PLACEMENTS



INTENSIVE SERVICES FOSTER CARE

- Intended to serve children who require intensive treatment and behavioral supports, as well as children with specialized health care needs in a home based setting
- Caregiver must complete special training & receives higher rate to assist in the care and support
- Relatives, NREFMs and community resource families can all be ISFCs
- **Capacity Exceptions:**
 - Preexisting relationship
 - Sibling group, and/or
 - Extraordinary needs that the family has unique ability to meet

LEVEL OF CARE: FUNDING BEFORE APRIL 1, 2021

- **Basic Rate** – Statewide Rate: one rate for all children; counties have Specialized Care Increment policies and can add to the Basic Rate
- **EXAMPLE: Specialized Care Increments** – Los Angeles County
 - D rate for children with severe emotional/behavioral challenges
 - F1-F4 rate for children with medical conditions, physical disabilities and developmental delays.
- **Dual Agency Rate** – Statewide Rate
 - 0-3 Dual Agency Rate for Child in Early Start Program
 - 3 and older Dual Agency Rate plus Supplement
- Rates after RFA Approval are the same for relatives and non-relatives; rate not dependent on eligibility for Federal Foster Care Payments

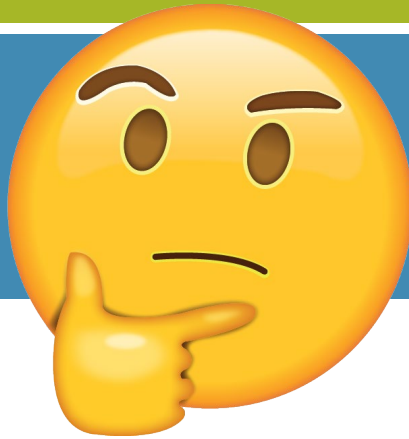
LEVEL OF CARE: FUNDING AFTER APRIL 1, 2021

- Instead of one Basic Rate for all children, there are 4 levels
 - LOC Basic, LOC 2, LOC 3 and LOC 4
 - Also ISFC/Static Rate
- Starts at current Basic Rate of \$1,037
 - LOC Basic - \$1,037, LOC 2 - \$1,153, LOC 3 - \$1,271, LOC 4 - \$1,387
- Counties can add a **Specialized Care Increment** to the LOC rate
- **Dual Agency Rates** have not changed
 - Children 0-3 in Early Start can receive 0-3 Dual Agency Rate or LOC + SCI whichever is higher



RESOURCE FAMILY APPROVAL/RELATIVE PLACEMENT





- “The child can’t be placed without RFA”
- “RFA is going to be denied so there is no need to start the process”
- “RFA won’t ever get approved because:
 - the child will be sleeping in the same room as the caregiver”
 - there isn’t sufficient space for the family”
 - the caregiver has a criminal record”
 - the caregiver already was denied and can’t apply again for two years”

- It's all in the Written Directives!
- Currently on **Version 7**
- Same force and effect as regs
- Provide specific guidance for RFA implementation, processes, requirements, oversight and due process.

Resource Family Approval Written Directives



VERSION 7
EFFECTIVE DATE: 06/15/2020

Prepared by:
California Department of Social Services



https://www.cdss.ca.gov/Portals/9/CCR/RFA/2021/V7%20RFA%20WD_1.13.21-FINAL.pdf

NEW EXCEPTIONS TO CAPACITY RESTRICTIONS

- The capacity may not exceed **six**, including adopted, biological, and guardianship children and children of a minor or NMD parent residing in the home, **EXCEPT:**
 - **To allow sibling groups to remain together**
 - **To allow a minor or NMD parent to remain with their child**
 - **To allow a child or NMD who has an established relationship with a Resource Family to remain with that Resource Family**

GENDER/SHARED BEDROOM

- Children of different genders may share a bedroom under any of the following circumstances:
 - (A) Each child is under eight years of age.
 - (B) The children are siblings.
 - (C) A minor parent may share a bedroom with their child.
 - (D) A Resource Family may permit a child to share a bedroom consistent with the child's gender identity regardless of the gender or sex listed on their court or child welfare documents.

CAREGIVER/SHARED BEDROOM

- A Documented Alternative Plan may be approved for a specific child or nonminor dependent to share a bedroom with a Resource Parent or an adult in the home due to special circumstances of the child which may include but not be limited to medical conditions or disabilities requiring close supervision.

