Overview of Federal Legislation and California Initiatives relating to Substance Exposed Infants (SEI)

Contents

The Family First Prevention Services Act

The Family First Prevention Services Act (H.R. 5456 (Family First)) was signed into law as part of the Bipartisan Budget Act on February 9, 2018, as Public Law 115-123. Family First amended Title IV-E and Title IV-B of the Social Security Act to child welfare programs and policy. This historic reform aims to change child welfare systems across the country by providing services to families who at risk of entering foster care.

The Family First Act is built on the premise that restructuring how the federal government spends money on child welfare can improve the safety, permanency and well-being outcomes for children and youth who have experienced abuse and/ or neglect. The bill aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment and in-home parenting skill training. Federal reimbursements will also be used to prioritize placement of children in families; in contrast, reimbursements will not be available for placement of children in group facilities when such a placement is not warranted

Some of the highlights of Family First are:

- Prevent children from entering foster care through new optional evidence-based prevention services and programs
- Restrict placement options for children being placed in care to mainly family foster homes with limited use of congregate care settings
- Improvement of the electronic interstate processing system
- Establish model licensing standards for family foster homes
- Recruitment and retention of high-quality foster families
- Extension of the John H. Chafee foster care independence programs to age 23
- Reauthorizes the Adoption Incentives program
- Provides 50% match funding for kinship navigator programs
- Allows room and board payments for children in care placed with their parent in family-based substance use residential treatment

For those children who cannot safely stay with their families, the law ensures that children are placed in the least-restrictive, most family-like settings.

New Opportunities to Address Substance Use Disorders

FFPSA offers new opportunities to provide needed treatment services to children and families affected by substance use disorders (SUDs) and prevent the need for foster care. As of October 2020, nine states have received approval of their state Title IV-E prevention plans, a requirement for receiving federal reimbursement for prevention services under the law. Six states and two tribal jurisdictions have submitted plans that are currently under review (as of October 2020). Most states and jurisdictions are still in the planning process to develop their prevention plans. An initial review of state plans shows that prevention services for children and parents affected by substance use disorders are generally not specified.

Due to the COVID-19 pandemic, state child welfare and SUD treatment leaders are facing unprecedented challenges in meeting the needs of families. Particularly in the face of severe state budget cuts over the next few budget cycles, implementation of Family First is more important than ever

to connect families to high-quality, family-centered treatment services that ensure the safety and well-being of the entire family.

There are three primary components of Family First aimed at meeting the needs of children and families affected by SUDs:

Residential Family-Based Substance Use Disorder Treatment: Reimbursement for Children's Room and Board: Effective October 1, 2018, Family First allows states to claim Title IV-E foster care maintenance payments for a child in foster care who is placed with a parent in a licensed residential family-based treatment facility for SUDs. This component of Family First allows funds that would otherwise pay for the placement of a child in foster care to cover the room and board of the child residing with a parent in a residential family-based SUD treatment program. This funding is available for up to 12 months if the child's case plan goal supports this placement, the facility provides parenting skills training and individual counseling, and the treatment services are trauma informed. The child does not need to meet the Title IV-E income eligibility requirement.

Services to Prevent Children from Entering Foster Care: Use of Title IV-E Funds for Treatment: Family First also creates a new funding stream, known as Title IV-E prevention services, to support certain programs and services to prevent the need for foster care and keep children safely in their homes. Effective October 1, 2019, states may draw down these Title IV-E prevention services payments to support evidence-based SUD treatment, mental health services, and in-home parenting skill-based programs, or a combination thereof, for up to 12 months at a time. These services are intended to prevent a child's placement in foster care. Individuals are eligible for prevention services regardless of whether the child meets Title IV-E income eligibility terms as required for federal support of foster care maintenance payments for a child. Two populations of children are eligible for these services: "Candidates" for foster care, which means children at imminent risk of being removed from their homes and placed into foster care if services were not provided; and Pregnant and parenting youth already in foster care. Parents or kin caregivers of these young people are also eligible to receive services. The criteria of "in-home" parenting programs are that the child remains in the home, and the program may be delivered in the home or in a treatment setting. To begin receiving these reimbursements, states must submit and receive approval for a Title IV-E prevention program plan from the federal government.

