

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7065 PCB CFS 18-01 Child Welfare
SPONSOR(S): Health & Human Services Committee; Children, Families & Seniors Subcommittee, Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee	12 Y, 0 N	Grabowski	Brazzell
1) Health Care Appropriations Subcommittee	11 Y, 0 N	Pridgeon	Pridgeon
2) Health & Human Services Committee	18 Y, 0 N, As CS	Grabowski	Calamas

SUMMARY ANALYSIS

The child welfare system identifies families whose children are at risk of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems endangering children. If the problems cannot be addressed in-home, the child welfare system finds safe out-of-home placements, such as relative and non-relative caregivers, foster families, or adoptive families. As of October 31, 2017, 11,909 children were receiving services in their homes, while 24,576 children were in out-of-home care.

Title IV-E of the federal Social Security Act provides federal reimbursement to states for a portion of the cost of foster care, adoption assistance, and (in states electing to provide this kind of support) kinship guardianship assistance on behalf of each child who meets federal eligibility criteria. Florida has operated under a Title IV-E waiver since 2006 that affords the state additional flexibility in the use of these federal funds. However, the waiver expires September 30, 2018, or in 2019 if the waiver is renewed for an additional year, reducing flexibility and causing an operating deficit of roughly \$70-\$90 million per year for the Department of Children and Families (DCF).

CS/HB 7065 makes several policy changes to allow the state to prepare for the loss of the Title IV-E waiver, comply with previously-waived federal laws, and shift funding streams to mitigate the projected deficit.

The federal Fostering Connections and Increasing Adoptions Act established a Guardianship Assistance Program (GAP) for children living with relative caregivers and fictive kin (non-relatives who have a pre-existing, significant family-like relationship with a child). Under GAP, states may use federal Title IV-E funds for kinship guardianship payments for children living in the homes of relatives and fictive kin who become the children's legal guardians. HB 7065 establishes a federally-subsidized GAP administered by DCF to begin July 1, 2019. The bill includes necessary definitions, eligibility standards, and licensure standards that correspond to the federal requirements for GAPs. The bill also sets initial payment rates for GAP participants, in accordance with federal standards. This would replace the state's relative caregiver program (including the non-relative component). Under the bill, the existing program will stop accepting new applications on June 30, 2019. Caregivers participating in the program prior to that date will be allowed to continue participation or transfer to the GAP, but the program will phase out over time in favor of the GAP.

The bill also modifies DCF's extended foster care program to comply with Title IV-E requirements, which will allow DCF to earn additional federal Title IV-E funding for services provided. The existing program serves young adults aged 18 to 21 who have not achieved permanency. Likewise, the bill revises the parameters of adoption assistance to include young adults aged 18 to 21, in compliance with federal requirements.

The bill establishes a new, five-tier licensure model for foster homes. This model assigns levels of licensure to prospective foster care providers based on the characteristics of the child or children to be placed with the provider, and will be compliant with federal GAP requirements. This licensure structure will facilitate the establishment of GAP by allowing DCF to waive non-safety licensure requirements for child-specific licensees on a case-by-case basis.

The bill has a significant positive recurring fiscal impact on state revenues through increased federal funds earned. The bill has a significant negative fiscal impact to the DCF. See Fiscal Comments.

The bill has an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7065c.HHS

DATE: 2/16/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children.

To serve families and children, the Department of Children and Families (DCF) contracts for foster care and related services with lead agencies, also known as community-based care organizations (CBCs). The outsourced provision of child welfare services was intended to increase local community ownership of service delivery and design.¹ DCF, through the CBCs, administers a system of care for children² to:

- Prevent children's separation from their families;
- Intervene to allow children to remain safely in their own homes;
- Reunify families who have had children removed from their care, if possible and appropriate;
- Ensure safety and normalcy for children who are separated from their families;
- Enhance the well-being of children through educational stability and timely health care;
- Provide permanency; and
- Develop their independence and self-sufficiency.

Florida uses funds from a variety of sources for child welfare services, such as the Social Services Block Grant, the Temporary Assistance to Needy Families block grant, Title XIX Medicaid administration, Title IV-B, Title IV-E, various other child welfare grants, and general revenue.

Dependency Case Process

When DCF removes a child from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care.

Many of the federal requirements related to the dependency process can be traced to the Adoption and Safe Families Act (ASFA) of 1997.³ The ASFA expanded the use of detailed case planning, while emphasizing the well-being of children at all critical points during the dependency case process.⁴ It further requires that states make timely decisions regarding permanency. The permanency goal is enforced primarily via a requirement that states terminate the parental rights of children who have spent 15 or more months of the past 22 months in foster care.⁵

Throughout the dependency process, DCF must develop and refine a case plan with input from all parties to the dependency case that details the problems being addressed as well as the goals, tasks, services, and responsibilities required to address the concerns of the state.⁶ The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.⁷

¹ Department of Children and Families, *Community-Based Care*, <http://www.myflfamilies.com/service-programs/community-based-care> (last accessed November 16, 2017).

² S. 409.145(1), F.S.

³ Public Law 105-89.

⁴ Committee on Child Maltreatment Research, Policy, and Practice for the Next Decade: Phase II, *New Directions in Child Abuse and Neglect Research* (2004), available at <https://www.ncbi.nlm.nih.gov/books/NBK195980/> (last accessed November 6, 2017).

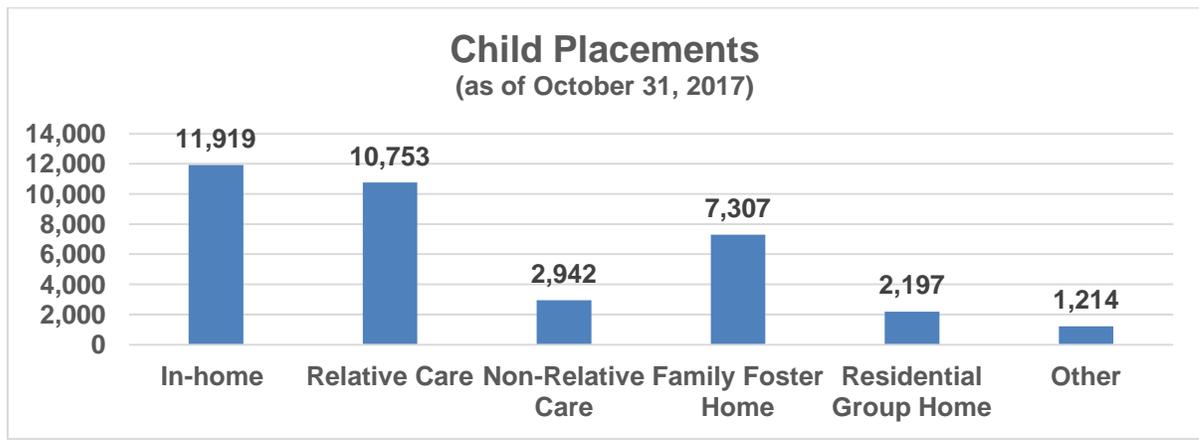
⁵ *Id.*

⁶ Ss, 39.6011 and 39.6012, F.S.

⁷ S. 39.01(11), F.S.

Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.⁸

Placements of Children in the Child Welfare System



Source: Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, November 2017, p. 29-30.

In-Home and Out-of-Home Care

DCF is required to administer a system of care that endeavors to keep children with their families and provides interventions to allow children to remain safely in their own homes.⁹ Protective investigators and CBC case managers can refer families for in-home services to allow a children who would otherwise be unsafe to remain in their own homes. As of October 31, 2017, 11,909 children were receiving services in their homes.¹⁰

When a child protective investigator determines that in-home services are not enough to allow a child to safely remain in his or her home, the investigator removes the child from his or her home and places the child with a safe and appropriate temporary placement. These temporary placements, referred to as out-of-home care, provide housing and services to children until they can return home to their families or achieve permanency with other families through adoption or guardianship.¹¹ Out-of-home placements range from temporary placement with a family member to a family foster home to a residential child-caring agency to a permanent adoptive placement with a family previously unknown to the child.¹² As of October 31, 2017, 24,576 children were in out-of-home care.¹³

CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.¹⁴ Legislative intent is to place children in a family-like environment when they are removed from their homes.¹⁵ When possible, child protective investigators and lead agency case managers place children with relatives or responsible adults whom they know and with whom they have a relationship. These out-of-home placements are referred to as relative and non-relative caregivers. When a relative or non-relative caregiver placement is not possible, case managers try to place children in family foster homes licensed by DCF.

