"Family First" Law Restricts Use of Congregate Care for Foster Youth

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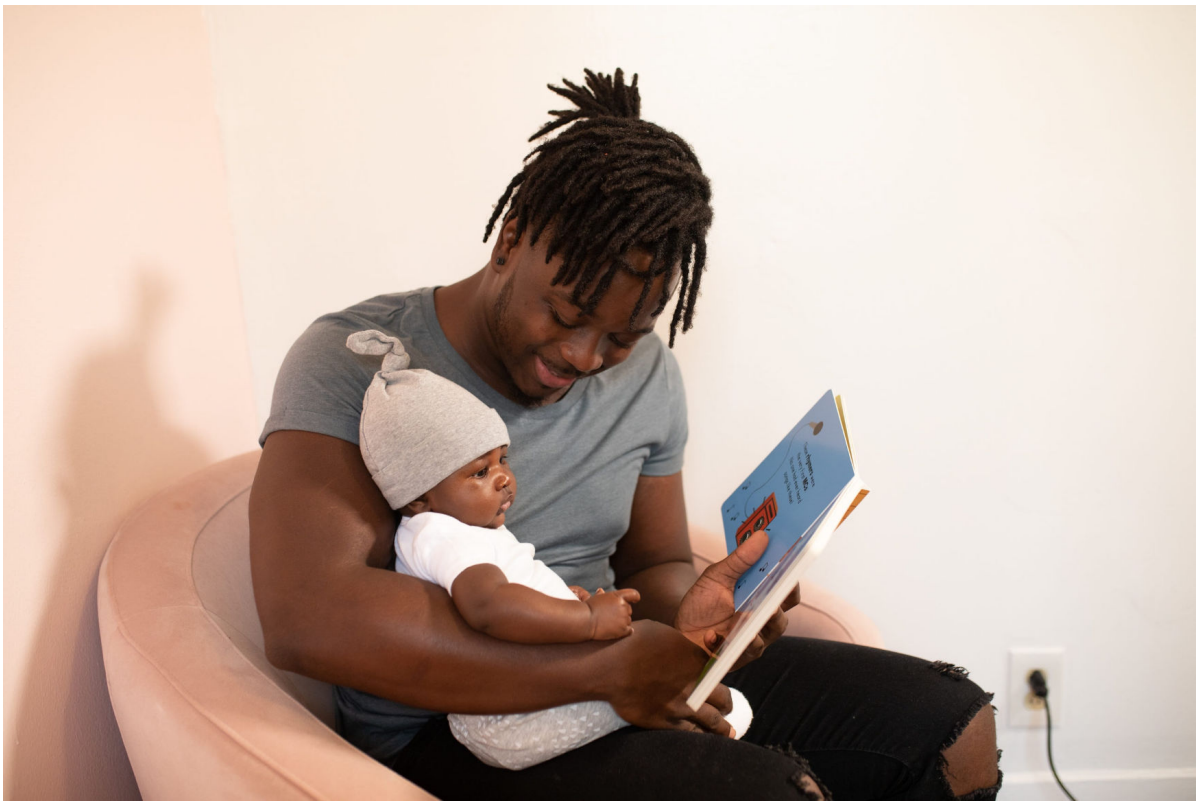

By Lisa Kay Williams

The Family First Preservation Services Act seeks to improve the well-being of children in foster care by establishing minimum standards for congregate care settings, by requiring independent assessments by qualified individuals that both outline a foster child's needs and recommend the appropriate level of care to meet those needs and by requiring court approval and ongoing oversight of a child's placement in a congregate care setting. This article outlines those requirements and proposes tasks for advocates to do and questions to pose.[1]

When enacting the Family First Preservation Services Act, Congress focused on research that demonstrated poor outcomes for children placed in congregate care compared to outcomes for children placed in family like settings. Children placed in group settings have far less educational success than their counterparts in family-settings: they are less likely to graduate from high school, more likely to drop out of school and more likely to obtain lower academic test scores.[2] Youth with at least one group-home placement were almost 2.5 times more likely to become delinquent than their peers in foster care.[3] Youth who have experienced trauma are at greater risk for further physical abuse when they are placed in group homes, compared with their peers placed in families.[4] Alternatively, children and youth placed in family foster care experienced fewer placements, returned

to the care of a parent sooner, were less likely to suffer re-abuse, were placed closer to their communities and were more likely to live with their siblings.[5] Casey Family Programs recommends that "[i]f therapeutic residential care is deemed necessary, jurisdictions should have a structured decision-making process to ensure that only specific youth who can most benefit are placed in this setting; that it offers the most appropriate, evidence-based interventions; and that it is used for the shortest amount of time necessary to achieve key safety, therapeutic, and permanency goals."[6]

Senate Bill 171, Oregon's implementation of the Family First Prevention Services Act, does just that.[7] The bill requires that congregate care settings meet the standards of a Qualified Residential Treatment Program (QRTP), with limited exceptions. DHS may place a child in a child-caring agency that is not a QRTP if the agency provides the following: prenatal, postnatal or parenting supports to a child; independent residence facility; care and services to sex trafficking victims; psychiatric residential treatment; proctor foster care; short term assessment and stabilization services by a residential care facility or shelter program, or homeless, runaway or transitional living shelter services.[8] A congregate care setting is any setting that cares for more than one child that is not a foster home, a proctor foster home certified by a child-caring agency or a residential facility or foster care home for children receiving developmental disability services.[9]