Reauthorization of Regional Partnership Grants: The law extends the RPG program through FY 2021. RPGs are three- to five-year competitive grants to support collaborative partnerships among providers of child welfare services, SUD treatment agencies, family or dependency courts, and family support services. Grantees create "regional partnerships" aimed at improving the well-being, permanency, and safety outcomes of children, and the recovery outcomes for parents whose children are in or at risk of out-of-home placement associated with a parent or caregiver's SUD. Although the grants are separate from Title IV-E, the collaborations enabled by RPGs are highly complementary to the opportunities in Family First. For states already operating an RPG or preparing to apply for an RPG, stakeholders involved in the RPG partnership can play an instrumental role in planning for and implementing the Family First provisions.

Plans of Safe Care

Since 2003, CAPTA has required governors to provide an assurance to the Secretary of the Department of Health and Human Services that their states have policies and procedures in effect to address the needs of infants who are identified as affected by SUDs. This law includes requirements to make appropriate referrals to child protective services (CPS) and other applicable services, and to develop a "plan of safe care" for the affected infants. These plans of safe care are intended to promote the health and safety of infants after leaving the hospital, and as of 2016 require that the treatment needs of the family/caregiver be included in the plan. This assurance by governors can be a critical tool for states to promote family-centered treatment for infants and their family/caretaker who are at risk of entering the child welfare system.

Like plans of safe care, Family First aims to connect families to needed SUD treatment services to prevent the need for foster care in the future and keep the family safely together. There may be circumstances in which infants born with prenatal exposure are considered at imminent risk of entering foster care, and therefore eligible to receive SUD prevention services under Family First. In general, however, plans of safe care will be developed further "upstream" compared to Family First—in other words, before a determination of "candidacy" is made.

The **Comprehensive Addiction Recovery Act (CARA)** was enacted in 2016 to establish a comprehensive, coordinated strategy to improve substance use prevention and education efforts (both legal and illegal substances) while promoting treatment and recovery.

CARA requires:

- Statewide policies and procedures to address the needs of infants who are affected by substance abuse or withdrawal symptoms. Requires referral to Child Welfare when there are indications of suspected maternal substance abuse if safety factors indicating risk to a child.
- Plans of Safe Care must be developed for infants born and identified as being affected by substance abuse or withdrawal symptoms (includes FAS, legal and illegal drugs).
- The following data points must be reported through National Child Abuse and Neglect Data System.
    1. Number of infants identified as effected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure (legal and illegal) including FAS reported to CWS by Health Care Providers.
    2. Number of such infants for whom a plan of safe care was developed.
    3. Number of infants and affected family members or caregivers for whom any referrals were made for necessary services

The Plan of Safe Care differs from a safety plan which addresses the immediate safety. A Plan of Safe Care is a continuous and long-term plan for the family which focuses on the infant's ongoing health, development, safety, and well-being. The Plan of Safe Care identifies the needs of the infant and family and the services to meet those needs. The Plan of Safe Care incorporates the following needs of the infant and family:

1. The physical health, substance use disorder treatment needs, general functioning, development, safety and any special care needs of the infant who may be experiencing neurodevelopmental, physical effects or withdrawal symptoms from prenatal exposure