REAPPLYING FOR RFA

- County shall cease further review of any RFA application if:
 - There has been a denial within the preceding year
 - There has been a rescission, revocation, exemption denial or exemption rescission within the previous 2 years

UNLESS...

County may continue to review an application if it has determined that the reasons for the previous denial, rescission, or revocation were due to circumstances or conditions which the applicant shows have either been corrected or are no longer in existence

EMERGENCY PLACEMENT OPTION FOR PROBATION

- AB 819 (CCR cleanup bill) took effect January 1, 2020
- Among other provisions, adds new code section - WIC 727.05
 - Explicitly authorizes a probation agency to make an emergency placement with a relative or NREFM prior to RFA
 - Mimics WIC 361.4 – requires CLETS, CACI and in-home inspection

NON-EXEMPTIBLE CONVICTIONS

IN RE CP (2020) 47 CAL.APP.5TH 17

- Absolute statutory bar to placement for non-exemptible is unconstitutional if relative can establish that they have a parental relationship with the child
- Court must determine if relative has "bonded, quasi-family relationship that courts have found worthy of protection as a fundamental interest."
- Factors court might consider:
 - Child views their house as "home"
 - "Only constant" in the child's life
 - Overnight, unsupervised visitation, sometimes extended for days and even weeks at a time
- If court finds relative and child have type of familiar relationship worthy of protection, must order agency to assess request for a criminal exemption according to factors in HSC 1522



FAMILY FIRST PRESERVATION SERVICES ACT (FFPSA)



PART I: ELIGIBILITY FOR PREVENTION SERVICES

1. A child who is a “candidate” for foster care – defined as “imminent risk of entering foster care”
2. Youth in foster care who are pregnant or parenting, or
3. A parent or kin caregiver of a child who is a candidate for foster care

■ *This will include youth who are at risk of entering foster care through the juvenile justice system*



California's 5 Year Preventative Plan -

Initial Pool of Prevention-Eligible Children:

- 1) Children in Families Receiving Voluntary or Court-Ordered Family Maintenance
- 2) Probation Youth Deemed As Being At Imminent Risk of Foster Care
- 3) Children Whose Guardianship or Adoption Arrangement is At-Risk of Disruption
- 4) Family Reunification Service Recipients With Trial Home-Visits

****MUST be a case-by-case, individualized case assessment to determine imminent risk**

PART I: SERVICES

- 3 categories of prevention services funded:

**Mental health
services**

**Substance abuse
prevention &
treatment**

**In-home parent
supports and skill-
based programs**

- Programs must fall into one of these evidence based standards as established by a federal clearinghouse:

Promising

Supported

Well-Supported

At least 50% must be at the **well-supported** level

PART 4: QRTPS

- FFPSA Part IV seeks to limit reliance on congregate care for serving children in foster care, consistent with the objectives of CCR.
- Eliminates IV-E funding after 2 weeks for children placed in congregate care unless it meets criteria for “**Qualified Residential Treatment Programs**” (QRTPs)

NEW QRTP REQUIREMENTS

■ FFPSA establishes new requirements for QRTPs, including:

- Operation of a **trauma-informed treatment model** and organizational framework able to meet the clinical needs of children with serious emotional or behavioral disorders or disturbances.
- Access to a **licensed or registered nurse**, not necessarily a direct employee of the facility.
- Provision of discharge planning and family-based **aftercare** supports for at least six months post-discharge.
- Assessment by a **Qualified Individual (QI)** who rules out the appropriateness of a lower level of care and identifies the specific mental health treatment goals that will be implemented by a Qualified Residential Treatment Program QRTP (STRTP).
- Use of a functional assessment tool to conduct the QI assessment.
- New **court hearing** requirements for each new placement determination, including specified findings.

GOALS

- These new requirements have the goal of:
 - Ensuring the appropriateness of all congregate care placements;
 - Reducing long-term stays in congregate care;
 - And to promote a successful transition to a home-based setting.