⁸ S. 39.521, F.S.

⁹ *Supra* note 2.

¹⁰ Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, November 2017, p. 29, available at http://centerforchildwelfare.fmhi.usf.edu/ga/cwkeyindicator/KI_Monthly_Report_Nov2017.pdf (last accessed January 9, 2018).

¹¹ Office of Program Policy and Government Accountability, Research Memorandum, Florida's Residential Group Care Program for Children in the Child Welfare System (December 22, 2014) (on file with the Children, Families, and Seniors Subcommittee).

¹² S. 409.175, F.S.

¹³ *Supra* note 10.

¹⁴ Child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement. (Rule 65C-28.004, F.A.C.)

¹⁵ S. 39.001(1), F.S.

Some children have extraordinary needs, such as multiple placement disruptions, mental and behavioral health problems, juvenile justice involvement, or disabilities, which may require case managers to place them in residential group care. The primary purpose of residential group care is to provide a setting that addresses the unique needs of children and youth who require more intensive services than a family setting can provide.¹⁶

Relatives and Non-Relative Caregivers

Research indicates that children in the care of relatives and non-relatives, such as grandparents or family friends, benefit from increased placement stability compared to children placed in general foster care. As opposed to children living in foster care, children living in relative and non-relative care are more likely to remain in their own neighborhoods, be placed with their siblings, and have more consistent interactions with their birth parents than do children who are placed in foster care, all of which might contribute to less disruptive transitions into out-of-home care.¹⁷ Relative and non-relative caregivers are not required to be licensed, but do undergo a walk-through of their homes to determine if the homes are appropriate to place the children.

Florida created the Relative Caregiver Program in 1998¹⁸ to provide financial assistance to eligible relatives caring for children who would otherwise be in the foster care system. In 2014, the Legislature expanded the program to include nonrelatives with whom a child may have a close relationship but are not blood relatives or a relatives by marriage.¹⁹ Those nonrelatives are eligible for financial assistance if they are able and willing to care for the child and provide a safe, stable home environment. The court must find that a proposed placement is in the best interest of the child.²⁰

Family Foster Homes

A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Foster homes are licensed²¹ and are inspected regularly, and foster parents go through a rigorous interview and training process before being approved.²² Such homes also include specialized foster homes for children with special needs.²³

Residential Group Care

Residential group care (RGC) placements are licensed by DCF as residential child-caring agencies²⁴ that provide staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged.²⁵ These include maternity homes, runaway shelters, group homes, and emergency shelters.²⁶ The two primary models of group care are the shift model, with staff working in shifts providing 24-hour supervision, and the family model, which has a house parent or parents that live with and are responsible for 24-hour care of children within the group home.²⁷

Lead agencies must consider placement in RGC if the following specific criteria are met:

- The child is 11 or older;

¹⁶ S. 39.521, F.S.

¹⁷ David Rubin and Downes, K., et al., The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care (June 2, 2008), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/> (last accessed January 10, 2018).

¹⁸ S. 39.5085, F.S.

¹⁹ Ch. 2014-224, Laws of Florida.

²⁰ *Supra* note 8.

²¹ *Supra* note 12.

²² Florida Department of Children and Families, Fostering Definitions, available at <http://www.myflfamilies.com/service-programs/foster-care/definitions> (last accessed January 10, 2018).

²³ *Supra* note 12.

²⁴ *Supra* note 11.

²⁵ *Supra* note 12.

²⁶ *Id.*

²⁷ *Supra* note 11.

- The child has been in licensed family foster care for six months or longer and removed from family foster care more than once; and
- The child has serious behavioral problems or has been determined to be without the options of either family reunification or adoption.²⁸

In addition, lead agencies must consider information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement.²⁹ If the lead agency case managers determine that RGC would be an appropriate placement, the child must be placed in RGC if a bed is available. Children who do not meet the specified criteria may be placed in RGC if it is determined that such placement is the most appropriate for the child.³⁰

Not only does RGC provide a placement option, it can also serve as a treatment component of the children's mental health system of care.³¹ Children in RGC with behavioral health needs receive mental health, substance abuse, and support services that are provided through Medicaid-funded Behavioral Health Overlay Services.³² Residential group homes also directly employ or contract with therapists and counselors.³³

Because RGC can be part of a dependent child's mental health system of care, it is one of the most expensive placement options for children in the child welfare system. Unlike rates for foster parents and relative caregivers, which are set in statute or by rule, CBCs annually negotiate rates for RGC placements with providers.

Extended Foster Care

In 2013, the Legislature established the framework for extended foster care, which applies to young adults aged 18 to 21 who have not achieved permanency prior to their 18th birthdays.³⁴ The program builds on independent living assistance services that were previously available to young adults who "aged-out" of the foster care system.³⁵ Section 39.6251, F.S., sets the parameters for extended foster care services, which are available to young adults who are living in licensed care on their 18th birthday and who are:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or,
- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.³⁶

Program eligibility is also contingent on the living situation of a young adult. Participants are required to live independently, but in an environment in which they are provided supervision, case management, and support services by either DCF or a relevant CBC. Examples of such an environment include college dormitories, shared housing, and foster family homes.³⁷

²⁸ S. 39.523(1), F.S.

²⁹ Id.

³⁰ S. 39.523(4), F.S.

³¹ Richard Barth, *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*. Chapel Hill, NC: University of North Carolina, School of Social Work, Jordan Institute for Families (June 17, 2002), available at:

http://www.researchgate.net/publication/237273744_vs._Foster_Homes_The_Empirical_Base_for_a_Century_of_Action.

³² Office of Program Policy and Government Accountability, *Research Memorandum, Florida's Child Welfare System: Out-of-Home Care* (November, 12, 2015) (on file with the Children, Families, and Seniors Subcommittee).

³³ Id.

³⁴ Ch. 2013-178, L.O.F.

³⁵ For additional detail, see *Bill Analysis and Fiscal Impact Statement of CS/SB 1036*, Senate Appropriations Committee, April 21, 2013. Available at

<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2013s1036.ap.DOCX&DocumentType=Analysis&BillNumber=1036&Session=2013> (last accessed January 17, 2018).

³⁶ S. 39.6251(2), F.S.

³⁷ S. 39.6251(4), F.S.

Licensure

DCF is required to license most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.³⁸

The following placements do not require licensure under the licensing statute:

- Relative caregivers,³⁹
- Non-relative caregivers,⁴⁰
- An adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption,⁴¹ and
- Persons or neighbors who care for children in their homes for less than 90 days.⁴²

Licensure involves meeting rules and regulations pertaining to:

- The operation, conduct, and maintenance of these homes,
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served,
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served,
- The ratio of staff to children required to provide adequate care and supervision of the children served,
- The maximum number of children in the home, and
- The good moral character based upon screening, education, training, and experience requirements for personnel.⁴³

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. The department must issue a license for those homes and agencies that meet the minimum licensure standards.⁴⁴ However, the issuance of a license does not require a lead agency to place a child with any home or agency.⁴⁵

Title IV-E Funding for Child Welfare

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of these funding streams is Title IV-E of the Social Security Act. Title IV-E provides federal reimbursement to states for a portion of the cost of foster care, adoption assistance, and (in states electing to provide this kind of support) kinship guardianship assistance on behalf of each child who meets federal eligibility criteria. Title IV-E also authorizes funding to support services to youth who “age out” of foster care, or are expected to age out without placement in a permanent family. While Title IV-E funding is an entitlement, eligibility is limited to those children who:

- Are from a home with very low income (less than 50% of federal poverty level in most states),
- Have been determined by a judge to need certain care,
- Are living in a licensed family foster home or a “child care institution”, and
- Are under 18 years old, unless the state has included older youth in its Title IV-E plan.

³⁸ *Supra* note 12.

³⁹ S. 409.175(1)(e), F.S.

⁴⁰ *Id.*

⁴¹ S. 409.175(4)(d), F.S.

⁴² S. 409.175(1)(e), F.S.

⁴³ *Supra* note 12.

⁴⁴ S. 409.175(6)(h), F.S.

⁴⁵ S. 409.175(6)(i), F.S.