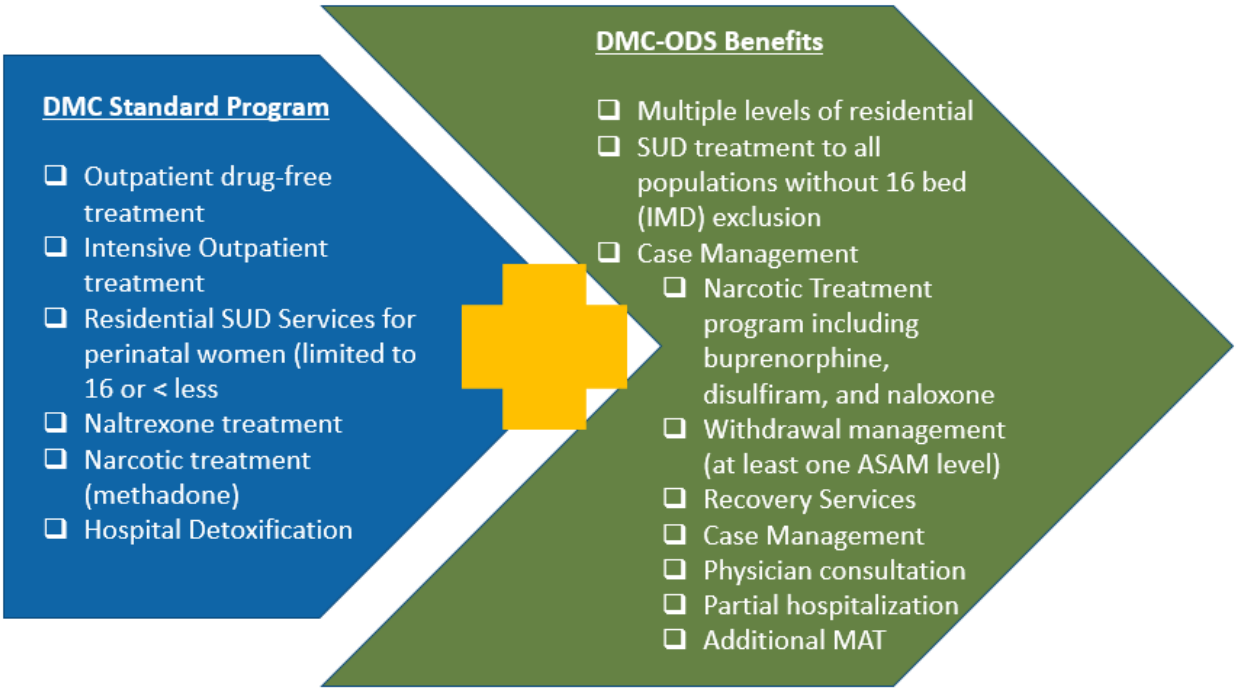
2. The physical/social/emotional health, substance use disorder treatment needs of the parent(s)/caregiver(s)
3. Services and supports to strengthen the parent/caregiver's capacity to nurture and care for the infant

Various Types of Plans Depending on Discipline

CPS	Safety Plan	The focus is on the immediate safety of a child or infant
CPS	Child Safety Agreement	The document contains information on what is working well in the family, what is causing the immediate safety threats to the child(ren), what needs to happen to keep child(ren) safe, and signatures for family members, the worker, and supervisor.
CPS	Disposition Case Plan	The focus is on reunification based on steps the judge decides to make things better for the child, parents, and family as a whole.
Treatment Providers	SUD and MH Treatment Plans	The focus is on the SUD/MH treatment of adults
Hospital	Hospital Discharge Plan	May focus on health and well-being of the infant
Hospital	Plan of Safe Care	A continuous and long-term plan for the family which focuses on the infant's ongoing health, development, safety and well-being. The Plan of Safe Care identifies the needs of the infant and family and the services to meet those needs.

Drug Medi-Cal Organized Delivery System (DMC-ODS)

DMC-ODS is Medi-Cal's effort to dramatically expand, improve and reorganize its system for treating people with SUD. The program aims to demonstrate that providing organized SUD care improves health outcomes while reducing overall costs. Services provided under the DMC-ODS are significantly more comprehensive that the limited set of services provided under the standard "state plan".



Thirty-eight California Counties opted into DMC-ODS representing 97% of the state's Medi-Cal Population. DMC-ODS requires counties to provide access to a full continuum of SUD services modeled after the American Society of Addiction Medicine (ASAM) criteria.

To be eligible for DMC-ODS services, people must meet all the following:

- Be eligible for Medi-Cal
- Reside in a county that is participating in DMC-ODS
- Have received at least one diagnosis from the Diagnostic and Statistical Manual of Mental Disorders for substance-related and addictive disorders (except for tobacco-related disorders)
- Meet the ASAM criteria definition of medical necessity for services

Additionally, people under age 21 are eligible to receive services under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) mandate. They must meet both of the following medical necessity requirements:

