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Child Welfare in the President's FY2023 Budget

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The President's FY2023 budget requests \$12.9 billion for child welfare programs authorized in Title IV-B and Title IV-E of the Social Security Act (SSA), the Child Abuse Prevention and Treatment Act (CAPTA) and related programs, and the Victims of Child Abuse Act. Comparable funding provided for these same programs in FY2022 (via P.L. 117-103) was \$11.7 billion.

The President's budget proposes to reauthorize through FY2027 the recently expired or expiring funding authorizations for child and family services programs included in Title IV-B of the SSA—the Stephanie Tubbs Jones Child Welfare Services (CWS) and MaryLee Allen Promoting Safe and Stable Families (PSSF) programs. The Administration calls for legislation that would amend PSSF program law to increase mandatory funding authorized for the program (from \$345 million/year to \$645 million/year). This would give states and tribes access to new flexible funds to meet child and family service needs, including for *kinship support*, which the budget proposes to add as an allowable use of PSSF child and family services funds. The budget proposes to further amend PSSF program law to (1) direct that a portion of the new mandatory PSSF funding be used to increase funding annually reserved for the Court Improvement Program and, separately, for Regional Partnership Grants (RPGs) to improve outcomes for children and families affected by substance use disorder; (2) allow a portion of the proposed increase in PSSF mandatory funds to create a new grant program to support civil legal services for child welfare-involved families; and (3) to require states, as a condition of receiving PSSF funds, to report on their use of *kinship diversion* (also referred to as *hidden foster care*), including how many children they place in these settings and information on any supports or services provided. Separately, as part of the annual appropriations process for FY2023, the Administration requests \$106 million in discretionary PSSF funding (compared to \$83 million provided for FY2022) and proposes appropriations act language that would direct \$30 million of that FY2023 discretionary PSSF funding for development, evaluation, and implementation of state and tribal kinship navigator programs (versus \$20 million provided for FY2022).

The budget also calls for legislation to increase annual mandatory funding authority for the Chafee Foster Care Program for Successful Transition to Adulthood (SSA §477) to \$243 million (compared to \$143 million under current law). As part of this proposal, it would make permanent several program flexibilities that were temporarily offered (April 1, 2020–September 30, 2021) to enable states to serve youth more effectively during the COVID-19 pandemic. Among other proposals, it seeks to make permanent the authority to serve former foster youth up to their 27th birthday and the ability to use any amount of Chafee funds (as opposed to the 30% cap under current law) to provide room and board assistance to former foster youth.

The President's budget requests continued discretionary funding for the Adoption and Legal Guardianship Incentive Payments, which are payments to states that increase the rate at which children who would otherwise remain in foster care indefinitely are moved to permanent homes via adoption or legal guardianship. Funding authorization for these payments expired with FY2021. Incentives paid in September 2021 (for adoptions and legal guardianships completed during FY2020) declined to \$24 million, from \$70 million in the previous year. The Administration attributes the reduced level of completed adoptions and legal guardianships to a slowdown during the first year of the COVID-19 public health emergency, including in court activities needed to complete adoptions and legal guardianships. It anticipates a return to prior levels of activity and requests continued annual funding of \$75 million for these payments.

Under the Title IV-E Foster Care, Prevention and Permanency Program, states are entitled to federal support for a part of every eligible program cost. To incentivize state use of authority under Title IV-E to provide prevention services and kinship navigator programs, the President's FY2023 budget proposes to amend Title IV-E to increase the share of federal support provided for those services and programs. It also seeks legislation to increase the federal share of support for Title IV-E eligible children in foster care who are placed with kin, as well as those who leave foster care for legal guardianship with kin. At the same time, it proposes to further reduce the federal share of assistance costs for children in foster care who are placed in non-family settings, including those placed in Qualified Residential Treatment Programs (QRTPs). Finally, it proposes to amend the Title IV-E program to prohibit discrimination in provision of foster care and adoption-related services based on the religious beliefs, gender identity, gender expression, sex, or sexual orientation of children or adults being served.

The FY2023 budget again proposes a competitive grant initiative to address racial inequity in child welfare and support a greater focus on a prevention-first model of child welfare work. This proposal, which would boost discretionary funding for Child Welfare Research, Training and Demonstration by \$100 million, was also included in the FY2022 budget request. The Administration also requests increased FY2023 discretionary funding for grants authorized in CAPTA and the Victims of Child Abuse Act.

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Overview

The President's FY2023 budget proposes \$12.9 billion for support of child welfare activities authorized in Title IV-B and Title IV-E of the Social Security Act (SSA), the Child Abuse Prevention and Treatment Act (CAPTA) and related programs, and the Victims of Child Abuse Act. This amount includes legislative proposals seeking increased mandatory funding for FY2023 of \$744 million (above current law) and increased discretionary funding requests of \$218 million (above final FY2022 funding).

The budget proposals, including requests for certain program amendments and for additional discretionary and mandatory funding, are described as efforts to

- increase support for prevention activities, and encourage a prevention-first approach to child welfare work;
- improve the ability of child welfare workers and the child welfare system to distinguish between poverty and neglect;
- address racial inequities in child welfare work;
- prohibit discrimination in provision of foster care and adoption services based on a child's or adult's religious beliefs, sex, sexual orientation, gender identity, or gender expression;
- better serve families affected by substance use disorder (SUD);
- support civil legal representation for child welfare-involved families;
- modernize and improve the work of courts handling child abuse and neglect proceedings;
- increase flexible child and family services funding to states and tribes, including for support of kinship services;
- encourage states and tribes to implement prevention services and kinship navigator programs under the Title IV-E foster care, prevention, and permanency program;
- incentivize states and tribes to place children who are in foster care or legal guardianship with kin;
- limit the use of group care for children in foster care by further reducing federal support for children in foster care placed in most non-foster family home settings; and
- make permanent certain program flexibilities allowed in the Chafee Foster Care Program for Successful Transition to Adulthood to permit effective services and supports to youth in, or formerly in, foster care.

This report describes the President's FY2023 budget request for child welfare programs administered at the federal level by the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Children's Bureau. Primarily, these are authorized in Title IV-B and Title IV-E of the SSA and by CAPTA. The report also shows funding requested for three competitive grant programs included in the Victims of Child Abuse Act. These programs are administered federally by the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP).

Table 1 shows child welfare funding provided for FY2022 alongside funding proposed in the FY2023 budget.

Table I. Child Welfare Funding: FY2022 Provided and FY2023 Proposed Amounts
(dollars in millions)

Program	FY2022	FY2023 President's Budget Request
Title IV-B of the Social Security Act		
Stephanie Tubbs Jones Child Welfare Services (CWS)	\$269	\$279
Child Welfare, Research, Training & Demonstration	\$19	\$121
MaryLee Allen Promoting Safe and Stable Families (PSSF) (mandatory, after sequestration + discretionary)	\$408	\$714 (includes \$300 legislative proposal) ^a
Title IV-E of the Social Security Act ^c		
Foster Care	\$5,920	\$6,005
Adoption Assistance	\$4,046	\$4,128
Guardianship Assistance	\$317	\$345
Prevention Services	\$112	\$183
Tribal IV-E Plan Development & Technical Assistance (TA)	\$3	\$3
Title IV-E Prevention Services Clearinghouse	\$1	\$10 (includes \$9 legislative proposal)
Legislative proposals for prevention services, kinship navigator programs, foster care, and kinship guardianship assistance, combined	\$161 ^b	\$335 (legislative proposals)
Chafee Foster Care Program for Successful Transition to Adulthood (§477 of the SSA)^d		
Chafee Foster Care Program (general program grants)	\$143	\$243 (includes \$100 legislative proposal)
Chafee Education and Training Vouchers (ETVs)	\$43	\$48
Child Abuse Prevention and Treatment Act (CAPTA)		
State Grants	\$95	\$125
Discretionary Activities	\$36	\$42
Community-Based Child Abuse Prevention (CBCAP) Grants	\$66	\$90
Other Programs (administered within HHS)		
Adoption and Legal Guardianship Incentive Payments (ALGIP)	\$75	\$75
Children's Justice Act Grants	\$20	\$20
Adoption Opportunities	\$48	\$46 ^e
Victims of Child Abuse Act (administered within DOJ)		
Children's Advocacy Centers (and related training and TA)	\$33	\$40
Court Appointed Special Advocates (CASAs)	\$14	\$14
Training for Judicial Personnel	\$4	\$6
TOTAL	\$11,671	\$12,882

Source: Table prepared by the Congressional Research Service based on the Consolidated Appropriations Act, 2022 (P.L. 117-103); U.S. Department of Health and Human Services (HHS), *FY2023 Budget in Brief*; HHS,

Administration for Children and Families (ACF), *FY2023 Justifications of Estimates for Appropriations Committees*; communications received by CRS from HHS, ACF, Office of Legislative Affairs and Budget (OLAB); and U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), *FY2023 Budget Request Overview*.