A Congressional Research Service analysis estimates that less than half of the children in foster care met Title IV-E foster care eligibility criteria in 2015, which signals the relative restrictiveness of traditional Title IV-E funding.⁴⁶

In addition to narrow eligibility, Title IV-E places firm guidelines on the use of federal matching funds. Eligible Title IV-E expenditures include:

- Foster care maintenance payments (for the child's room and board);
- Caseworker time to perform required activities on behalf of eligible children in foster care or children at imminent risk of entering foster care (e.g., finding a foster care placement for a child and planning services needed to ensure a child does not need to enter care, is reunited with his or her parents, has a new permanent home, or is otherwise prepared to leave foster care);
- Program-related data system development and operation, training, and recruitment of foster care providers; and
- Other program administration costs.

The federal government pays a share of these costs ranging from 50-83%, depending on the nature of the expenditure, and additionally in regard to foster care maintenance payments, the state's per capita income.⁴⁷ Florida was projected to spend an estimated \$182 million in Title IV-E funds in Fiscal Year 2016-17, about 15% of total child welfare spending.⁴⁸

However, Title IV-E funds generally cannot be used for an array of services that may be vital to the foster care population, such as family support services, intensive in-home services, and mental health and substance abuse services. While Title IV-E is an entitlement program that may be used to pay a portion of the foster care maintenance costs of all eligible children, it cannot be used to provide services to either prevent placement or to hasten a child's return home.⁴⁹

Title IV-E Waivers

In 1994, Congress authorized the U.S. Department of Health and Human Services (HHS) to approve State demonstration projects made possible by waiving certain provisions of Title IV-E. This provided states flexibility in using federal funds for services promoting safety, well-being, and permanency for children in the child welfare system.⁵⁰ HHS may waive compliance with standard Title IV-E requirements and instead allow states to establish projects that allow them to serve children and provide services that are not typically eligible. To do so, states must enter into an agreement with the federal government outlining the terms and conditions to which the state will adhere in using the federal funds. The states also agree to evaluate the projects.⁵¹ Currently 26 states have approved projects, including Florida.⁵²

Florida's Title IV-E Waivers

Florida's original Title IV-E waiver was initially effective October 1, 2006, and was to extend for five years. Key features of the waiver were:

⁴⁶ Emelie Stoltzfus, *Child Welfare: An Overview of Federal Programs and their Current Funding*, CONGRESSIONAL RESEARCH SERVICE, January 10, 2017, p. 13-15, available at <https://fas.org/sgp/crs/misc/R43458.pdf> (last accessed November 27, 2017).

⁴⁷ *Id.*

⁴⁸ Department of Children and Families, *Child Welfare Funding Basics for Florida in Light of Our Title IV-E Demonstration Waiver and the Family First Prevention Services Act of 2016 - HR 5456*, presented at the Florida Coalition for Children Foundation's 2016 Annual Conference, on file with Children, Families and Seniors Subcommittee staff.

⁴⁹ U.S. Department of Health and Human Services, Administration for Children and Families. *Synthesis of Findings: Title IV-E Flexible Funding Child Welfare Waiver Demonstrations*. September 2005. Available at https://www.acf.hhs.gov/sites/default/files/cb/synthesis_of_findings_assisted_guardianship_flexible_funding.pdf (last accessed February 12, 2018).

⁵⁰ Amy C. Vargo et al., *Final Evaluation Report, IV-E Waiver Demonstration Evaluation, SFY 11-12*, March 15, 2012, p. 5, available at <http://www.centerforchildwelfare.org/kb/LegislativeMandatedRpts/IV-EWaiverFinalReport3-28-12.pdf> (last accessed January 8, 2018).

⁵¹ 42 U.S.C. §1320a-9(f).

⁵² *Supra* note 50, at 15.

- A capped allocation of funds, similar to a block grant, distributed to community-based care lead agencies for service provision;
- Flexibility to use funds for a broader array of services beyond out-of-home care; and
- Ability to serve children who did not meet Title IV-E criteria.⁵³

The original waiver tested the hypotheses that under this approach⁵⁴:

- An expanded array of community-based care services would become available;
- Fewer children would need to enter out-of-home care;
- Child outcomes would improve; and,
- Out-of-home care costs would decrease while expenditures for in-home and preventive services would increase.

Results indicated that the waiver generally achieved these goals, though evaluators noted areas of improvement available regarding the ongoing assessment of fathers' needs; assessment of children's dental, educational, and physical health needs and provision of needed services; frequency of case manager visits with parents; and engagement of fathers in services.⁵⁵

The federal government extended Florida's original waiver to 2014, then approved a renewal retroactively beginning October 1, 2013. The renewal is authorized until September 30, 2018. The renewal waiver's terms and conditions include the following goals:

- Improving child and family outcomes through flexible use of Title IV-E funds;
- Providing a broader array of community-based services and increasing the number of children eligible for services; and
- Reducing administrative costs associated with the provision of child welfare services by removing current restrictions on Title IV-E eligibility and on the types of services that may be paid for using Title IV-E funds.⁵⁶

Like the original waiver, the renewal waiver also involves a capped allocation of funds, flexibility to use funds for a wider array of services, and expanded eligibility for children.⁵⁷ The renewal waiver also required that the state procure an independent evaluation of the processes and outcomes under the waiver. The University of South Florida was chosen to complete these evaluations, which are available on the DCF website.⁵⁸

Sunset of Waiver and Non-Renewal

Florida's waiver is due to end September 30, 2018, but can be renewed for one more year (federal law prohibits the federal government from establishing new waivers or allowing current waivers to operate after September 30, 2019⁵⁹). Thus Florida will revert to more restrictive Title IV-E federal funding requirements beginning in 2018, or in 2019 if the waiver is renewed for an additional year.

When the waiver expires, the state will be required to revert to a traditional Title IV-E service model, which will both eliminate federal support for many current services and create a significant funding

⁵³ *Supra* note 50, at 5-6.

⁵⁴ Armstrong, M.I., Vargo, A.C., Jordan, N., Sharrock, P., Sowell, C, Yampolskaya, S., Kip, S. (2009). Evaluation brief on the status, activities and findings related to Florida's IV-E waiver demonstration project: Two years post-implementation. (Florida's IV-E Waiver Demonstration Project – Evaluation Brief Series, 250-2). Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute.

⁵⁵ *Id.* at 2-3.

⁵⁶ *Demonstration Project Terms and Conditions*, p. 4, available at <http://www.centerforchildwelfare.org/kb/GenIVE/WaiverTERms2013-2018.pdf> (last accessed November 16, 2017).

⁵⁷ *Waiver Authority*, p.1, available at <http://www.centerforchildwelfare.org/kb/GenIVE/WaiverTERms2013-2018.pdf> (last accessed January 8, 2017).

⁵⁸ Department of Children and Families, *IV-E Waiver Evaluation Reports*, available at <http://centerforchildwelfare.fmhi.usf.edu/IVEReport.shtml> (last accessed January 9, 2018).

⁵⁹ 42 U.S.C. § 1320a-9(d)(2).

deficit for the state. DCF estimates that expiration of the waiver will lead to an operating deficit of roughly \$70-\$90 million per year over the next five fiscal years.⁶⁰

Bipartisan Budget Act of 2018

On February 9, 2018, Congress enacted and the president signed into law H.R. 1862, also known as the Bipartisan Budget Act of 2018.⁶¹ The bill is primarily a continuing resolution that funds the federal government through March 23, 2018, but it also includes the substance of the Family First Prevention Services Act (FFPSA), a bill that was introduced in both the 2016-17 and 2017-18 congressional terms.

The FFPSA has permanent provisions impacting federal support for child welfare and foster care. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. The services that states can be reimbursed for providing to children and their families meeting eligibility requirements address mental health, substance abuse, family counseling, and parent skills training. However, the FFPSA also introduces new limits on federal funding for placements in congregate settings.⁶²

The FFPSA also includes funding opportunities for states that establish and operate kinship navigator programs.⁶³ These programs would offer information to help relative caregivers and fictive kin learn about and access the range of support services available to them and children in their care provided by public, private, community, and faith-based organizations.⁶⁴

As Florida provides these types of preventative services to families in the child welfare system, the state may be able to offset some of the costs associated with the expiration of the Title IV-E waiver by taking advantage of the new and enhanced federal funds available under the FFPSA. Florida also uses Title IV-E funds for placements in congregate settings. How much additional federal revenue the state will be able to earn under the FFPSA is unknown at present. The Congressional Budget Office estimates that the FFPSA will result in new federal outlays nationally over the next ten years of approximately \$1.5 billion for foster care prevention services (an average of \$150 million per year, nationwide) and programs and approximately \$125 million in Title IV-E payments for evidenced-based kinship navigator programs over the next ten fiscal years (an average of \$12.5 million per year, nationwide).⁶⁵

Title IV-E Guardianship Assistance Program

Congress approved the Fostering Connections and Increasing Adoptions Act in 2008.⁶⁶ A key element of the legislation is the creation of a federally supported Guardianship Assistance Program (GAP) for relatives. The GAP gives states the option of using federal Title IV-E funds to support kinship guardianship payments for children living in the homes of relative caregivers who become the children's legal guardians.⁶⁷ The GAP provides support for children who meet traditional Title IV-E eligibility

⁶⁰ Department of Children and Families. Agency bill analysis, dated December 6, 2017. On file with staff of the Children, Families and Seniors Subcommittee.