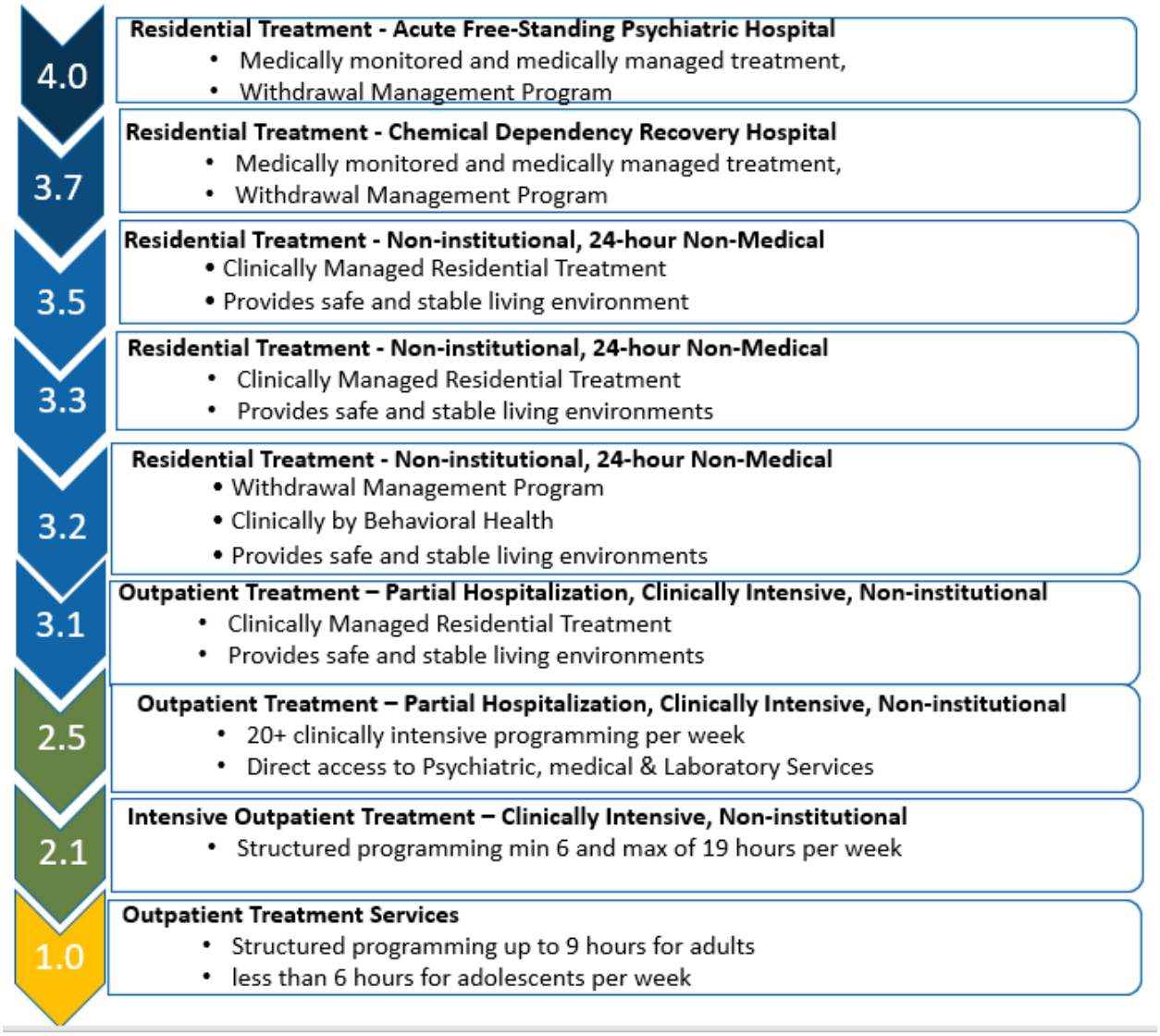
- Be assessed to be at risk for developing a SUD
- Meet the ASAM adolescent treatment criteria

The DMC Medi-Cal Waiver provides an exemption from the Institution for Mental Disease (IMD) exclusion, this exemption allows federal funding for SUD treatment for residential inpatient treatment for facilities that have 16 or more resident beds

The DMC waiver also allows the DMC-ODS program to address workforce capacity issues by allowing Licensed Practitioners of the Healing Arts or LPHAs to determine medical necessity and to direct treatment plans. LPHA's include the following practitioners:

- Physician, licensed/waivered psychologist
- Licensed/waivered/registered social worker
- Licensed/waivered/registered marriage and family therapist
- Licensed/waivered/registered professional
- clinical counselor
- Registered nurse
- Nurse practitioner

DMC-ODS Counties must provide one level of **residential** care, but many counties provide more.



