

January 15, 2019

ARTICLE

# Leveraging the FFPSA for Older Youth: Reduction of Group Care Provisions

By Jenny Pokempner

Share:



This is the second of three articles on how the Family First Prevention Services Act (FFPSA) might be leveraged to the benefit of older youth. In addition to increasing investments in [prevention services](#) so youth and families do not enter the system in the first place, the FFPSA seeks to limit the use of group care by restricting the use of Title IV-E funds for group settings. The FFPSA continues to allow [Title IV-E funds](#) to be used to fund placements in a “family foster home,” defined as a home with 24-hour care for 6 or fewer children (with some exceptions), or a “child care institution,” defined as an institution for up to 25 children that is not a detention center. However, under the FFPSA, a child’s Title IV-E eligibility ends after two weeks of placement in a child care institution. Thus, placement in group settings lasting longer than two weeks generally will be ineligible for federal funding. States can continue to place youth in these settings but will have to fund them with state and local dollars.

There are, however, several group settings that are exempted from these restrictions. States can continue to draw down IV-E funds for settings described later in this article after two weeks even if they are provided in the form of child care institutions.

## Leveraging the Reduction of Group Care Provisions for Older Youth

Older youth are at high risk for being placed in group care; [one out of every four—171,162—youth in foster is at least age 14, and 34 percent of those youth are in group care placements](#). These placements compromise the ability of youth to find permanency and form healthy, lasting relationships with family and caring adults. They also compromise opportunities for youth to develop the skills they need to be successful in adulthood. Older youth are the ones most likely to positively benefit from the FFPSA’s efforts to reduce group care, but they are also the group that the system will say it is the most challenged to serve in family -based settings. Advocates must ensure that the needs of these youth are front and center in FFPSA discussions. We recommend that advocates take a three-pronged approach that works to ensure that

- the provisions that restrict group care are applied rigorously to older youth;
- the excepted settings are available in appropriate numbers, are of high quality, and prioritize permanency; and
- achieving permanency and supportive connections through enforcement of existing law, including the Strengthening Families Act permanency and normalcy provisions and the reasonable efforts requirements, continues and creates the framework for the right sizing of placements and services under the FFPSA.

## Advocacy to Limit Group Care Placement

[Much has been written](#) about policies that can effectively reduce decisions to place youth in group care. These reforms tend to require more process and oversight before a placement in group care can occur. This can include special teamings that ask important questions about family and community connections as well as the efforts that have been made to serve the youth in the community. Requiring high -level approval and frequent re authorization to continue placement can also force the system to think more creatively and carefully about options outside of group care. Policies that make certain reasons for group care placement unacceptable—such as the lack of a family -based setting— can also be powerful shifters of practice as can policies that prohibit group care placements for certain ages (for example, under 12 or 18 and older) and that enforce time limits (e.g., no more than 3

months). While many states have instituted such reforms, advocates should examine what policies exist in their jurisdiction and consider whether policy or legal requirements of this sort should be part of FFPSA implementation efforts. It is possible that these reforms may be more effective in combination with the changed federal financing incentives as well as any additional reforms at the state level.

The FFPSA uses the federal IV-E financing structure to shift practice, but it is largely using a disincentive to force change and doing it through a significant, but limited, funding stream. [Title IV-E is the largest federal funding stream for child welfare activities](#), but states use a good deal of state and local funds to run their child welfare systems, and these funds are not governed by the FFPSA. Long-lasting change will likely require states to create a law and policy structure that is consistent across funding sources and that does not just push child welfare systems away from service delivery we do not want to see, but that pulls and supports them in building the array that is best for children and youth. Ideally, state funding schemes should mirror the federal disincentives for group care but should also provide incentives and support so that the state can build sufficient alternatives. Advocates are encouraged to consider the following possible reforms:

- Enact a state funding formula that disincentivizes group care and provides incentives for community-based supportive services and placements.
- Enact state law to allocate funds to provide financial and service support for kinship care arrangements (for example, subsidies, navigators, post-permanency support).
- Enact state law that allocates funds to train foster care and adoption caseworkers to support older youth permanency.
- Review and potentially revise the state's Medicaid Plan to ensure the funding of services that can support an enhanced placement array for older youth.
- Enact state law to provide funding and training to recruit and retain skilled caregivers.

## Advocacy to Support Caregivers for Older Youth

To be successful in reducing group care placements, states need to build up and enhance their placement and service array. Working to recruit kin and non-kin caregivers is essential to this goal as is investing in retention and support of caregivers, which will also assist with recruitment. One of the best ways to determine what caregivers need to support youth of varying ages and needs is to simply ask them. Advocates can play a role in getting this feedback and presenting it to policy makers. Initiatives like the [Quality Parenting Initiative](#) (QPI) provide a model for this type of inquiry as well as a structure for supporting caregivers through policy and practice. This model seeks to both enhance and specify the standards for caregivers and provide them the support they need to achieve those standards.