⁶¹ H.R. 1862 of 2018. P.L. 115-123.

⁶² John Kelly. "One Month of Spending, Years of Child Welfare Reform." *Chronicle of Social Change*. February 9, 2018. Available at <https://chronicleofsocialchange.org/child-welfare-2/one-month-spending-years-child-welfare-reform> (last accessed February 12, 2018).

⁶³ *Supra* note 61.

⁶⁴ For more information, see "Kinship Navigator Programs – Summary & Analysis." Grandfamilies.org. Available at <http://www.grandfamilies.org/Topics/Kinship-Navigator-Programs/Kinship-Navigator-Programs-Summary-Analysis> (last accessed February 12, 2018).

⁶⁵ Congressional Budget Office. "Estimated Direct Spending and Revenue Effects of Division E of Senate Amendment 1930, the Bipartisan Budget Act of 2018." February 8, 2018. Available at <https://www.cbo.gov/publication/53557> (last accessed February 12, 2018).

⁶⁶ H.R. 6893 of 2008. P.L. 110-351.

⁶⁷ Mark F. Testa and Leslie Cohen. "Pursuing Permanence for Children in Foster Care: Issues and Options for Establishing a Federal Guardianship Assistance Program in New York State." School of Social Work, The University of North Carolina at Chapel Hill. June 2010. Available at

criteria, so the establishment of a state GAP is not contingent on the continuation of a Title IV-E waiver. If the existing Title IV-E waiver cannot be renewed beyond 2019, establishment of a state GAP framework would allow Florida to receive other Title IV-E funds to support guardianship, which could mitigate the aggregate loss of Title IV-E funds. Establishment of a state GAP would also allow DCF to provide caregivers who establish legal guardianship with an improved monthly stipend relative to existing state programs.

Kinship Care and Guardianship

Kinship care has been defined as "the full-time nurturing and protection of children who must be separated from their parents, by relatives, members of their tribes or clans, godparents, stepparents, or other adults who have a kinship bond with a child."⁶⁸ The benefits of permanent placements with relatives are well established. The GAP reflects a significant body of research establishing the importance of linking foster children with relatives and other close acquaintances. Evidence demonstrates that children in kinship care:

- Experience less trauma as a result of being separated from parents and placed with strangers;
- Are more likely to be placed together with their siblings;
- Experience fewer behavioral problems than children in traditional foster care;
- Are able to stay connected to their extended family networks and maintain cultural and familial ties; and,
- Are less likely to be on psychotropic medication.⁶⁹

Moreover, recent research indicates that children placed with relative guardians are more likely to achieve permanency goals with those guardians than children placed in other forms of foster care.⁷⁰

Relative and Non-Relative Care in Florida

Florida law already maintains strong preferences for relative guardians throughout its child welfare system of care. Section 39.5085, F.S., includes guidelines for relative care and indicates that DCF should endeavor to:

(b) **Recognize family relationships** in which a grandparent or other relative is the head of household that includes a child otherwise at risk of foster care placement.

(c) **Enhance family preservation and stability** by recognizing that most children in such placements with grandparents and other relatives do not need intensive supervision of the placement by the courts or by the department. (emphasis added)⁷¹

There are four options for placement with relatives or fictive kin in Florida, which vary in the amount of funding and fund source and the relationship of the caregiver to the child. These options are:

- Relative caregiver program (relative component);
- Relative caregiver program (non-relative component);
- TANF Child-only funding; or,
- Placement or permanent guardianship without funding.

<http://ocfs.ny.gov/main/reports/Pursuing%20Permanence%20for%20Children%20in%20Foster%20Care%20June%202010.pdf> (last accessed January 8, 2018).

⁶⁸ Child Welfare League of America. *Kinship care: A natural bridge*. Washington, DC: 1994.

⁶⁹ MaryLee Allen and Jennifer Miller. "Kinship Care and the Fostering Connections Act." Perspectives on Fostering Connections: A Series of White Papers on the Fostering Connections to Success and Increasing Adoptions Act of 2008. February 2013. Available at <http://www.childrensdefense.org/library/data/state-data-repository/perspectives-on-fostering.pdf> (last accessed January 9, 2018).

⁷⁰ Tessa Bell and Elisa Romano. "Permanency and Safety Among Children in Foster Family and Kinship Care: A Scoping Review." *Trauma, Violence, & Abuse* Vol 18, Issue 3, pp. 268 – 286. October 11, 2015.

⁷¹ S. 39.001(1)(b)4.f. and S. 39.001(1)(b)4.j., F.S.

Relative Caregiver Program

The Legislature established the relative caregiver program (RCP) in 1998, which provides temporary cash assistance to individuals who meet eligibility rules and have custody of a relative child under age 18 who has been placed in his or her home through the dependency system.⁷² In 2014, the program expanded to include to nonrelatives with whom a child may have a close relationship, though its name remained the same.⁷³

The intent of the RCP is to provide support to relative caregivers who would otherwise struggle with the financial impact of taking a child into their homes. The program is funded with a combination of federal revenues under the Temporary Assistance to Needy Families (TANF) program and state revenues (particularly for the non-relative component, which does not qualify for TANF funding).⁷⁴ At present, the basic monthly payment amount to relatives and non-relative caregivers under the program is linked to the age of the child under care:

- Age 0 through age 5 - \$242 per month;
- Age 6 through age 12 - \$249 per month;
- Age 13 through age 18 - \$298 per month.⁷⁵

Relative and nonrelative caregivers may become eligible for these subsidies without having to meet foster care licensure standards.⁷⁶

TANF Child-Only Funding

The TANF program is a block grant that provides states, territories, and tribes with federal funds each year to cover benefits, administrative expenses, and services targeted to needy families. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Florida's Temporary Cash Assistance (TCA) Program is funded through the TANF block grant and provides cash assistance to needy families with children that meet eligibility requirements.

Children and caregivers who do not meet the eligibility criteria for the relative caregiver program may be eligible for child-only subsidies under TCA if:

- The child has not been adjudicated dependent, but is living with a relative,⁷⁷ or
- The child still resides with his or her custodial parent, but that parent is not eligible to receive TCA.⁷⁸

Financial support from the TANF child-only program is limited to relatives and provides a lower monthly subsidy than the Relative Caregiver programs.⁷⁹

Permanent Guardianship without Funding

It is also possible for caregivers to become permanent guardians without the promise of any financial assistance. Section 39.6221, F.S., sets the criteria by which an individual may seek permanent guardianship of a child. In cases where reunification or adoption are not in the best interest of a child,

⁷² S. 39.5085(2), F.S.

⁷³ *Supra* note 19.

⁷⁴ Some children placed with a relative guardian are eligible for the TANF "child only" program. For more information, see Department of Children and Families, *Temporary Assistance to Needy Families State Plan Renewal: October 1, 2014 – September 31, 2017*. Available at <http://www.dcf.state.fl.us/programs/access/docs/TANF-Plan.pdf> (last accessed January 17, 2018).

⁷⁵ 65C-28.008, F.A.C.

⁷⁶ S. 39.5085(2)(c), F.S.

⁷⁷ Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.

⁷⁸ Child-only families also include situations where a parent is receiving federal Supplemental Security Income (SSI) payments, situations where the parent is not a U.S. citizen and is ineligible to receive TCA due to his or her immigration status, and situations where the parent has been sanctioned for noncompliance with work requirements.

⁷⁹ *Supra* note 74.

permanent guardianship may be considered by the court.⁸⁰ For families and children who do not meet the criteria of the Relative Caregiver programs or the TANF child-only criteria, unsubsidized guardianship may be established. The following chart summarizes the guardianship options available at present.