Notes: The Victims of Child Abuse Act programs are administered by DOJ-OJP and receive appropriations as part of DOJ funding. All other programs shown are administered by HHS-ACF and receive appropriations as part of HHS funding.

Funding provided and requested for the PSSF program is shown after application of required sequestration, which reduced mandatory PSSF funding appropriated for FY2022 by 5.7% and is expected to reduce any FY2023 mandatory funding provided for the program by the same percentage.

Funding for Title IV-E foster care, adoption, kinship guardianship, and prevention is based on definite budget authority as shown in the FY2023 budget request (for both FY2022 and FY2023), except for information on the amounts for Title IV-E prevention services and for Title IV-E foster care. Those amounts are shown as a combined figure in the budget documents, but are shown as disaggregated amounts in this table based on information received from HHS, ACF, OLAB. As each of these Title IV-E program components is authorized to receive federal reimbursement for a part of all program-eligible costs (i.e., *open-ended* funding), the federal dollars provided for these purposes may be more or less than the amounts shown in this table.

- a. The President's FY2023 budget proposes to authorize annual mandatory PSSF funding of \$645 million. This is \$300 million above the level authorized for FY2022. This requested additional PSSF mandatory funding is subject to sequestration, however, and after the expected 5.7% reduction, the full amount of proposed mandatory funding would be roughly \$608 million in FY2023. For the FY2023 sequestration order, see *OMB Report to the Congress on the BBDECA 251A Sequestration for Fiscal Year 2023*, <https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/>.
- b. The President's FY2023 budget proposes to expand federal cost sharing for Title IV-E prevention services and kinship navigator programs, beginning with FY2022. The legislative proposal, if enacted, would be expected to increase federal Title IV-E prevention services and kinship navigator spending by \$161 million for FY2022. That figure *is not included* as part of the total FY2022 funding provided (i.e., it is not included in the \$11.667 billion total).
- c. The FY2023 requested funding shown for Title IV-E foster care (which is expected to include any kinship navigator funding request), as well as for Title IV-E prevention services, adoption assistance, and kinship guardianship assistance—are amounts HHS-ACF expects will be necessary to meet federal obligations for FY2023 under current law. The amount shown as the Title IV-E legislative proposal (\$335 million) represents the combined amount of increased funding expected to be needed for these Title IV-E activities, based on the legislative proposals included in the budget. With the exception of Title IV-E adoption assistance, these legislative proposals would be expected to affect federal spending for each of the Title IV-E program components authorized to receive open-ended funding. The *HHS FY2023 Budget in Brief* describes the amount of budget authority needed in FY2023 for these proposals as being identical to the amount of outlays (see pp. 129, 137).
- d. The Chafee general program is shown separate from the Title IV-E program in this table even though it is formally a part of the Title IV-E program, and its funding is appropriated as a part of the Title IV-E account. Accordingly, budget documents include the increase in capped mandatory funding that is requested for Chafee as a part of the overall increase for the Title IV-E program. Chafee ETVs, however, are not a part of the Title IV-E program and any discretionary funding provided (and requested) for ETVs is included in the HHS-ACF account titled "Children and Families Services Programs."
- e. The President's FY2023 budget request for Adoption Opportunities was made with reference to the final FY2021 funding level (\$44 million). The request for \$2 million in discretionary funding (above the FY2021 level) is sought to support a Quality Improvement Center or "other national effort" to work with local sites in using a "data-driven" approach to meet an "urgent need" to improve targeted recruitment of foster family homes that "meet the needs and reflect the racial or cultural representation of children and young people in care"; HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 181. This request was also made in the FY2022 President's Budget (HHS, ACF, *FY2022 Justifications of Estimates for the Appropriations Committees*, p. 176). The Consolidated Appropriations Act, 2022 (P.L. 117-103, enacted March 15, 2022), increased funding for Adoption Opportunities to \$48 million. The Joint Explanatory statement (and the incorporated H.Rept. 117-96) accompanying that law reference continued support for the National Mental Health Competency Training Initiative (\$1 million) under Adoption Opportunities, but do not otherwise discuss unique uses of the funds in this appropriations line item.

Proposals for the CWS and PSSF Programs

The CWS and PSSF programs are included in Title IV-B of the SSA. The President's FY2023 budget would extend through FY2027 recently expired (September 30, 2021) or expiring (September 30, 2022) funding authorizations included in these programs, and it requests increased program funding. The budget also proposes additional legislative changes to the PSSF program, including growing the PSSF service array.

Extending CWS Funding Authority

The CWS program (Title IV-B, Subpart 1 of the SSA) authorizes funding to states and tribes for the provision of a broad range of services to promote the well-being of children; prevent their abuse, neglect, or exploitation; keep at-risk families safely together and enable appropriate reunifications when separation does occur; promote the safety, permanency, and well-being of children in foster and adoptive families; and improve the child welfare workforce.

Discretionary funding authority for the CWS program (\$325 million annually) expired on September 30, 2021. Funding provided for the program has never reached the \$325 million mark (initially set in 1990); it received \$269 million for FY2022. The President's budget proposes to extend funding authority for the program through FY2027 and requests \$279 million for it in FY2023. The budget notes that the level funding for the CWS program over multiple years "has eroded the real value of the appropriation."¹

PSSF Program and Proposals

The PSSF program (Title IV-B, Subpart 2 of the SSA) receives funding via separate mandatory (capped) and discretionary authorizations of appropriations. Funding for PSSF is primarily used to make formula grants to states, territories, and tribes for the provision of family support, family prevention, family reunification, and adoption promotion and support services. Further, PSSF program law requires that certain funds appropriated for the program be reserved for support of additional activities and grants, including for evaluation, training, technical assistance, and research activities; the Court Improvement Program (CIP); Regional Partnership Grants (RPGs) to improve outcomes for children and families affected by parental substance use disorder; and Monthly Caseworker Visits (MCV) grants to improve the quality of caseworker visits with children in foster care. In recent years, annual appropriations acts have specified certain additional uses of PSSF discretionary funds, including for additional support to the Title IV-E Prevention Services Clearinghouse and for grants to support state and tribal kinship navigator programs. (Kinship navigator programs are designed to aid kin caregivers by helping them identify and locate services and supports they need to meet their own needs and those of the children in their care.)²

Five-Year PSSF Reauthorization

The President's FY2023 budget calls for a five-year reauthorization of the PSSF program (through FY2027) and seeks \$751 million (pre-sequestration) for it in FY2023.³ Specifically, the

¹ U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 171.

² See description of kinship navigator program components at Section 427(a)(1) of the Social Security Act (SSA).