Minimum Standards for Congregate Care Settings

A QRTP provides licensed and accredited residential care and specialized, evidence-based treatment, supports and services to a child, who based on an independent assessment, requires such treatment to address the effects of trauma or mental, emotional or behavioral health needs. The program must be licensed and accredited by one of the following organizations: the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission on Accreditation of Healthcare Organizations or the Council on Accreditation.[10] The program must utilize a trauma informed treatment model with services to address the clinical needs of children. [11] A QRTP must employ licensed medical and mental health staff, including registered or licensed nursing staff working within the scope of their licensure, on-site according to the treatment model and available 24 hours a day, seven days a week.[12] A QRTP facilitates and documents family involvement in the child's treatment, consistent with the best interests of the child.[13] Finally, a QRTP provides discharge planning and family-based after-care support for at least six months following discharge.[14]

Advocates for children and families can independently assess the quality of a congregate care setting by visiting the facility and asking questions. As part of her efforts to reduce the use of congregate care in her district, Judge Kim Berkeley Clark visits facilities and asks, "Would I want my child to be here?" and "If I were a kid, would I want to be here."[15]

Independent Assessment by a Qualified Individual

DHS must ensure that an independent, qualified individual assesses each child within 30 days of the child's placement in a QRTP.[16] A qualified individual is one that is a trained professional or licensed clinician, is not an employee of DHS or the Oregon Health Authority, and is not affiliated with any placement settings for children.[17] The evaluation must assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool; determine whether the needs of the child can be met by family members or foster parents, and if not, determine which setting would provide the most effective, appropriate, least restrictive level of care consistent with the short- and long-term permanency goals; develop individualized, specific short-term and long-term mental and behavioral health goals and, finally, work in conjunction with the child's family and team.[18] The evaluator's report must contain the following information. First, a written explanation of why the needs of the child cannot be met by the child's family or by a foster family. A shortage of foster homes is not a valid reason to recommend placement in a higher level of care.[19] Second, why placement in a QRTP is the most appropriate, effective and least restrictive setting, and, finally, how placement in a QRTP is consistent with the short-term and long-term goals for the child as specified in the child permanency plan.[20]

Court Approval of QRTP Placements

Within 30 days of placement in a QRPT, DHS must move the court for an order approving such placement.[21] The motion must include the date of the placement, the parties' placement preferences and a copy of the child's independent assessment.[22] Upon receipt of the motion, the court must hold a hearing and enter an order approving or disproving the placement no later than 60 days after the child's placement in the QRTP. [23] In the order, the court must make the following specific determinations:

"Whether the needs of the child or ward can be met through placement in a foster family home or in a proctor foster home as defined in ORS 418.205," and

"If the court determines that the needs of the child or ward cannot be met through placement in a foster family home or proctor foster home, whether placement of the child or ward in the qualified residential treatment program: (i) Provides the least restrictive setting to provide the most effective and appropriate level of care for the child or ward; and (ii) Is consistent with the child's or ward's case plan."[24]

Ongoing Oversight of QRTP Placements

There are several existing statutes that grant the court authority to review, approve or reject a child's placement as well as to make specific recommendations to DHS regarding a child's care. Committing a child to the custody of DHS does not terminate the court's continuing jurisdiction to protect the rights or children and their parents.[25] The court must review efforts made by DHS to allow a child to remain or return safely to a parent.[26] The court has the authority to review placements and, if the court determines that a DHS placement or proposed placement is not in the child's best interest, the court may order DHS to place a child in a specific type of placement, e.g. placement with a parent, a relative foster parent, a current caretaker, a group placement, etc.[27] The court has the authority to "specify the particular type of care, supervision or services" that DHS must provide to children in their custody.[28] DHS must consider a committing court's recommendations before placing a child in any facility.[29] DHS must also develop a case plan and regularly report to the court particular information and progress made regarding the case plan.[30]

The congregate care requirements of Senate Bill 171 outlined above take effect on July 1, 2020. Given the court's current and continuing authority to review, approve or reject placements, the proposed tasks for advocates to do and questions to pose are immediately applicable.

Footnotes

[1]National Association of Counsel for Children and the American Bar Association Center on Children and the Law. "Reducing Reliance on Non-Family Placements, A Judicial Toolkit." https://www.ncsc.org/~/media/Microsites/Files/Every%20Kid/checklist.ashx. (Accessed December 9, 2019)

[2] Casey Family Programs. "What are the outcomes for youth placed in congregate care settings?" https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/. (Accessed December 9, 2019)

[3] Casey Family Programs. "What are the outcomes for youth placed in congregate care settings?" https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/. (Accessed December 9, 2019)

[4] Casey Family Programs. "What are the outcomes for youth placed in congregate care settings?" https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/. (Accessed December 9, 2019)

[5] Casey Family Programs. "What are the outcomes for youth placed in congregate care settings?" https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/. (Accessed December 9, 2019)

[6] Casey Family Programs. "What are the outcomes for youth placed in congregate care settings?" https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/. (Accessed December 9, 2019)

[7] Or Laws 2019, ch 619

[8] Id. § 3a.

[9] Id. § 3a(1)(a).

[10] Id. § 5.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Chiamulera, Claire. "Reducing Congregate Care Placements: Strategies for Judges and Attorneys." Child Law Practice Today. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january-december-2018/reducing-congregate-care-placements–strategies-for-judges-and-a/. (Accessed December 9, 2019)

[16] Or Laws 2019, ch 619, § 6

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Or Laws 2019, ch 619, § 7

[22] Id.

[23] Id.

[24] Id.

[25] ORS 419B.349

[26] ORS 419B.343

[27] ORS 419B.349

[28] ORS 419B.337

[29] ORS 419B.343

[30] ORS 419B.343 and 419B.443

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