	QRTP (federal law)	STRTP (CA law)
Eligible youth	“Children with serious emotional or behavioral disorders or disturbances”	<p>Child meets one of the following:</p> <ul style="list-style-type: none"> • medical necessity criteria for Medi-Cal specialty mental health services • Assessed as seriously emotionally disturbed • Requires emergency placement • Assessed as needing level of service provided by the STRTP • STRTP has specialized program to serve CSEC, juvenile sex offenders, youth affiliated with a gang
Treatment/staffing requirement	Licensed or registered nursing staff and other licensed clinical staff who are available 24 hours/7 days a week	<ul style="list-style-type: none"> • STRTPs must have in good standing a mental health certification • Minimum education/training requirements for staff • Needs and services plan updated every 30 days
Timeline for assessment	Assessment by a “qualified individual” must be completed within 30 days after placement is made, or federal funding will be cut off	<p>Timelines exist for those youth who require an emergency placement into an STRTP.</p> <ul style="list-style-type: none"> • Within 72 hours of emergency placement, a licensed mental health professional must make a determination that the child/youth requires the level of services and supervision provided by the STRTP. • Within 30 days of emergency placement, the IPC shall make a determination, with recommendations from the CFT, as to whether the STRTP is appropriate.

	QRTP (federal law)	STRTP (CA law)
Who does the assessment?	<p>“Qualified Individual” = trained professional or licensed clinician who is not an employee of the state agency and who is not connected to or affiliated with any placement setting in which children are placed by the state</p>	<ul style="list-style-type: none"> • Assessment by a mental health professional • Placement decision by Interagency Placement Committee
Court Oversight	<p>Within 60 days of a QRTP placement, juvenile court must:</p> <ul style="list-style-type: none"> • Consider assessment by the qualified individual; • Determine whether the needs of the child can be met through placement in a family home or, if not, whether placement of the child in a QRTP provides the most effective and appropriate level of care in the least restrictive environment; and • Approve or disapprove the placement 	<p>Child of any age must have case plan documenting need for placement into STRTC and if the placement is longer than six months, the placement must be documented pursuant to Section 16501.1(a)(3) and shall be approved by the deputy director or director</p>
Post-Discharge Support	<p>QRTP must provide discharge planning and family-based aftercare support for at least 6 months post-discharge</p>	<p>STRTP must provide for, arrange for, or assist with continuity of care, services, and treatment as child moves from STRTP to home-based family care or to a permanent living situation through reunification, adoption, or guardianship.</p>

PART 4: EXCEPTIONS TO QRTP REQUIREMENT

- ✓ Specialized settings for expectant or parenting youth
- ✓ Transitional housing for youth 18 years and older
 - Does NOT include THP programs for minors
- ✓ Programs for youth have been or are at-risk of becoming victims of commercial sex trafficking

❓ What will this look like in California?





Assembly Bill 153
(Committee on Budget; Stats. 2021, ch. 86)
Signed into law July 16, 2021

WIC section 361.22 and 727.12 (section
4096 QI report; 16501(l) definition of QI)

ACIN 1-73-21 (issued 9/8/21)

Rule of Court 5.618 (pending)

Judicial Council Forms (pending)
JV-235, JV-236, JV-237, JV-238, and JV-239

HEARING REPORT REQUIREMENTS

- A copy of the determination that a child/NMD should be in an STRTP and supportive documentation prepared by the “qualified individual (QI)”
- The new case plan documentation pursuant to section 16501.1(d)(2)(C).
- A statement regarding whether the child/NMD or any party to the proceeding, or the child’s tribe in the case of an Indian child, objects to placement in an STRTP

HEARING REQUIREMENTS

- Within **5 calendar days**, the placing agency must request a hearing to review the placement (361.22(b)(1) & 727.12(b)(1))
- Placing agency must serve the request for review on all parties (361.22(b)(2); 727.12(b)(2))
- Within **5 calendar days** of receiving the request for review, the court must set a hearing within 45 days of the start of the placement and notice all parties of the hearing date (361.22(d); 727.12(d))
- 361.22 and 727.12 subdivision (h) requires the Judicial Council to develop a process to review placements without a hearing.
 - Rule 5.618 subdivision (f) gives requirements for the process

HEARING REQUIREMENTS

After considering the report, court must:

- Determine whether needs can be met in a family-based setting, or, if not, whether STRTP provides the most effective and appropriate setting in the least restrictive environment
 - Shortage or lack of family homes NOT appropriate reason for determining that the needs of the child cannot be met in a family-based setting
- Determine whether STRTP is consistent with the short- and long-term mental health goals and permanency plan
- Approve or disapprove the placement

TIMELINES

- States were able to opt in for prevention services funding beginning **October 1, 2019**
 - However, when state opts in the new congregate care requirements take effect
 - For that reason CA chose to delay implementation
- Last day to implement new congregate care requirements: **October 1, 2021**