	Relative Caregiver	Non-Relative Caregiver	TANF Child-Only	Unsubsidized Guardianship
Statutory Authority	S. 39.5085, F.S.	S 39.5085, F.S.	S. 414.045, F.S. 45 CFR Part 233	S. 39.6221, F.S.
Relationship to Child	Relative "within the fifth degree by blood or marriage"	Non-relative	Relative	Relative or non-relative
Fund Source	State and federal	State only	State and federal	NA
Benefit Amount (monthly)	Age 0 - 5: \$242 Age 6 - 12: \$249 Age 13 - 18: \$298	Age 0 - 5: \$242 Age 6 - 12: \$249 Age 13 - 18: \$298	\$95 - \$180	NA

Federal Requirements for GAP

The federal Fostering Connections Act and Increasing Adoptions Act promotes permanency for children living with kin by providing states with the option to use federal Title IV-E funding for kinship guardianship subsidies. If a child meets select Title IV-E eligibility standards, he or she may also be eligible for a GAP subsidy if:

- The child has been removed from his or her family's home pursuant to a voluntary placement agreement or as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare;
- The child is eligible for federal foster care maintenance payments under Title IV-E of the Social Security Act for at least six consecutive months while residing in the home of the prospective relative guardian who is licensed or approved as meeting the licensure requirements as a foster family home;
- Return home or adoption are not appropriate permanency options for the child;
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child; and,
- The child has been consulted regarding the guardianship arrangement (applicable to children age 14 and older).⁸¹

Likewise, a prospective guardian must meet certain conditions to qualify for a GAP subsidy. He or she:

- Must be the eligible child's relative or close fictive kin⁸²;
- Must have undergone fingerprint-based criminal record checks and child abuse and neglect registry checks;
- Must be a licensed foster parent and approved for guardianship assistance by the relevant state department;
- Must display a strong commitment to caring permanently for the child; and,
- Must have obtained legal guardianship of the child after the guardianship assistance agreement has been negotiated and finalized with the department.⁸³

Federal guidance on GAP implementation recognizes that many relative caregivers may find the foster care licensure process burdensome. Accordingly, states are granted the authority to determine what

⁸⁰ S. 39.6221, F.S.

⁸¹ 42 U.S.C. § 673(d)(3)(A).

⁸² Federal guidance gives states the flexibility to use inclusive definitions of the term "relative". U.S. Department of Health and Human Services, Agency for Children and Families, Program Instruction ACYF-CB-PI-10-01, February 18, 2010.

⁸³ 42 U.S.C. § 671(a)(20)(D) and 673(d)(3)(A).

constitutes a “non-safety” licensure standard and, on a case-by-case basis, offer waivers to those standards when appropriate.⁸⁴

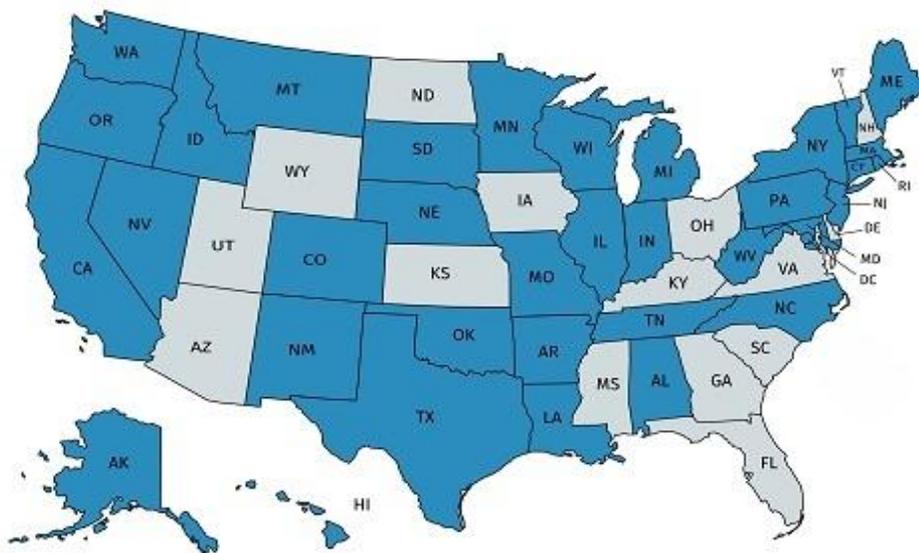
GAPs in Other States

As of May 2017, 35 states, the District of Columbia, and 8 Native American tribes or tribal consortia had established federally-subsidized guardianship assistance programs.⁸⁵ The earliest federally-subsidized GAPs were implemented in 2009, in Maine, Missouri, and Oregon.⁸⁶

California’s Kinship Guardianship Assistance Payment (Kin-GAP) was originally established as a fully state-funded program in 2000. In many ways, the original program was similar to Florida’s Relative Caregiver program. Kin-GAP initially provided relative guardians with a subsidy linked to a child’s age that was equivalent to the state foster care rate. In 2011, the state also adopted a GAP meeting the federal Title IV-E standards and the programs now operate in tandem, with the state-funded guardianship assistance generally directed towards guardians and children not meeting the federal eligibility criteria.⁸⁷

Michigan enacted state-funded guardianship legislation in 2008, prior to passage of the Fostering Connections to Success and Increasing Adoptions Act, and delayed implementation of its state program to provide linkage to the federal requirements for Title IV-E GAP. The program was ultimately implemented in 2011. As of February 2015, 807 children (492 Title IV-E GAP and 315 state GAP) were receiving guardianship assistance with relatives and/or foster parents.⁸⁸

States with GAPs – May 2017⁸⁹



Note: States shaded in blue have established federally-subsidized GAP programs

⁸⁴ U.S. Department of Health and Human Services, Agency for Children and Families, Program Instruction U.S. Department of Health and Human Services, Agency for Children and Families, Program Instruction ACYF-CB-PI-10-01, July 9, 2010.

⁸⁵ Grandfamilies.org. “Subsidized Guardianship – Summary and Analysis.” Available at <http://www.grandfamilies.org/Topics/Subsidized-Guardianship/Subsidized-Guardianship-Summary-Analysis> (last accessed January 16, 2008).

⁸⁶ Children’s Defense Fund. *The Title IV-E Guardianship Assistance Program (GAP): An Update on Implementation and Moving GAP Forward*. September 2015. Available at <http://www.grandfamilies.org/Portals/0/Title%20IV-E%20GAP%20Update.pdf> (last accessed January 16, 2018).

⁸⁷ California Department of Social Services. *All County Letter No. 11-15: New Kinship Guardianship Assistance Payment (KIN-GAP) Program Requirements*. January 31, 2011. Available at http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11_15.pdf (last accessed January 16, 2018).

⁸⁸ *Supra* note 86.

⁸⁹ *Supra* note 85.

Adoption Assistance

DCF provides financial assistance to families who adopt children with special needs or who are otherwise difficult to place in an adoptive home.⁹⁰ This assistance is made available in several ways. DCF may grant a maintenance subsidy to families (maintenance adoption subsidy or MAS), which is an annual payment intended to subsidize the costs of caring for an eligible child.⁹¹ The department may also offer a subsidy to family for any medical costs associated with a child's specific needs.⁹² Lastly, DCF is authorized to offer a nonrecurring reimbursement to an eligible family for costs associated with formalizing an adoption, which may include attorney's fees, court costs, travel expenses, and other related costs.⁹³ Adoption assistance, in these various forms, may be offered to families who adopt an eligible child until the 18th birthday of such a child.⁹⁴

Substance Exposed Newborns

Drug abuse during pregnancy creates adverse health effects in newborns termed Neonatal Abstinence Syndrome (NAS).⁹⁵ Newborns with NAS suffer from withdrawal symptoms such as tremors, abdominal pain, weight loss, sweating, incessant crying, rapid breathing, sleep disturbance and seizures.⁹⁶ The incidence of NAS has increased substantially in the past decade.⁹⁷

The dependency court has discretion as to what case plan tasks and services a parent may be ordered to participate in based on the particular case and facts.⁹⁸ However, the court must order any parent whose actions relating to substance abuse have caused harm to a child, such as being born substance-exposed, to submit to a substance abuse disorder evaluation or assessment and participate and comply with treatment services identified by the assessment or evaluation. Section 39.01(30)(g), F.S., defines harm from a child's exposure to controlled substances or alcohol in two ways. Either:

- The newborn infant tests positive for a controlled substance or alcohol at birth, or
- There is evidence of extensive, abusive and chronic use by a parent of a controlled substance(s) or alcohol and the child is demonstrably adversely affected by such usage.⁹⁹

While pregnant mothers with severe substance use disorders are more likely to give birth to infants testing positive for controlled substances or alcohol, women with mild or moderate substance use disorders may refrain from using long enough to prevent the infant from testing positive or demonstrating symptoms at birth. Although NAS usually manifests quickly after birth in severe cases of maternal drug use, withdrawal symptoms may take days or even weeks to surface in infants whose mother's pre-natal drug use was less severe.¹⁰⁰

Effect of Proposed Changes

Guardian Assistance Program

The bill makes numerous statutory changes to establish a federally-subsidized guardianship assistance program in Florida, such as new and revised definitions, initial program parameters, and revised licensure standards. The establishment of a GAP program represents a significant step towards mitigating the loss of federal revenues to the state that will result from the expiration of Florida's Title IV-E waiver. The program will provide the state with an alternative vehicle for earning federal revenues

⁹⁰ S. 409.166, F.S.