³ Under the Budget Control Act of 2011, as amended, mandatory funding for the PSSF program is subject to annual

budget proposes to increase mandatory funding authorized for the program to \$645 million (from the current level of \$345 million), and while it seeks to retain a \$200 million annual discretionary PSSF funding authorization as part of the five-year reauthorization, for FY2023 it requests use of just \$106 million of that authority.⁴

The PSSF reauthorization proposal, discussed more below, is expected to increase mandatory PSSF budget authority by \$3 billion across 10 years (FY2023-FY2032), with federal outlays across that timeframe expected to be slightly below that level, at \$2.7 billion.⁵

Increased Mandatory PSSF Funding and Related Proposals

The proposed increase of \$300 million (before sequestration) in mandatory PSSF funds would direct \$180 million in new funding to states and tribes for provision of PSSF-defined child and family services. Along with this funding increase, the budget proposes a legislative change to “specifically add kinship support as an allowable use of PSSF funds.”⁶ Under current law, PSSF child and family services must be used to provide family support, family preservation, family reunification, and adoption promotion and support services. In requesting this additional service funding, HHS-ACF cites the PSSF program as a “crucial source of flexible child welfare funding,” available for a broader range of support and services than are permitted under Title IV-E prevention services. Further, as described by HHS-ACF, mandatory funding for states and tribes under the PSSF program has been relatively “static” for most of two decades, and increased PSSF services funding would provide them the “resources needed to better shift toward a prevention-oriented child welfare system that centers child and family well-being at every step of the process.”⁷

With the remaining \$120 million in increased annual mandatory funding proposed for the PSSF program, HHS-ACF seeks to double annual mandatory funding for the CIP program (\$60 million instead of the \$30 million under current law), triple annual mandatory funding for RPGs to improve outcomes for children and families affected by parental substance use disorder (\$60 million instead of the \$20 million under current law), and to create a new formula grant program (\$50 million each year) to support civil legal services for children and families with child welfare system involvement. Civil legal services are expected to help families address issues that can compromise the ability of parents to provide a safe and stable home for their children (e.g., housing instability, domestic violence, unmet health care needs, or unemployment).⁸ According to

sequestration of funds (at the rate applied for non-defense, non-exempt, mandatory programs) in each year through FY2029. See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*. The rate is 5.7% for FY2023, and this would reduce the mandatory PSSF funding proposed (\$645 million) to just above \$608 million; see *OMB Report to the Congress on the BBDECA 251A Sequestration for Fiscal Year 2023*, March 28, 2022, https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA_251A_Sequestration_Report_FY2023.pdf.

⁴ Although the PSSF discretionary funding authorization expired as of FY2021, the program received discretionary funding (\$83 million) for FY2022. Regarding the Administration requesting a continued discretionary authorization for the PSSF program of \$200 million annually through FY2027 (even while seeking just \$106 million under that authorization for FY2023), see HHS, ACF, *FY2023 Justification of Estimates for the Appropriations Committees*, p. 298.

⁵ Budget authority represents the full level of funds requested for use. Outlays represent the amount of funds states and tribes are expected to use. The Administration estimates that not all of the authorized funding will be accessed immediately, and this reduces outlays to a level below budget authority. See HHS, *FY2023 Budget in Brief*, p. 129 (budget authority for FY2023) and p. 137 (outlays for FY2023-FY2032).

⁶ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 299.

⁷ *Ibid.*, p. 298.

⁸ For more information, see HHS, ACF, ACYF, Children’s Bureau, *Civil Legal Advocacy*, IM-21-02, January 12, 2021.

HHS-ACF, many families become involved with child welfare due to these “collateral issues” (rather than due to parental abuse), and “legal representation will enable more families to connect to the services they need to stay safely together.”⁹

Proposals Related to FY2023 Discretionary PSSF Funding

The PSSF program statute (Title IV-B, Subpart 2 of the SSA) generally provides that discretionary PSSF funding is to be used for the same purposes as mandatory PSSF funds.¹⁰ However, in recent years annual appropriations laws have been used to specify additional uses for discretionary PSSF funds, including for formula grants to support kinship navigator programs (FY2018-FY2022), to increase support for RPGs to improve outcomes for children affected by parental substance use disorder (FY2019 and FY2020), to provide additional funding for the Title IV-E Prevention Services Clearinghouse (FY2020-FY2022), and to increase funding for child and family services-related evaluation, research, and technical assistance (FY2018-FY2022).¹¹

The President's FY2023 budget proposes PSSF discretionary funding of \$106 million for FY2023 (compared to \$83 million provided in FY2022) and it would fund each of the additional activities supported in one or more years (as noted above) with a part of this discretionary funding. Specifically, it seeks \$30 million for the kinship navigator program (compared to \$20 million in prior years), \$7 million for additional RPGs support (compared to no additional funds for FY2022), and \$9 million for the Title IV-E Prevention Services Clearinghouse (compared to \$2.75 million for FY2022).¹² The account language in each of the FY2018-FY2022 appropriations acts effectively reduced each of the stated levels of reserved discretionary funding by 5% in order to support increased funding for child and family services evaluation, research, and technical assistance. The President's FY2023 budget appears to seek the same 5% reservation of funds from its proposed levels of support.¹³ (For ease of comparison, the text above gives amounts, both proposed and FY2022 comparison, as the amount before the 5% reduction.)

Apart from the kinship navigator programs supported with PSSF discretionary funds, states and tribes are authorized (since FY2019) to support kinship navigators under the Title IV-E program. However, this support, authorized to cover 50% of the cost of kinship navigators, is only available if the kinship navigator program model used meets certain evidence criteria given in the

Civil legal advocacy is intended to address a broader range of issues than those that may supported with Title IV-E program funds for independent legal representation. Title IV-E funding may be used to provide legal services for eligible children and their parents during child welfare proceedings (e.g., hearings to address removal, termination of parental rights, or a permanency plan for a child in foster care). See HHS, ACF, ACYF, Children's Bureau, Technical Bulletin, *Frequently Asked Questions: Independent Legal Representation*, July 20, 2020.

⁹ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 299.

¹⁰ Under program law, PSSF mandatory and discretionary funding are to be used for the same purposes, except that only mandatory funds are reserved for regional RPGs and monthly MCV grants (see §§436 and 437 of the SSA). Specifically, both mandatory and discretionary funding are used for state child and family services, and a portion of both mandatory funding and any discretionary funding provided is reserved for research, evaluation, and training; the Court Improvement Program; and tribal child and family services.

¹¹ See appropriation language for the HHS, ACF, “Promoting Safe and Stable Families” account as included in P.L. 115-141, P.L. 115-245, P.L. 116-94, P.L. 116-260, and P.L. 117-103.

¹² *Ibid.*

¹³ See proposed appropriations language in HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 283. Because the proposed appropriations law language inserts a new proviso (concerning RPG funding), a technical adjustment may be needed in the proposed language to ensure application of the 5% reservation for research, evaluation, and technical assistance across all of the discretionary PSSF funding reservations proposed for the appropriations law.

Title IV-E program. Thus far, only one such program model has been identified. Citing this fact, the HHS-ACF Children's Bureau notes an "ongoing" need to provide other funding "in order to develop additional models that will meet such criteria."¹⁴

Although it requests additional RPG and Title IV-E Prevention Services Clearinghouse funding as part of the discretionary PSSF account, the administration separately seeks to boost those same line items in other budget proposals (i.e., a Title IV-E legislative proposal with regard to Title IV-E clearinghouse funds and a mandatory PSSF proposal with regard to RPGs).

For more on PSSF funding by activity (as provided in FY2022 and proposed for FY2023), see the **Appendix**, including **Table A-1**.

Kinship, Tribal, and Other PSSF Program Proposals

Several of the FY2023 PSSF proposals focus on kinship care concerns and would also address tribal access to PSSF funds.

Kinship Care Supports and Kinship Diversion

As noted above, HHS-ACF proposes to designate *kinship support* as an allowable use of PSSF funds, and also seeks to boost funding for states to develop evidence-based kinship navigator programs. Separately, it would require that each state, as a part of its required PSSF state plan, describe its use of kinship placements to keep children out of foster care. This practice may be called *kinship diversion*, or sometimes *hidden foster care* (where children are no longer living with parents but are not counted as being in foster care and may not be otherwise served). As proposed by HHS-ACF, states would need to report on their use of kinship diversion, including the number of children the state child welfare agency placed with kin outside of foster care (i.e., without formal court transfer of the child's placement and care responsibility to the state) and the supports offered to those children and families.