California Advancing and Innovating Medi-Cal (CalAIM)

The California Advancing and Innovating Medi-Cal (CalAIM) proposal is a far-reaching set of reforms to expand, transform, and streamline Medi-Cal service delivery and financing. CalAIM is a large package of reforms aimed at (1) reducing health disparities by focusing attention and resources on Medi-Cal's high-risk, high-need populations; (2) rethinking behavioral health service delivery and financing, (3) transforming and streamlining managed care, and (4) extending federal funding opportunities currently available under the state's soon-to-expire 1115 waiver.

CalAIM's guiding principles include:

- Improve the member experience.
- Deliver person-centered care that meets the behavioral, developmental, physical, long term services and supports and oral health needs of all members.
- Work to align funding, data reporting, quality and infrastructure to mobilize and incentivize towards common goals.
- Build a data-driven population health management strategy to achieve full system alignment.
- Identify and mitigate social determinants of health and reduce disparities and inequities.
- Drive system transformation that focuses on value and outcomes.
- Eliminate or reduce variation across counties and plans, while recognizing the importance of local innovation.
- Support community activation and engagement.
- Improve the plan and provider experience by reducing administrative burden when possible.
- Reduce the per-capita cost over time through iterative system transformation.

CalAIM would require all Medi-Cal managed care plans to operate population health management programs. Managed care plans would be required to collect and analyze information on their members' health status, service utilization history, and social needs. While existing data sources would form the basis of some of this information, a new standardized, statewide Individual Risk Assessment tool would be developed by the Department of Health Care Services (DHCS) to ensure consistent information collection across managed care plans. With this information, managed care plans would assign their members into one of four risk categories: "low risk," "medium and rising risk," "high risk," or "unknown risk." While plans would remain responsible for connecting low-risk members to preventive and wellness services, they would be responsible for providing increasing levels of care coordination and service linkages to their higher-risk members.

CalAIM proposes to create a new statewide managed care benefit, Enhanced Care Management (ECM), to provide intensive case management and care coordination for Medi-Cal's most high-risk and high-need beneficiaries (provided they are enrolled in managed care). The intent is for ECM to provide much more high-touch, community-centered care coordination services than generally are available to the targeted populations, which include, for example, high utilizers of emergency departments and members with unstable housing. The intent is for ECM to connect high-risk, high-need members to the appropriate services necessary for the improvement of health outcomes.

In June 2020, DHCS launched the Foster Care Model of Care Workgroup to provide an opportunity for stakeholders to weigh in on a long-term plan and strategy for improving health outcomes and the delivery of fully integrated health care services for foster care children and youth. The workgroup will

complete its work in June 2021. Based on input from the workgroup, DHCS and the California Department of Social Services (CDSS) will develop a plan of action, which may involve budget recommendations, waiver amendments, state plan changes or other activities.

Resources

CASA, *Advocacy in Action: Families First Prevention Services Act*
https://advocacyinaction.casaforchildren.org/permanency/the-family-first-prevention-services-act/

Children and Family Futures, *Implementing the Substance Use Disorder Provisions of the Family First Prevention Services Act*
https://www.cffutures.org/files/QIC_Webinar_Resources/FFPSA%20Implementation%20Challenges%20and%20Strategies_FINAL.pdf

Department of Health Care Services: *CalAIM Proposal*
https://www.dhcs.ca.gov/provgovpart/Documents/CalAIM-Proposal-03-23-2021.pdf

Department of Health Care Services: *Drug Medi-Cal Organized Delivery System*
https://www.dhcs.ca.gov/provgovpart/Pages/Drug-Medi-Cal-Organized-Delivery-System.aspx

Legislative Analyst's Office: *CalAIM: Equity Considerations*
https://lao.ca.gov/reports/2021/4402/CalAIM-Equity-031221.pdf

National Center for State Courts, *Issue Brief: Family First Prevention Services Act*
https://www.ncsc.org/__data/assets/pdf_file/0029/16967/overview-of-ffpsa-may-18.pdf

National Center on Substance Abuse and Child Welfare, *How States Are Addressing Plans of Safe Care for Infants with Prenatal Substance Exposure and Their Families*
https://ncsacw.samhsa.gov/files/on-the-ground-508.pdf

Public Health Reports, *The Family First Prevention Services Act: A New Era of Child Welfare Reform*
https://pubmed.ncbi.nlm.nih.gov/31995716/