⁹¹ S. 409.166(4), F.S.

⁹² Id.

⁹³ S. 409.166(7), F.S.

⁹⁴ *Supra* note 91.

⁹⁵ McQueen, K. and Murphy-Oikonen, J, *Neonatal Abstinence Syndrome*, The New England Journal of Medicine, Review Article, December 22, 2016, available at: <http://www.nejm.org/doi/pdf/10.1056/NEJMra1600879> (last accessed January 20, 2018).

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ *See* s. 39.521, F.S.

⁹⁹ S. 39.01(30)(g), F.S.

¹⁰⁰ *Supra* note 60.

under Title IV-E, while also offering enhanced cash benefits to certain permanent guardians and the children in their care.

GAP Eligibility Framework

Included in the bill is a statutory framework for a GAP in Florida. The bill creates new sections in ch. 39, F.S., which set eligibility requirements and payment parameters generally reflecting federal requirements as outlined in sections 471 through 475 of the federal Social Security Act. The program would take effect on July 1, 2019, to allow DCF adequate time to establish necessary operational protocols.

The bill defines “guardianship assistance program” as a program that provides benefits to a child’s guardian on behalf of the child. Benefits may be in the form of a monthly guardianship assistance payment, a guardianship nonrecurring payment, or Medicaid coverage.¹⁰¹

Federal law dictates that a prospective guardian must be a relative of the child to be placed, or at least have a familial relationship with the child, in order to be GAP eligible. The bill defines “fictive kin” as a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child. Federal guidance allows states the flexibility to adopt definitions of “relatives” that extend beyond traditional family ties.¹⁰² This new definition will allow for greater participation in the GAP than a more restrictive definition of relative or kin.

In keeping with federal requirements, for a guardian to qualify to receive benefits on behalf of a child, the bill requires that:

- The child’s placement with a prospective guardian has been approved by the court;
- The court has granted legal custody to the guardian;
- The guardian has been licensed as a provider of foster care under s. 409.175, F.S.; and,
- The child was eligible for federal foster care maintenance payments under Title IV-E for at least six consecutive months while the child resided in the home of the guardian and the guardian was licensed as a provider of foster care.

DCF must redetermine eligibility annually for GAP participants. DCF will terminate benefits for participants found ineligible or if the child is absent from the home of the guardian for more than 60 consecutive days, subject to a limited set of exceptions.

The bill sets initial payment parameters for the GAP, which are also in alignment with relevant federal requirements. DCF will provide GAP participants assistance payments of \$4,000 annually, or another amount to be specified in a written agreement, paid on a monthly basis. Participants are also eligible for a one-time payment of up to \$2,000 for expenses associated with obtaining legal guardianship of a child.

Regardless of a child’s age, the bill requires DCF to document how GAP participation supports a child’s permanency goal. For GAP participants, the stated permanency goal will generally be permanent guardianship, and the following information must be documented in each participant’s case plan:

- The manner in which the child meets program eligibility requirements;
- The manner in which the agency determined that reunification or adoption is not appropriate;
- Efforts to discuss adoption with the child’s permanent guardian;
- Efforts to discuss guardianship assistance with the child’s parent or the reasons why efforts were not made;
- The reasons why a permanent placement with the prospective guardian is in the best interest of the child;

¹⁰¹ 42 U.S.C. § 673(b)(3)(c).

¹⁰² *Supra* note 82.

- The reasons why the child is separated from his or her siblings during placement, if applicable; and,
- Efforts to consult the child, if the child is 14 years of age or older, regarding the permanent guardianship arrangement.

Here again, the requirements included in the bill correspond to federal requirements outlined in sections 471 through 475 of the federal Social Security Act.

GAP eligibility typically ends when a child reaches 18 years of age, though under federal law payments can be extended to age 21 under certain conditions. The bill sets out such conditions, which will allow DCF to obtain additional federal revenues in support of young adults currently served by the extended foster care program.

Sunset of Relative Caregiver Program

Under the bill, the new GAP replaces Florida's existing relative caregiver program. The current relative caregiver program will no longer accept initial applications after June 30, 2019, which means that participation will decline over time as children age out of the program. This also applies to the non-relative caregiver component. Guardians and associated children who are enrolled in the program prior to that date can continue participation until they no longer meet eligibility criteria. Conditions that would end eligibility would include the child reaching 18 years of age, a caregiver's choice not to continue providing care, or a child's placement in another setting. Guardians who would like to apply for financial assistance after the established date will be directed to apply for GAP benefits.

Recoupment of Non-relative Caregiver Overpayments

The bill also gives DCF the authority to recoup certain overpayments made under the relative caregiver program. DCF already has such authority when federal TANF disbursements are made, but cannot recoup overpayments when a caregiver is subsidized exclusively with state funds. Between January 2017 and November 2017, DCF could have recouped \$129,770 in funds paid to nonrelative caregivers if such authority had existed.¹⁰³

Extended Foster Care

The bill sets eligibility criteria for federally-subsidized extended foster care equivalent to the requirements currently listed in s. 39.6251, F.S. A young adult, aged 18-21 years who aged out of foster care at age 18, may be eligible for Title IV-E reimbursement if he or she is:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or,
- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.

The bill makes conforming changes to s. 39.6251, F.S., the statute that sets parameters for participation in extended foster care. These changes allow for certain young adults to qualify for GAP participation and allow DCF to obtain additional federal Title IV-E revenues to finance that participation. Absent the changes, the state will not meet federal requirements for earning Title IV-E funds for extended foster care. DCF indicates that approximately 800 young adults are currently participating in extended foster care, and the bill will allow the state to earn additional federal funds as appropriate.¹⁰⁴

¹⁰³ *Supra* note 60.

¹⁰⁴ *Id.*

Adoption Assistance

The bill authorizes DCF to provide maintenance adoption assistance and payments for young adults, ages 18 to 21, in compliance with Title IV-E requirements. The change is effective January 1, 2019, and applies only to young adults whose adoptive parents entered into an adoption assistance agreement after the child reached 16 years of age but before the child reached 18 years of age. Just as with the extended foster care benefits, a young adult and his or her adoptive family may be eligible for adoption assistance benefits if the young adult is:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed for at least 80 hours per month; or,
- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.

The extension of maintenance adoption subsidy (MAS) to age 21 for those children who were adopted at age 16 or 17 will allow the state to earn additional federal revenues under Title IV-E. At present, the MAS payments expire when a child reaches the age of 18. Without these changes, as well, the state would not meet federal requirements for earning Title IV-E funds associated with extended foster care.

The bill also requires that all prospective adoptive homes complete an adoptive home study in order to qualify for a MAS subsidy.

Foster Home Licensure

The federally-subsidized GAP requires that guardians be licensed as foster care providers to qualify for benefits. This represents a meaningful departure from the existing relative caregiver program, which does not require participating guardians to obtain licensure. As licensure standards may prevent otherwise qualified caregivers from participating in a GAP, the federal government allows states to waive non-safety licensure requirements on a case-by-case basis. The bill revises the existing foster care licensure model in anticipation of GAP implementation and the potential for limited exemptions from non-safety standards.¹⁰⁵

The bill establishes a 5-tier foster home licensing structure, which assigns requirements to all foster care settings based on the characteristics of the child or children who would be placed in the home. The bill establishes the following levels of licensure:

- Level I - Child-Specific Foster Homes;
- Level II – Non-Child specific Foster Homes;
- Level III - Safe Foster Homes for Human Trafficking;
- Level IV - Therapeutic Foster Homes; and,
- Level V - Medical Foster Homes.