The use of kin to care for children who would otherwise enter foster care is variously praised (for keeping children out of *the system*) or criticized (for expecting kin to take on care of children with little or no support of any kind). Further, the use of kinship diversion and the types of services available to children and families in these kinship care situations vary by states and comprehensive, comparable information is limited.¹⁵ Survey data show, however, that among children removed from their homes following an investigation of abuse or neglect, kinship care (mostly informal) is the most common placement setting.¹⁶ Under the Family First Prevention Services Act (FFPSA), states may count on kin to permit children to remain safely at home while prevention services are provided to or on behalf of a child. In this circumstance, the safety of the

¹⁴ Communications received by CRS from the HHS, ACF, Children's Bureau, via HHS, ACF, OLAB, April 4, 2022.

¹⁵ For more information, see Karin Malm, Kristin Sepulveda, and Sam Moore, *Variations in the Use of Kinship Diversion Among Child Welfare Agencies: Early Answers to Important Questions*, Child Trends, 2019.

¹⁶ The National Survey of Child and Adolescent Well-Being (NSCAW II) collected three waves of data on a national sample of children who were in families investigated for abuse or neglect between February 2008 and April 2009. The survey found that the large majority of children remain in their homes following an investigation of abuse or neglect (85%-87%, decreasing with length of time from the investigation). Among those removed from their homes, however, the most common living arrangement was informal (most often) or formal kinship care (around 9%-11%, increasing with length of time from investigation). The remaining children lived in non-relative foster family homes or group settings (3%-4%, decreasing with length of time from the investigation). See NSCAW II child characteristics, baseline, wave 2 and wave 3 (various reports at <https://www.acf.hhs.gov/opre/project/national-survey-child-and-adolescent-well-being-nscaw-1997-2014-and-2015-2024>).

child, and provision of services to the child and/or child's family must be monitored by the state child welfare agency.¹⁷

Tribal PSSF

About 3% of mandatory PSSF funding must be annually reserved for tribal child and family services.¹⁸ The proposed \$300 million increase in mandatory PSSF funding would be expected to increase annual tribal PSSF funding by around \$9 million. For FY2022, tribal PSSF funding (mandatory and discretionary) totaled roughly \$10.4 million (after sequestration).¹⁹

As part of its request to double overall annual mandatory funding for the CIP (from \$30 million to \$60 million), the Administration proposes to double the amount of those CIP funds that are set-aside to support tribal court improvement grants (from \$1 million to \$2 million).

The Administration also seeks a technical adjustment to the determination of eligibility of tribal entities for PSSF funding. Under current law, all tribal PSSF funds are allotted in proportion to an individual tribe's share of children (i.e., individuals under age 21) among all children in tribes approved to receive PSSF funding. Further, no tribe may be approved to receive PSSF funds unless its allotment of *mandatory* PSSF funds would be at least \$10,000.²⁰ The Administration seeks the authority to make this determination based on a combination of mandatory and discretionary PSSF funds, which would permit a greater number of tribes to be eligible for PSSF funds.²¹

Regional Partnership Grants

HHS-ACF seeks to remove a limitation on the amount of grant funding that may be provided to an RPG during the planning phase to collaboratively implement services and supports to improve outcomes for children and families affected by substance use disorder. Under current law, a planning phase (up to two years) is required for grantees, and during this time funds awarded may not exceed \$250,000. According to HHS-ACF, the removal of this limitation is sought in recognition of the varying levels of grantees' preparedness to implement projects.²²

Title IV-E Foster Care, Prevention and Permanency

Under Title IV-E of the SSA, the federal government is committed to providing funding to participating states and tribes for a part of the cost of providing foster care to every child meeting federal eligibility criteria for foster care, adoption assistance, and guardianship assistance (in

¹⁷ §471(e) of the SSA, including §471(e)(2)(A) and (e)(5)(B)(ii).

¹⁸ The law provides that tribes/tribal entities are to receive 3% of PSSF mandatory funding (\$345 million) that remains after funds for RPGs and MCV grants (typically \$40 million/year) have been reserved. This effectively makes the reservation of mandatory PSSF funds about 2.7% of total PSSF mandatory funds. (All dollar amounts in this footnote refer to pre-sequestration amounts.) If this language were retained, and the separate proposal to increase mandatory funding for RPGs was enacted, this would further reduce the effective share of PSSF mandatory funds available to tribes (to about 2.6%).

¹⁹ Prior to sequestration, estimated tribal PSSF funding for FY2022 is \$10.9 million.

²⁰ The formula for allotment of PSSF tribal funding is described for mandatory funds in Section 433(a) of the SSA and for discretionary funds in Section 437(c)(1). The limitation on tribes, including tribal organizations and tribal consortia, that may be approved to receive PSSF funds is at Section 432(b)(2)(B) of the Social Security Act.

²¹ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 299.

²² *Ibid*, p. 298-290.

states electing to provide it). Beginning with FY2020, states are also able to claim open-ended mandatory federal support under Title IV-E for provision of selected evidence-based services intended to prevent the need for children to enter foster care; as of FY2019, Title IV-E support is authorized to be provided for kinship navigator programs meeting the evidence and program component requirements of the law.

Encouraging the Use of Title IV-E Prevention Services and Kinship Navigator Options

The President's FY2023 budget proposes to increase the share of Title IV-E prevention services and kinship navigator program costs that the federal government would pay to 100% for FY2022 and FY2023,²³ 90% in each of FY2024-FY2026, and the higher of 75% or a state's/tribe's federal medical assistance percentage (FMAP) plus 10 percentage points in FY2027 and every subsequent year. (For a description of FMAP, see the text box below.) Under current law, federal financial participation for each of these Title IV-E program costs is 50% and is slated to remain at that level in all years, with one exception: Title IV-E prevention services costs are slated to be paid at a state's or tribe's FMAP beginning with FY2027.²⁴

What Is the FMAP?

A number of the President's FY2023 budget proposals would raise or lower federal support for particular child welfare activities supported under the Title IV-E foster care, prevention and permanency program by a specific number of percentage points above or below a state or tribe's FMAP.

The FMAP, or federal medical assistance percentage, is used in Medicaid, as well as several other programs (including the Title IV-E program), to indicate the share of a program cost that the federal government is obligated to pay under program law. It may range from no lower than 50% in states with the highest relative per capita income to no higher than 83% in those with the lowest. For most states, the FMAP is recalculated annually by HHS.

For states and territories, the FMAP, including its calculation, is defined as part of the Medicaid program (§1905(b) of the SSA). For child welfare purposes, HHS is given authority (§479B(d) of the SSA) to determine "tribal FMAPs." These are used in the Title IV-E program.

The FMAP is used in the Title IV-E program to determine federal financial participation (FFP) in provision of Title IV-E foster care maintenance payments, as well as for Title IV-E adoption assistance and kinship guardianship assistance payments. Beginning with FY2027, it is also slated to be used to determine what part of a state's Title IV-E prevention services costs the federal government provides. (For other Title IV-E program costs, the amount of FFP is fixed at a single percentage, usually 50%, that applies for all states and tribes.)

A higher FMAP (or higher FFP) means a state or tribe will receive greater federal support for program work. For example, if a state or tribe has a 50% FMAP, it is entitled to federal reimbursement of \$50 for every \$100 it spends to provide Title IV-E foster care maintenance, adoption assistance, or guardianship assistance payments. If a state or tribe has an FMAP of 83%, it is entitled to \$83 for every \$100 it spends for those Title IV-E payments.

For more information on how state FMAPs are calculated, see CRS Report R43847, *Medicaid's Federal Medical Assistance Percentage (FMAP)*. For more information on tribal FMAPs used in the Title IV-E program only, see HHS,

²³ Under current law, the federal share of those program costs is 50%, although the federal share of costs was temporarily raised to 100% for part of FY2020 and all of FY2021 (April 1, 2020–September 30, 2021) as part of the response to the COVID-19 pandemic (Supporting Foster Youth and Families Through the Pandemic Act, Division X of P.L. 116-260).