The FFPSA requires that states show that their licensing standards for family foster care are in accord with model standards that have been promulgated by the Children's Bureau. States will have to explain if there are areas where requirements are waived or amended for relative caregivers seeking to be licensed. It is recommended that advocates use this opportunity to create and enhance licensing standards that support caregivers in acquiring the skill and community support they need to provide excellent care for children, including older youth. High expectations should be mirrored by high support. In addition, these standards should address ways to resolve barriers that relative caregivers may face in being licensed or being approved for services and support that are not related to safety.

Advocacy to prohibit discrimination against lesbian, gay, bisexual, transgender, and questioning youth or foster and adoptive resources is a civil rights issue, but it is also a permanency and FFPSA issue. Advocates should leverage the FFPSA's push to expand family-based placements as an opportunity to urge the elimination of any laws, policies, or practices that support discrimination of foster and adoptive resources and to institute prohibitions on discrimination.

## Advocacy to Build a High-Quality Placement Array by Developing the Excepted Settings

The restrictions on using Title IV-E funds for group care have several exceptions. The following are settings that are exempted from the group care restrictions for the purpose of IV-E funds :

- A qualified residential treatment program (QRTP).
- A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims.
- A supervised setting for youth ages 18 and older who are living independently.

While the first three excepted settings do not specify age, it is likely that older youth will be considered for these excepted settings more often than younger children . Advocates should ensure that these excepted settings are of high quality and serve an important and needed role in the placement and service continuum. Advocates should also ensure that these settings do not become barriers to developing family -based settings for older youth or as a reason to not pursue permanency.

The QRTP is getting significant attention in FFPSA implementation discussions because it is likely the setting that will replace existing group homes, albeit in a transformed way. However, for a placement to be a QRTP, it must meet multiple requirements. These requirements are intended to ensure that placement is limited by specific treatment needs , that the placement can meet the treatment needs that cannot be met in a less restrictive setting , that the placement is capable of meeting an array of treatment needs , and that the goal from day one is to transition to family and the community. The FFPSA meets these requirements by developing a rigorous process to justify initial and continued placement and by requiring that placements have specific services, training, and capacity in place. Ideally, this process and requirements will ensure that older youth are placed in QRTPs only in rare circumstances for the shortest time possible. However, it is recommended that advocates raise questions about whether QRTPs can meet the needs of older youth and whether additional service provisions (such as the provision of transition services) or placements based on age should be developed.

Unlike QRTPs, the other excepted settings do not carry any particular requirements about initial or continued placement or about the service array and training of staff. States have the flexibility to develop and receive federal funding for group settings that serve pregnant and parenting youth and children and youth who have been found to be, or are at risk of becoming, sex trafficking victims. Advocates are encouraged to make sure there are discussions about the place of these settings in the state's placement array and to explore developing standards for program and practice for these settings so they do provide high -quality services that meet the special needs of the targeted populations. It is recommended that advocates lead these discussions and recruit youth and service providers who have expertise in working with older youth and these two special populations. We encourage the development of standards that support good practice but are not so prescriptive that development of these settings is impossible. Finally, a crucial piece of these discussions includes how these two populations—pregnant and parenting youth and youth who are, or are at risk for being, victims of sex trafficking—can be served in family -based placement settings. *The fact that states can provide care in a group setting for these two groups of youth does not in any way mean that it is the only, or even the most preferable, way to serve these youth.* Advocates should ensure that implementation discussions address how serving these two groups of young people can be done in family settings.

Among the excepted placement options for federal funding is the placement category of “a supervised setting in which an individual lives independently.” This has been a IV-E reimbursable setting for youth who are in extended foster between ages 18 and 21 since [the Fostering Connections to Success and Increasing Adoptions Act of 2008](#). The [Children's Bureau](#) decided not to issue regulations on these settings but did provide some parameters indicating that states have a good deal of flexibility to develop settings that meet the age -appropriate needs of young adults:

For example, a title IV-E agency may determine that when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement meet the supervised setting requirement. We encourage the title IV-E agency to be innovative in determining the best living arrangements that could meet an older child's needs for supervision and support as he/she moves toward independence. Further, we note that a title IV-E agency should continue to work with youth who are in supervised independent living settings to form permanent connections with caring adults.

While the majority of states provide extended foster care in some form, states continue to struggle with providing an age-appropriate placement array for young adults. [Recent research](#) shows some improvements, but much work remains to be done. We encourage advocates to ensure that discussions about the placement array for youth in extended foster care are a part of FFPSA discussions and presented as a strategy for alternatives to group care. Advocates can remind policy makers that states have great flexibility in what they can develop that will still allow them to draw down federal funds. Advocates should make sure the issue of quality is a core component of the discussion and that the placement array in extended foster care includes more independent settings as well as family-based settings.

### Ensuring That Permanency Advocacy Is the Framework for the Expansion of the Placement Array

The focus of the group care provisions of the FFPSA are placement—reducing one type and increasing the provision of other types. These provisions use placement to get to permanency. We want youth in family- and community-based settings because we believe that in those settings they are more likely to be able to return home, reconnect and connect with kin or other community members, and achieve permanency.