Level I licensure is aimed at the prospective GAP population and would give DCF flexibility to waive non-safety licensure requirements for relative caregivers on a case-by-case basis. Individuals licensed as level I foster care providers would be required to complete 4 hours of in-service training annually, in addition to meeting all other licensure standards. The bill requires the other levels of licensure to adhere to all current licensure standards, as detailed in s. 409.175, F.S., and any additional certification requirements applicable to each level of license. Individuals licensed as levels II through V foster care providers would be required to complete 8 hours of in-service training, in addition to all other licensure standards.

¹⁰⁵ DCF has begun to identify licensure standards that may be waived on a case specific basis. Many of the standards relate to the physical layout of a guardian's home. For example, existing licensure standards include requirements on the size and location of the child's bedroom. Another standard requires that the home have an operational land-line telephone. These and other non-safety standards may be waived in certain circumstances.

The bill defines “licensing home study” as a documented assessment to determine the safety and appropriateness of any 24-hour living arrangement for a child who is unattended by a parent or legal guardian. A primary caregiver issued a license for a specific child (level I) may apply for a waiver of the non-safety-related and non-health-related elements of a licensing home study under the GAP.

The bill also amends s. 409.145(4), F.S., establishing a new monthly foster parent room and board rate for Level I foster parents at \$333.00, effective July 1, 2019. This is the rate that would generally be paid to GAP participants. Foster care room and board rates for Level II foster parents are modified, effective July 1, 2018, to be:

- Age 0 through age 5 - \$457.95 per month;
- Age 6 through age 12 - \$469.68 per month;
- Age 13 through age 18 - \$549.74 per month.

These rates reflect cost-of-living increases to the statutory provisions originally set in 2014.¹⁰⁶ The bill indicates that future cost of living increases and supplemental room and board rate for independent living skills are only for level II through level V foster parents.

The bill also eliminates references to “emergency shelter parents”. The term no longer applies as used in existing law related to the completion of preservice training.

Projected GAP Participation

It is not yet clear how many RCP participants will successfully transition to GAP or how many relatives and fictive kin will enter the program in the future. The federally-subsidized GAP will require caregivers to meet many of the licensure standards applicable to family foster homes, set forth in s. 409.175, F.S. DCF has the authority to waive non-safety licensure standards on a case-by-case basis¹⁰⁷, but some relatives or fictive kin will be unable to, or prefer not to, meet its requirements. This means that under the bill, some relatives and fictive kin will enter GAP, but some will not. DCF estimates that roughly 9,700 children currently receiving relative or non-relative caregiver benefits would be eligible to transition to the federally-subsidized GAP.¹⁰⁸ For those who do not, *relatives* will be eligible for child-only TANF funding, but *non-relatives* will not be able to obtain payment to support caring for the child. Once the relative caregiver program closes to new participants, GAP will be the only subsidized guardianship program available to non-relative caregivers.

As shown below, the GAP offers participants a higher monthly subsidy than the current relative caregiver program.

Ages	Current Relative Caregiver Rate	Proposed GAP Rate	Increase from RCP to GAP
0-5 Years Old	\$242.00	\$333.00	\$91.00
6 – 12 Years Old	\$249.00	\$333.00	\$84.00
13-18 Years Old	\$298.00	\$333.00	\$35.00

Substance Exposed Newborns

The bill modifies the definition of “harm” associated with exposure to a controlled substance or alcohol included in S. 39.01(30)(g). The existing standard for harm requires DCF to demonstrate that a child is “demonstrably adversely affected” by the substance abuse of a parent. The bill changes this standard to one in which DCF must instead show that substance abuse has or will severely compromise the ability of a parent to provide adequate supervision and care for a child, allowing DCF to prospectively intervene before a child has experienced inadequate supervision and care. This change also gives

¹⁰⁶ S. 409.145(4), F.S.

¹⁰⁷ *Supra* note 82.

¹⁰⁸ *Supra* note 60.

DCF greater authority to intervene in cases where an infant does not immediately present with symptoms of NAS.

The bill has an effective date of July 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.01, F.S.; relating to definitions.
- Section 2:** Amends s. 39.302, F.S.; relating to protective investigations of institutional child abuse, abandonment, or neglect.
- Section 3:** Amends s. 39.521, F.S.; relating to disposition hearings; powers of disposition.
- Section 4:** Amends s. 39.5085, F.S.; relating to Relative Caregiver Program.
- Section 5:** Amends s. 39.6012, F.S.; relating to case plan tasks; services.
- Section 6:** Amends s. 39.6221, F.S.; relating to permanent guardianship of a dependent child.
- Section 7:** Creates s. 39.6225, F.S.; relating to Guardianship Assistance Program.
- Section 8:** Amends s. 39.6251, F.S.; relating to continuing care for young adults.
- Section 9:** Amends s. 394.495, F.S.; relating to child and adolescent mental health system of care; programs and services.
- Section 10:** Amends s. 409.145, F.S.; relating to care of children; quality parenting; “reasonable and prudent parent” standard.
- Section 11:** Amends s. 409.166, F.S.; relating to children within the child welfare system; adoption assistance program.
- Section 12:** Amends s. 409.175, F.S.; relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.
- Section 13:** Amends s. 960.065, F.S.; relating to eligibility for awards.
- Section 14:** Provides for an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT¹⁰⁹:

1. Revenues:

Title IV-E

Due to Florida’s anticipated loss of the Title IV-E waiver, the state will participate in the Title IV-E program without the flexibility of the waiver provisions. This change will require modifications in how child welfare services are reimbursed with state and federal funds. It is estimated that Florida will lose approximately \$67.1 million in federal Title IV-E funding in Fiscal Year 2020-21 and this will grow to \$89.5 million by Fiscal Year 2021-22.

DCF has reviewed and analyzed several other initiatives and strategies that would increase Title IV-E eligibility. One strategy is the implementation of foster care candidacy. While Title IV-E Foster Care is generally not available for in-home case management services, candidacy claiming is an exception. A candidate for foster care is a child who is at imminent risk of removal from the home. Florida’s current practice model is focused on preventing removals when it is safe to do so; therefore, there should be a significant percentage of “candidates” currently being served in the in-home population and consequently eligible for Title IV-E claiming. Similar to GAP, implementation of Foster Care Candidacy increases Title IV-E revenues by shifting otherwise ineligible clients into the IV-E eligible population. It is estimated that implementation of Foster Care Candidacy will

¹⁰⁹ The fiscal comments included here do not include any impacts that may result from the enactment of the Bipartisan Budget Act of 2018 by Congress on February 9, 2018, which included the substance of the Family First Prevention Services Act (FFPSA). It is conceivable that Florida will be eligible for additional federal Title IV-E funds under the Act.

position Florida for an additional \$37 million in Title IV-E earnings. Other strategies analyzed include maximizing eligibility rates, which is estimated to provide \$11 million in additional claiming.

GAP and Extended Foster Care

To expand the population that is eligible for Title IV-E funding, HB 7065 authorizes implementation of the federal GAP and federal EFC programs along with the extension of MAS to age 21 for those children who were adopted at age 16 or 17. DCF will be able to access additional federal funds for these programs through Title IV-E of the Social Security Act over and above the current capped waiver allocation. This includes increased federal claiming due to foster care providers being licensed as a GAP provider as well as federal match claimed for staffing to license GAP providers. See the following chart.

Revenue GAP Program			
	FY 2018-19	FY 2019-20	FY 2020-21
Federal Funds from GAP Licensure Staff	\$ 1,027,831	\$ 4,035,348	\$ 4,035,348
Increased Title IV-E Foster Care Earnings-Relative Care Giver Conversion		\$ 13,051,529	\$ 17,402,038
Increased Title IV-E Foster Care Earnings-Non Relative Care Giver Conversion		\$ 5,280,407	\$ 7,040,543
	\$ 1,027,831	\$ 22,367,284	\$ 28,477,929

Since the passage of the Foster Care Independence Act of 1999, states have been encouraged to create programs to support a continuum of services to youth aging out of foster care. Florida currently offers three different components of the Independent Living Program which includes EFC, Postsecondary Education Services and Support (PESS), and Aftercare Services. The current program, implemented in January 2014, closely mirrors the requirements of the federal extended foster care program for which federal financial participation is allowed, but to date, Florida has funded the program only with state funds. Through the expansion of these programs, Florida can earn additional federal funds to assist in mitigating the loss of federal funds due to the loss of the Title IV-E waiver. Revenue calculations assume implementation of the federal program effective 1/1/2019 (extended MAS would not begin until this date, and EFC costs would only be eligible for federal reimbursement for 50% of the year).