²⁴ Section 474(a)(7) of the SSA sets the federal share of Title IV-E kinship navigator costs at 50% in every year. Section 474(a)(6) of the SSA provides for 50% reimbursement of Title IV-E prevention-related costs through FY2026; for FY2027 and every year thereafter, it specifies that Title IV-E prevention services costs (but not Title IV-E prevention-related administration and training costs) are to be reimbursed at a state's or tribe's FMAP. Per April 2022 CRS communication with HHS-ACF, the legislative proposal would apply the higher rate of federal financial participation in Title IV-E prevention costs to all aspects of the prevention program (i.e., those for Title IV-E prevention services as well as those for related training and administration).

ACF, *Tribal Federal Medical Assistance Percentage*, <https://www.acf.hhs.gov/cb/grant-funding/tribal-federal-medical-assistance-percentage-fmap>. For information about a temporary 6.2 percentage point increase in state and tribal FMAPs related to the COVID-19 pandemic, see CRS Insight IN11297, *Temporary Federal Medical Assistance Percentage (FMAP) Increase for Title IV-E Foster Care and Permanency Payments*.

Title IV-E prevention services and kinship navigator programs are recently authorized (FY2020 and FY2019, respectively) optional activities under the Title IV-E program. As of early March 2022, 20 states (including the District of Columbia) and one tribe had approval to seek federal funding for provision of Title IV-E prevention services, 19 states and two tribes had submitted plans for Title IV-E prevention services that were under review by HHS-ACF, and 13 states (including Puerto Rico and the U.S. Virgin Islands) had no currently submitted Title IV-E prevention services plan.²⁵ States and tribes do not need to submit a Title IV-E plan amendment in order to claim Title IV-E kinship navigator program funding.²⁶

According to budget documents, the proposed increase in the federal share of support for these Title IV-E program costs is intended to encourage states and tribes to offer Title IV-E prevention services and kinship navigator programs, and the higher level of initial support is proposed to offer them upfront resources to invest in new evidence-based services, as well as necessary staff and training for those services. Additionally, HHS-ACF notes that a permanently higher (than foster care) reimbursement rate for Title IV-E prevention services is intended to “create an incentive to prioritize prevention services” and to “provide the long-term support states and tribes need to adopt and sustain a prevention focused approach to child welfare.”²⁷

The budget additionally proposes the following measures to expand state and tribal use of the Title IV-E prevention services option:

- Permitting states to spend up to 15% of their Title IV-E prevention services funding on “emerging or developing” services that do not yet meet the required evidence rating, provided the state agrees to evaluate the activity and discontinue or modify use of any service found ineffective.²⁸ (Under current law, Title IV-E prevention spending may only be used to support programs meeting the *well-supported*, *supported*, or *promising* evidence criteria as given in the Title IV-E program and independently rated by the Title IV-E Prevention Services Clearinghouse.)
- Making permanent the requirement that a state must spend at least half (50%) of its Title IV-E prevention services funding on programs receiving an evidence

²⁵ Information compiled by HHS, ACF, Administration on Children, Youth and Families (ACYF), Children’s Bureau as of March 1, 2022. Throughout this report, the term *state*, when used in the context of the Title IV-E program, generally refers to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, each of which has approval to operate a Title IV-E program. Tribes may access Title IV-E funds via direct approval of a Title IV-E plan, or via a state-tribal Title IV-E agreement. Only tribes approved to directly operate a Title IV-E program may seek approval from HHS-ACF of a tribal-specific prevention services plan. For tribes with approved Title IV-E plans, see <https://www.acf.hhs.gov/cb/grant-funding/tribes-approved-title-iv-e-plans>.

²⁶ HHS, ACF, ACYF, Children’s Bureau, PI-18-09, November 30, 2018, <https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1811.pdf>. However, Title IV-E funds may only support kinship navigator programs with a practice standards rating of *promising*, *supported*, or *well-supported*, as determined via independent review of the Title IV-E Prevention Services Clearinghouse and in accordance with IV-E evidence standards. The first program meeting this standard was identified as of October 1, 2021, and to date, is the only eligible kinship navigator program model. For more on the program model see <https://preventionservices.acf.hhs.gov/programs/319/show>.

²⁷ HHS, ACF, *FY2023 Justification of Estimates for Appropriations Committees*, p. 329.

²⁸ HHS, *FY2023 Budget in Brief*, p. 129.

rating of *well-supported* or *supported*. (Under current law, this is the requirement through FY2024, after which 50% of prevention services must be spent for *well-supported* programs only.)²⁹

- Exempting tribes that carry out prevention services through a tribal-state Title IV-E agreement from the requirement that they use only programs with *well-supported*, *supported*, or *promising* evidence ratings from the Title IV-E Prevention Services Clearinghouse. This would allow these tribes to use interventions specific to their culture or context. (Tribes that directly operate a Title IV-E program have been exempted from the requirement that they use only Title IV-E Prevention Services Clearinghouse-approved programs, but the Title IV-E law does not permit this for tribes receiving Title IV-E funding via a state-tribal Title IV-E agreement.)³⁰
- Allowing states to use cultural adaptations of the programs approved by the Title IV-E Prevention Services Clearinghouse for use in the Title IV-E prevention services program.³¹
- Funding the Title IV-E Prevention Services Clearinghouse at \$10 million each year. (Under current law, the clearinghouse receives \$1 million annually in Title IV-E funding.)³²

HHS estimates these proposals combined would increase federal Title IV-E spending by \$280 million in FY2023 and a total of \$4.9 billion across 10 years (FY2023-FY2032).³³

Incentivizing Children's Placement with Kin in the Title IV-E Program

When children are removed from their homes, placement with kin is expected to reduce the trauma they experience and helps to maintain family and community connections. Kinship care

²⁹ As amended by the Family First Prevention Services Act (Title VII, Division E, P.L. 115-123), Title IV-E of the SSA requires a state to spend no less than 50% of its Title IV-E prevention services on programs with a *well-supported* rating. The Family First Transition Act (§602, Division N, P.L. 116-94) temporarily adjusted this provision. For FY2020 and FY2021, it lifted the requirement entirely (so long as spending was for a program that met a *promising*, *supported*, or *well-supported* rating); for FY2022 and FY2023, it provides that a state must spend 50% on programs with either *supported* or *well-supported* ratings; and for FY2024 and later, it returns to the requirement as enacted (50% of a state's spending must be for programs with a *well-supported* rating).

³⁰ §479B(c)(1)(E) of the SSA permits HHS to specify requirements applicable for Title IV-E prevention services. The requirements must permit provision of prevention services and programs adapted to the culture and context of tribal communities served. HHS has used this authority to exempt tribal entities that directly operate a Title IV-E program from the requirement that prevention services meet the specific Title IV-E evidence standards. However, the law is not understood to extend this authority to tribes providing Title IV-E prevention services under a state-tribal Title IV-E agreement. See HHS, ACF, ACYF, Children's Bureau, PI-18-10, November 30, 2018, <https://www.acf.hhs.gov/sites/default/files/documents/cb/pi1810.pdf>

³¹ HHS has provided information regarding cultural adaptations permissible for tribes that provide Title IV-E prevention services under a Title IV-E agreement with a state. See HHS, ACF, ACYF, Children's Bureau, IM-21-09, January 13, 2021.

³² §476(d)(5) of the SSA. For each of FY2020 through FY2022, additional funding (about \$2.6 million/year) has been provided for the Title IV-E Prevention Services Clearinghouse through annual appropriations law. Those laws (P.L. 116-94, P.L. 116-260, and P.L. 117-103) directed a portion of discretionary funding for the PSSF program (Title IV-B, Subpart 2 of the SSA) to be used for the clearinghouse.