In 2014, the [Preventing Sex Trafficking and Strengthening Families Act](#) (SFA), among other things, required that states crack down on the use of the permanency plan of “another planned permanent living arrangement” (APPLA) for older youth and put in place stringent requirements on when to use this permanency plan. It was believed that far too many older youth were being assigned the goal of APPLA and that this plan rarely resulted in permanency and often resulted in a youth aging out of care without ever finding permanency. The SFA requirements sought to make the use of APPLA rare and to prompt discussion and case work that would result in APPLA not being needed at all.

While states changed law and policy to comply with the SFA, they are still in the process of changing practice and messaging around older youth permanency. We strongly recommend that advocates use FFPSA implementation efforts to continue with or reinvigorate work on this issue. Key to the older youth permanency provisions of the SFA was changing a philosophy that either all older youth were not cut out for family or that as youth got older, the focus needed to shift from permanency to preparation for adulthood. The SFA made clear that permanency is always the expectation and legal obligation until youth leave the system and that preparation for adulthood must occur alongside seeking permanency. We recommend that advocates use these legal requirements to underline the need to move older youth out of group care and to develop the types of alternatives for placement and services that are more conducive to achieving permanency.

The SFA also includes “normalcy provisions” focused on ensuring that youth are able to engage in normal, age-appropriate activities. The normalcy provisions of the SFA apply to all placement settings, including group care, and require that youth in care have access to age-appropriate enrichment, extracurricular, social, and cultural activities and experiences to the same degree as their non-placement peers. While these provisions have been in place since 2014, group care settings still struggle with their implementation, and oversight of implementation in group settings has been lax. Advocates are encouraged to inquire into the capacity of placements to comply with the normalcy provisions as the current placement array is being inventoried and a new array is being designed. It is likely that the facilities that are not able to provide normalcy to youth are exactly the ones that should either be eliminated or revamped.

The FFPSA provides new leverage through financing incentives and disincentives to move the child welfare system to a vision and goal that are not new: a system that provides age-appropriate and developmentally appropriate placement settings that are with family and in the community. Our pre-FFPSA federal and state laws contain many provisions that aim to get us to this result. We can use the new tools the FFPSA provides to reinvigorate legal advocacy through enforcement of existing laws. Below are a few examples for attorneys who represent children and parents to consider in their trial court and appellate advocacy:

- 1 Leverage reasonable efforts to finalize the permanency plan requirement to get youth the placement and services they need and deserve.** This could include requesting orders for a family -based placement to be developed or to provide services that would make a placement appropriate. This can be done at the trial court level or in a fair hearing. To have an impact on policy change, appellate advocacy could also be pursued. These challenges could be done along side assertions of the right to the least restrictive placement settings.
- 2 Use state case law on disposition and any state law requirements related to placement to increase and enhance the placement options for older youth.** Statutory and case law in most states provides dispositional standards that require individualized determinations that are guided by the best interests standard. While these standards can be broad, advocates can use them, along with a good record supporting how the proposed placement will meet the youth's needs, to argue for a court order for the best placement. (A few examples can be found in the Juvenile Law Center's [Transition to Adulthood Litigation Resources](#).) When the needed placement is not available or the service is not being provided, the court order can spur its development or expansion.
- 3 Enforce the APPLA reduction provisions as a way to increase and enhance the permanency services provided to youth and ensure that youth are meaningfully engaged in permanency planning.** This could include the provision of trauma -informed services to address grief and loss, family finding and search technologies, child -specific recruitment, and reunification services.
- 4 Enforce the normalcy provisions.** The [federal law](#) requires that the court make findings about whether older youth have regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities and whether their caregiver or placement is using the reasonable and prudent parent standard to further this access. Attorneys should be diligent in making sure these findings are made and that corrective action is taken if the court finds that the youth does not have access to activities.

The FFPSA provides a real opportunity to transform the child welfare system into one that can provide family -based settings for older youth and support them as they transition to adulthood. Because older youth are over represented in group care settings, they should benefit from the FFPSA if we work to develop the placements and services that are needed to provide high -quality alternatives. This will require further developing family -based settings and ensuring that any non-family -based settings are limited in ways that ensure quality and age appropriateness and that prioritize family, connections, and permanency.

*Jenny Pokempner is the director of child welfare policy at the Juvenile Law Center in Philadelphia, Pennsylvania.*

---

Copyright © 2019, American Bar Association. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or downloaded or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. The views expressed in this article are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).

A marketing banner for Scorpion AI. The left side has a black background with white and blue text. The right side has a blue background with the Scorpion logo and a 'Learn More' button.

**Cutting-Edge AI**  
**With a Human Touch.**  
Get more from your marketing  
with Scorpion.

  
**SCORPION**

[Learn More](#)

[ABA](#) American Bar Association |

</content/aba-cms-dotorg/en/groups/litigation/committees/childrens-rights/articles/2019/winter2019-leveraging-the-ffpsa-for-older-youth-reduction-of-group-care-provisions>