	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Enhanced Federal earnings due to programmatic changes	\$ 3,642,850	\$ 8,893,254	\$ 9,678,614	\$ 10,180,005

2. Expenditures:

GAP

CBC lead agencies will need additional licensing staff and eligibility staff to license and complete the review of initial applications for nonrelative and relative caregivers who are seeking or receiving Guardianship Assistance payments. Prior to completing or approving a DCF licensing packet, staff must be certified as trainers in their agencies' parent preparation pre-service curriculum, and they must be certified as a Child Welfare Licensing Specialist, which takes an average of 2 months to complete. The licensure staff would be hired during April 2019 so they are trained and certified by July 1, 2019 when the GAP legislation is implemented.

DCF estimates that CBCs would need 89 contract staff for licensure of relative caregiver homes and 23 contract staff would be needed for licensure of nonrelative caregiver homes for a total of 112 licensure staff. In addition, CBCs would need 11 contract staff to determine eligibility for relative

caregivers and 3 contract staff would be needed to determine eligibility for nonrelative caregivers, for a total of 14 staff. Licensure staff of 112 plus 14 eligibility staff equals 126 staff. The staff are funded at \$90,070.79 per position (salary and benefits) for a total of \$11,348,919 per year.

DCF would also require two state FTE for the planning and implementation of the program and then for the ongoing oversight of the program on a statewide level. The positions would be needed effective July 1, 2018. The Office of Child Welfare responsibilities will include, but not be limited to, coordination with the federal Children's Bureau concerning GAP; amending or developing rules and operating procedures to support GAP implementation; developing trainings for child welfare professionals and community stakeholders; providing technical assistance and training to child welfare professionals and community stakeholders on GAP; overseeing state and federal audits; creating and maintaining a Title IV-E plan for GAP; drafting, piloting and implementing an eligibility process, and serving as content experts for GAP functionality in the Florida Safe Families Network (FSFN).

	FY 2018-19	FY 2019-20	FY 2020-21
2 State FTE	\$ 189,500	\$ 180,642	\$ 180,642
Licensure Staff for Relative Caregiver Home Conversion-89 CBC Contract Staff	\$ 2,004,075	\$ 8,016,300	\$ 8,016,300
Licensure Staff for Nonrelative Caregiver Home Conversion-23 CBC Contract Staff	\$ 427,836	\$ 2,071,628	\$ 2,071,628
Relative Caregiver Eligibility Determination-11 CBC Contract Staff	\$ 247,695	\$ 990,779	\$ 990,779
Non Relative Caregiver Eligibility Determination-3 CBC Contact Staff	\$ 67,553	\$ 270,212	\$ 270,212
	\$ 2,936,659	\$ 11,529,561	\$ 11,529,561
Federal Match	\$ 1,027,831	\$ 4,035,348	\$ 4,035,348
State General Revenue	\$ 1,908,828	\$ 7,494,214	\$ 7,494,214

Extended Foster Care, Independent Living, and Maintenance Adoption Subsidies

Through the expansion of these programs, Florida can earn additional federal funds to assist in mitigating the loss of federal funds due to the expiration of the Title IV-E waiver. Cost calculations assume implementation of the federal program effective 1/1/2019 (extended MAS would not begin until this date and EFC costs would only be eligible for federal reimbursement for 50% of the year). Funding in FY 2018-19 would be nonrecurring, and no additional State funds are needed for SFY 2020 due to full implementation and increased federal earnings.

	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Total Cost	\$ 37,091,978	\$ 38,348,813	\$ 39,009,485	\$ 39,890,381
Less New and Existing Federal Funds	\$ (11,433,314)	\$ (16,683,718)	\$ (17,469,078)	\$ (17,970,469)
Less Existing GR	\$ (21,661,257)	\$ (21,661,257)	\$ (21,661,257)	\$ (21,661,257)
Total Program Need	\$ 3,997,407	\$ 3,838	\$ (120,850)	\$ 258,656
State General Revenue	\$ 3,997,407	\$ 3,838	\$ (120,850)	\$ 258,656

Information Technology

DCF and its contract providers have also estimated a need of between 9,400 and 12,000 hours to modify the FLORDIA system to support the implementation of GAP at \$117/hour. Changes will also be required for the FSFN system. The system enhancement cost was calculated using level of

effort estimates for Eligibility, EFC, and GAP. These estimates were provided by contract vendors, and they utilized an hourly rate of \$110/hour.

	FY 2018-19
Guardianship Assistance Program	\$ 1,276,147
Extended Foster Care Program & Eligibility Determination Modifications	\$ 4,555,114
	\$ 5,831,261
Federal Funds	\$ 401,487
NR State General Revenue	\$ 4,241,491
State Trust Funds	\$ 1,188,283

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who become permanent guardians will have an indeterminate fiscal impact. A current participant in the relative caregiver program has the opportunity to become licensed and participate in GAP, which would increase his or her monthly subsidy. Conversely, the sunset of the relative caregiver program could also prevent future caregivers from qualifying for a subsidy, if they are unable or unwilling to meet GAP eligibility requirements but would have been able to access payment through that program. It is also possible that such caregivers would qualify for TANF child-only subsidies, but the monthly payments under TANF are substantially lower than those under GAP or the current relative and nonrelative caregiver program.

D. FISCAL COMMENTS:

HB 5001, the proposed General Appropriations Act for Fiscal Year 2018-19 contains the following appropriations to implement the provisions of this bill:

	<u>Rec GR</u>	<u>NR GR</u>	<u>Trust Funds</u>	<u>Total</u>
Title IV-E GAP Implementation (2.0 FTE & 100,384 in Rate)	\$ 1,903,070	\$ 5,758	\$ 1,027,831	\$ 2,936,659
Extended Foster Care, Maintenance Adoption Subsidy to 21, and Independent Living	\$ 1,352,742	\$ 2,644,665	\$ 3,642,850	\$ 7,640,257
Guardianship Assistance Technology Changes			\$ 1,276,147	\$ 1,276,147
Extended Foster Care Program Technology Modifications		\$ 4,241,491	\$ 313,623	\$ 4,555,114
Total	\$ 3,255,812	\$ 6,891,914	\$ 6,260,451	\$ 16,408,177

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill gives DCF rule making authority related to several programs. The bill provides DCF with sufficient rulemaking authority to implement the guardianship assistance program and establish the proposed licensure model for foster family homes. The bill also provides DCF with rule-making authority related to the recoupment of state overpayments under the nonrelative caregiver program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Children, Families, and Seniors Subcommittee adopted three amendments to the PCB, which made both technical and substantive changes. The amendments:

- Introduced a cross-reference to the new section of statute establishing the Guardianship Assistance Program in the definition of “guardian nonrecurring payments”.
- Specified that participants in the Relative Caregiver program enrolled prior to June 30, 2019 may continue participation in that program, so long as the eligibility requirements of the program are met.
- Made stylistic changes to the new section of statute that governs the administration of the Guardianship Assistance Program and requires participants in the Relative Caregiver Program

remaining after the program is closed to new entrants to comply with all program eligibility requirements.

- Revised foster care room and board rates, effective July 1, 2018, and also set applicable payment rates for foster homes, effective after the establishment of the Guardianship Assistance Program on July 1, 2019. Effective July 1, 2018, the monthly foster care room and board rates are:
 - Children age 0-5: \$457.95;
 - Children age 6-12: \$469.68;
 - Children age 13-18: \$549.74
- Required that supplemental payments be made to all foster care providers until June 30, 2019. Effective July 1, 2019, when the Guardianship Assistance Program begins, these payments will only be made to providers licensed at levels II through V.

On February 15, 2018, the Health and Human Services Committee adopted two amendments and reported CS/HB 7065 favorably as a committee substitute. The amendments:

- Allow Guardianship Assistance Program (GAP) participants who enroll at ages 16 or 17 to continue receiving GAP benefits after age 18, rather than individuals enrolling after age 18, to ensure compliance with federal program requirements.
- Specify that an adoption assistance agreement must be completed with DCF before an adoption is finalized for a family to qualify for financial assistance.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.