³³ HHS, *FY2023 Budget in Brief*, p. 137.

has also been found to reduce the number of times children are moved to new foster care settings (i.e., it increases placement stability), and it promotes permanency with family.³⁴

Federal child welfare law requires states to consider giving preference to placement of a child with a relative (over a non-relative) provided all child protection standards are met, and it further requires each state to locate and notify adult relatives of children entering foster care to inform them of their right to participate in the child's care and placement, among other things.³⁵ Among all children in foster care, about 34% have been placed with kin; however, this percentage varies significantly by state, ranging in a recent year from as low as 4% to as high as 44%.³⁶

To further incentivize placement of children with kin in all states, the President's FY2023 budget proposes to increase federal support for foster care maintenance payments made on behalf of Title IV-E eligible children in foster care who are placed in kinship families to between 60% and 93% (i.e., 10 percentage points above a state's or tribe's FMAP). (To be eligible for Title IV-E support a child in foster care must be living in a licensed foster family home, among other criteria.)

As an additional means of promoting kin placement and encouraging states/tribes to take up the option to provide Title IV-E kinship guardianship assistance, the proposal would also provide federal support of between 60% and 93% (i.e., 10 percentage points above a state's or tribe's FMAP) of a state's/tribe's costs of providing Title IV-E kinship guardianship assistance payments. As of February 2022, 10 states had *not* taken up the option to provide Title IV-E guardianship assistance, which has been available since FY2009.³⁷

HHS estimates these Title IV-E proposals combined would increase federal Title IV-E spending by \$91 million in FY2023 and a total of \$1.3 billion across 10 years (FY2023-FY2032).³⁸

Decreasing Support for Non-family Settings in the Title IV-E Program

The share of children in foster care who live in congregate care (i.e., non-family settings that are group homes or institutions) has been in decline. It was 12.2% of children in foster care on the last day of FY2016 (53,300 children), and had declined to 9.5% of the caseload by the last day of FY2020 (38,800 children).³⁹

The FFPSA sought to encourage this trend. It amended the Title IV-E program to provide that, with limited exceptions, children in foster care who are placed in a setting other than a foster

³⁴ Marc A. Winokur et al., "Systematic Review of Kinship Care Effects on Safety, Permanency, and Well-being Outcomes," *Research on Social Work Practice*, vol. 28, no. 1, 2018, pp.19-32; and HHS, ACF, ACYF, Children's Bureau, *Kinship Care*, IM-20-08, December 29, 2020.

³⁵ §471(a)(19) and (29) of the SSA.

³⁶ HHS, ACF, ACYF, Children's Bureau, *AFCARS Report#28*, Preliminary Estimates for FY2020 as of October 4, 2021, <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport28.pdf>. State-by-state variation for children in foster care is based on FY2017 data analysis by the research group Child Trends; see <https://www.childtrends.org/blog/the-share-of-children-in-foster-care-living-with-relatives-is-growing>.

³⁷ Those states were Arizona, Delaware, Georgia, Kansas, Kentucky, Mississippi, New Hampshire, Ohio, South Carolina, and Utah. For information on state and tribal take-up of the Title IV-E kinship guardianship option, see <https://www.acf.hhs.gov/cb/grant-funding/title-iv-e-guardianship-assistance>.

³⁸ HHS, *FY2023 Budget in Brief*, p. 137.

³⁹ HHS, ACF, ACYF, Children's Bureau, *The AFCARS Report # 24* (preliminary estimates for FY2016) and *The AFCARS Report #28* (preliminary estimates for FY2020), <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/afcars>.

family home may receive Title IV-E foster care maintenance payment support for a maximum of 14 days. The exceptions concern children placed in “specified settings,” which are designed to meet a child’s particular needs.⁴⁰ These are settings providing (1) prenatal, post-partum, or parenting supports to youth; (2) high-quality services in a residential setting to children found to be victims, or at risk, of sex trafficking; (3) supervised independent living for youth ages 18 or older; or (4) qualified residential treatment programs (QRTPs). QRTPs must be able to meet clinical needs of children with “serious emotional or behavioral disorders.” Further, to be eligible for Title IV-E foster care maintenance payment support while placed in a QRTP, children must receive additional assessment and review to ensure that a child’s placement in a foster family home is not a more appropriate foster care placement setting.⁴¹

The President’s FY2023 budget proposes to further reduce federal Title IV-E foster care maintenance payment support to children placed in group care settings, including those placed in QRTPs and all but one of the other specified settings, by 5 percentage points (i.e., a state’s FMAP *minus* 5 percentage points). It would exclude from this change youth ages 18 or older in supervised independent living, as well as children placed with parents in a family-based residential treatment center for substance-use disorders.⁴²

HHS estimates this proposal would decrease federal Title IV-E spending by \$27 million in FY2023 and a total of \$107 million across 10 years (FY2023-FY2032).⁴³

Including a New Anti-discrimination Provision in the Title IV-E Program

Under current Title IV-E policy, states and tribes are prohibited from delaying or denying the placement of a child in a foster family or adoptive home based on the race, color, or national origin of the child or of the prospective foster or adoptive parent/s. In addition, a state or tribe may not deny an individual the opportunity to become a foster or adoptive parent based on race, color, or national origin.⁴⁴ This requirement also applies to any entity contracted by a state child welfare agency to carry out foster care or adoption placements and related activities (e.g., training of prospective parents). States/tribes that are found out of compliance with this requirement are expected to develop a “corrective action plan” and may be fined.⁴⁵

The President’s FY2023 budget proposes to amend the Title IV-E program to further prohibit state and tribal Title IV-E agencies from discriminating against current or prospective foster/adoptive parents, or children in foster care or being considered for adoption, on the basis of “religious beliefs, sexual orientation, gender identity, gender expression, or sex.” The proposal

⁴⁰ In addition to these “specified settings,” where children may be eligible for Title IV-E support for more than 14 days, FFPSA also authorized up to 12 months of Title IV-E support for children in foster care who are placed with their parent in a family-based residential treatment center for substance use disorder (§472(j) of the SSA). The FY2023 budget does not propose to reduce federal cost sharing for children placed with family in such a setting.

⁴¹ §§472(k) and 475A(c) of the SSA.

⁴² HHS, ACF, *FY2023 Justification of Estimates for the Appropriations Committees*, pp. 330-331.

⁴³ HHS, *FY2023 Budget in Brief*, p. 137.

⁴⁴ §471(a)(18) of the SSA.

⁴⁵ See 45 C.F.R. Section 1355.38 for enforcement provisions specific to the non-discrimination provisions at Section 471(a)(18) of the SSA. See also discussion of related applicable civil rights laws and enforcement measures at HHS, Office of Civil Rights (OCF), *Protection Against Discrimination in Child Welfare Activities*, “What Child Welfare Entities Have Non-Discrimination Responsibilities,” <https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html>.

would also include “financial penalties and mandatory corrective action for any title IV-E agency (or its contractor) that delays, denies, or otherwise discourages Americans from being considered or serving as foster or adoptive parents based on their religious beliefs, sexual orientation, gender identity, gender expression or sex.”⁴⁶

This budget proposal is similar to a proposal included in the 21st Century Children and Families Act (H.R. 5856, §2), which, like the budget proposal, would amend Title IV-E of the SSA to make these prohibitions related to provision of services for individuals, including related penalties, specific to an entity’s receipt (direct or indirect) of Title IV-E funding. It is also consistent with the John Lewis Every Child Deserves a Family Act (H.R. 3488/S. 1848), which would apply to a broader range of programs. H.R. 3488/S. 1848 would prohibit discrimination in provision and administration of child welfare services/programs (on the basis of an individual’s sexual orientation, gender identity, marital status, or religion) by entities receiving federal funding (directly or indirectly) under Title IV-E as well as other federal funding streams in the Social Security Act (e.g., Medicaid, the Social Services Block Grant [SSBG], Temporary Assistance for Needy Families [TANF], and the child welfare programs in Title IV-B).⁴⁷

At the same time, the proposal is expected to run counter to provisions included in the Child Welfare Provider Inclusion Act (S. 656/H.R. 1750). That bill would prohibit a state that receives Title IV-B or Title IV-E funds from discriminating against a *child welfare service provider*, including organizations, entities, or individuals that provide child and family services, based on the “sincerely held religious beliefs” of the child welfare service provider. States and localities, for example, would be prohibited from denying a contract to such an organizational or individual service provider based on the provider’s sincerely held belief that, for instance, only heterosexual individuals or individuals holding certain religious beliefs should be foster or adoptive parents.

The FY2023 budget proposal and these child welfare-specific legislative proposals⁴⁸ are part of a longer-running disagreement about broader HHS grant policy.⁴⁹ In December 2016, the Obama Administration published revised general HHS grant regulations to provide that “no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors.” The final rule included in the list of such factors *religion, gender identity, and sexual orientation*.⁵⁰ Soon after, the Trump Administration took office and began to hear from some grantees that the provision interfered with faith-based organizations’ right to free speech and religious exercise, among other concerns. In 2019, citing concerns about certain regulatory procedures it contended had not been followed in development of the final rule, the Administration issued a notice of non-enforcement of the rule.⁵¹ More immediately, however, it

⁴⁶ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 339.

⁴⁷ H.R. 3488/S. 1848 refer to Title XX of the SSA, which includes not only the SSBG (Subtitle A), but also Elder Justice-related programs (Subtitle B) and Social Impact Demonstration Projects (Subpart C).

⁴⁸ Although it has been revised multiple times, the legislation now known as the John Lewis Every Child Deserves a Family Act has been introduced in every Congress since at least 2009 (H.R. 3827, 111th Congress). Similarly, legislation known as the Child Welfare Provider Inclusion Act, has been introduced in some form in every Congress since at least 2014 (S. 2706, 113th Congress), and a precursor bill, the Religious Freedom for Providers of Adoption, Foster Care and Child Welfare Services Act, was first introduced in 2006 (H.R. 6209, 109th Congress).

⁴⁹ States and localities with particular anti-discrimination provisions that have been applied to providers of child and family services have also been the subject of court cases in recent years. For example, see CRS Legal Sidebar LSB10612, *Fulton v. Philadelphia: Religious Exemptions from Generally Applicable Laws*.

⁵⁰ See the final rule in the *Federal Register*, December 12, 2016, p. 89393. This rule was effective as of January 11, 2017.

⁵¹ See the Trump Administration description of complaints received and its subsequent issuance of a non-enforcement

issued several waivers of the rule, including to the state of South Carolina, which had pursued the waiver to enable continued contracting with an agency that limited its foster and adoptive training/placement services to individuals who were Protestant Christians.⁵² A new rule finalized by the Trump Administration in January 2021 provides that HHS will abide by any prohibition against discrimination included in program statute and any relevant Supreme Court decision.⁵³

HHS describes this proposal to add new non-discrimination language to the Title IV-E program as budget neutral (i.e., it is not expected to increase or decrease Title IV-E spending).⁵⁴

Chafee Program Proposals

The Chafee Foster Care Program for Successful Transition to Adulthood (Chafee program, §477 of the SSA) provides formula grant funding to states and participating tribes for provision of services and supports to eligible youth in or formerly in foster care.⁵⁵ The services are intended to help prepare youth in foster care for adulthood, enable them to make meaningful connections with adults, and improve their current and longer-term education, employment, health, and well-being outcomes.⁵⁶

Increase Mandatory Program Funding

The President's FY2023 budget would increase annual mandatory funding for the program from \$143 million under current law to \$243 million. This proposed increase would be the first major change in the annual mandatory authorization since December 1999, when it was set at \$140 million (P.L. 106-169). (Chafee annual mandatory funding increased marginally, to \$143 million, beginning with FY2020 [as authorized in P.L. 113-183].)

Adjust Eligible Service Population and Other Program Rules

Additionally, the President's FY2023 budget proposes revising certain eligibility criteria and other Chafee program policies. A number of these changes draw on flexibilities that were

notice, in November 2019, in the *Federal Register*, January 12, 2021, p. 2259. In a November 2021 press release reaffirming HHS's commitment to nondiscrimination, including on the basis of sexual orientation, gender identity, and religion, the Biden Administration noted that waivers had been granted to three states, South Carolina, Texas, and Michigan, and called those waivers inappropriate; see "HHS Takes Action to Prevent Discrimination and Strengthen Civil Rights," press release, November 18, 2021.

⁵² See "Trump Administration Grants Waiver to Agency that Works Only with Christian Families," *Washington Post*, January 23, 2019; and letter to Governor Henry McMaster, "Re: Request for Deviation or Exception from 45 CFR §75.300(c)," January 23, 2019, from HHS, ACF, Acting Assistant Secretary Steven Wagner.

⁵³ See the final rule in the *Federal Register*, January 12, 2021, pp. 2257-2278.

⁵⁴ HHS, *FY2023 Budget in Brief*, p. 137.

⁵⁵ Although it is discussed separately in this report, the mandatory funding for the Chafee program is a unique component of the Title IV-E program. Therefore, it is discussed in the President's budget document as part of legislative proposals for the Title IV-E "Payments for Foster Care and Permanency" program. See HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, pp. 313-346. However, funding for the Chafee Education and Training Vouchers (ETVs), which is provided separately and on a discretionary basis, is not a part of the Title IV-E program. (Discretionary funding for ETVs is discussed in the "Children and Families Services Programs" section of HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, pp. 109-237.)

⁵⁶ For more information about this program and the related Chafee Educational and Training Vouchers, see CRS In Focus IF11070, *John H. Chafee Foster Care Program for Successful Transition to Adulthood*, and/or contact CRS Analyst in Social Policy Patrick Landers.

permitted in response to the COVID-19 pandemic but ended on September 30, 2021. According to HHS-ACF, making these changes, together with increasing funding for the Chafee program, would help states to offer more personalized and effective supports to Chafee-eligible youth who, it notes, “face significant obstacles” in attaining education and stable employment and must also deal with the effects of their time in foster care, including trauma, all “without the familial network most youths rely on for support.”⁵⁷

Specifically, the budget proposes to make the following changes to Chafee eligibility and provision of Chafee services:⁵⁸

- Permitting Chafee services to be provided to an otherwise eligible youth up to their 27th birthday.⁵⁹ Under current law, youth may be served up to age 21, or in some states age 23.⁶⁰
- Allowing Chafee services for all youth who experienced foster care at age 14 or older. Under current law, youth who experienced foster care at age 14 or older are eligible for Chafee services unless they left care for adoption or legal guardianship; for those youth, Chafee services may be provided only if a youth left foster care for one of those reasons at age 16 or older.
- Ensuring that youth receiving U.S. Department of Housing and Urban Development (HUD) vouchers, via the Family Unification Program (FUP) or the Foster Youth Initiative (FYI), are eligible for Chafee-funded case management services. Under current law, youth receiving Chafee services must be under age 21, or in some states under age 23. However, youth formerly in foster care may qualify for FUP/FYI services at ages 18 to 24, and may then continue to receive this aid for five years.⁶¹
- Permitting use of Chafee funds to provide housing assistance without restriction (under current law, no more than 30% of a state’s allotment may be used for housing costs) and to make this type of Chafee support available to any youth formerly in foster care at age 14 or older (under current law, youth must have been in foster care on their 18th birthday to receive Chafee housing support).
- Clarifying driving and transportation assistance as allowable Chafee supports and without any specific cap on the amount of that assistance. Under current law, driving and transportation assistance may be provided but this support is not described.⁶²

⁵⁷ HHS, ACF *FY2023 Justifications of Estimates for the Appropriations Committees*, p. 331.

⁵⁸ *Ibid.*

⁵⁹ Under current law, the related but separately funded Chafee Education and Training Vouchers (ETVs, §477(i) of the SSA) are available to Chafee eligible youth for postsecondary education and training support, though in no case beyond their 26th birthday. If Congress chooses to adjust eligibility for the general Chafee program, it may wish to re-examine eligibility criteria for Chafee ETVs.

⁶⁰ Youth may be served up to age 23 in states that HHS determines provide foster care support to age 21 (this does not have to be Title IV-E support) and if the state certifies its intention to serve youth up to the older age. As of April 5, 2022, 32 states, the District of Columbia, and Puerto Rico served Chafee youth up to age 23.

⁶¹ Additional eligibility criteria may apply for FYI/FUP housing assistance. See CRS Report R46734, *Housing for Former Foster Youth: Federal Support*. For more information on FUP/FYI, contact CRS Specialist in Housing Policy Maggie McCarty.

⁶² The Supporting Foster Youth and Families Through the Pandemic Act (Division X of P.L. 116-260) specified a range of driving and transportation assistance that may be provided with Chafee funds but capped annual support for these purposes to no more than \$4,000 for any one youth in care. See HHS, ACF, ACYF, Children’s Bureau, PI-21-04,

The Chafee proposal is expected to cost \$100 million in FY2023 and \$1.0 billion across 10 years (FY2023-FY2032).⁶³

Focusing on Racial Equity, Prevention-First Work, and Staff Diversity and Skills in Child Welfare

The President's FY2023 budget requests \$121 million in discretionary funding for Child Welfare, Research, Training and Demonstrations (CWRTD, §426 of the SSA). This program, which supports competitive grants to advance child welfare practices and improve the skills of the child welfare workforce, received FY2022 funding of close to \$19 million. Funding may be awarded to eligible entities, including public child welfare agencies, colleges and universities, and nonprofit research organizations.

Of the requested funding increase of \$102 million, \$100 million is proposed for making competitive grants to state, local, and public child welfare agencies to “address racial inequities in child welfare, reduce overrepresentation of children and families of minority heritage, and reorient systems towards a prevention-first model.” The remaining \$2 million would be used to focus on ensuring a diverse child welfare workforce and leadership that is able to support anti-racist practices.

Competitive Grants Proposed

A family's involvement with child welfare generally begins with a child protective services (CPS) response (investigation or assessment) resulting from an allegation of child abuse and neglect. Based on historical data, researchers estimate that the probability a child will experience a CPS response at some point before their 18th birthday varies considerably by race/ethnicity.⁶⁴ More than half of all African-American children (53.0%) were expected to experience CPS involvement during childhood, compared to 32.0% of Hispanic children, 28.2% of White children, 23.4% of Native American children, and 10.2% of Asian/Pacific Islander children.⁶⁵ Further, on a national basis, children of Native American and African-American heritage are more likely to experience removal from their homes and placement in foster care than are children of other racial or ethnic backgrounds.⁶⁶

March 9, 2021, pp. 10-11, <https://www.acf.hhs.gov/sites/default/files/documents/cb/pi2104.pdf>.

⁶³ HHS, *FY2023 Budget in Brief*, p. 137.

⁶⁴ A CPS response means that the state or local child protection agency received a report alleging child abuse and neglect and it determined it should conduct an investigation of whether child abuse or neglect occurred, OR (when child's risk is consider low or moderate) an assessment of family's strengths and needs, including the child's safety. Investigative responses are generally more common than assessments. Either response typically involves direct contact between CPS workers and the child[ren]/family.

⁶⁵ Kim Hyunil, Christopher Wildeman, Melissa Jonson-Reid, and Brett Drake, “Lifetime Prevalence of Investigating Child Maltreatment Among U.S. Children,” *American Journal of Public Health*, February 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227926/>.

⁶⁶ Child Welfare Information Gateway, *Child Welfare Practice to Address Racial Disproportionality*, April 2021, https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf. See also Darcy H. Merritt, “How Do Families Experience CPS,” pp. 203-226; and Alan Dettlaff and Reiko Boyd, “Racial Disproportionality and Disparities in the Child Welfare System: Why Do They Exist and What Can be Done to Address Them,” pp. 253-274; both in *The Annals of the American Political Science Society*, vol. 692, November 2020.

The proposed \$100 million competitive grant program would require state, local, and tribal child welfare agency grantees to work with other public and private/community-based stakeholders (in education/early childhood education, and public health and human services) to advance policy and practice reforms to address racial inequities in child welfare, reduce overrepresentation of children and families with minority heritage, and reorient child welfare toward a prevention-first model. According to HHS-ACF, selected grantees would be geographically diverse (serving rural and urban areas) and “relatively limited” to allow each grantee sufficient funding for a broad range of activities. Among other described possibilities, activities might include ensuring families have access to emergency assistance, respite care, and other support services; recruiting and funding parents and children with relevant lived experience to serve as peer mentors and system navigators; implementing race-blind decisionmaking practices; ensuring that child welfare agencies and their partners have the tools to distinguish poverty from neglect; better equipping caseworkers to meet the needs of the communities they serve; and building data systems to inform individual and system-wide decisionmaking. Grantees would receive technical assistance and evaluation support.⁶⁷

Child Welfare Workforce Initiatives

Half of the proposed \$2 million for workforce related activities would be used to

- expand the work of the National Child Welfare Workforce Institute to use coaching and learning programs that support anti-racist policies and to increase the hiring, retention, and development of racially diverse child welfare leaders including, at all levels, individuals with lived experience in child welfare; and
- extend a project known as the Data Analytics Institute⁶⁸ to train child welfare leaders and human resources personnel on how to analyze child welfare workforce data to identify racial inequities; implement data-driven strategies for recruiting, selecting, supervising, evaluating, and retaining child welfare workers; and build healthy organizational cultures.

This discretionary funding proposal was also included in the FY2022 President’s budget but was not supported in the final FY2022 appropriations act (P.L. 117-103).

Selected Other Discretionary Funding Requests and Related Proposals

Beyond what has already been discussed in this report, the President’s FY2023 budget requests increased discretionary funding for other child welfare purposes and offers related proposals, including the following:

- \$125 million for CAPTA state grants (compared to \$95 million provided for FY2022). This grant program supports grants to states to strengthen their CPS systems. HHS-ACF describes this funding request as including \$83 million to “combat the opioid crisis” by helping states meet CAPTA’s requirement for the

⁶⁷ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, pp. 177-178

⁶⁸ For more information on the Data Analytics Institute, see <https://www.qic-wd.org/child-welfare-workforce-analytics-institute-2>.

- development, implementation and monitoring of plans of safe care for substance-exposed infants and their parents.⁶⁹
- \$42 million for research, demonstration projects, and related work under CAPTA's "discretionary activities" line item (compared to \$36 million provided for FY2022). HHS-ACF notes that funding will be used to build knowledge about how state policies concerning the definition and determination of child abuse and neglect influence child welfare practice and child and family outcomes; explore approaches to "disentangling neglect from poverty";⁷⁰ continue support for a variety of activities, including community collaboration projects to prevent abuse and neglect through better served families; and build capacity to evaluate interventions for child welfare-involved youth at risk of homelessness, among other things.⁷¹
 - \$90 million for Community-Based Child Abuse Prevention (CBCAP) grants (Title II of CAPTA) (compared to \$66 million provided for FY2022). The request supports continued development of community-based family support and prevention services, including evaluation and increased use of evidence-based programs. The Administration also seeks a legislative change to the CBCAP program that would increase the minimum grant provided under it to \$225,000 (compared to \$175,000 under current law). Although this grant program has seen some increase in funding overall, HHS-ACF notes that states with smaller child populations have not all seen an increase in funding.⁷²
 - \$48 million for Chafee Education and Training Vouchers (ETVs) (compared to \$43 million provided for FY2022). The proposed level of funding is expected to provide between 16,000 and 17,000 vouchers for postsecondary education or training for young people in or formerly in foster care.⁷³
 - A total of \$70 million for three grant programs authorized under the Victims of Child Abuse Act (compared to \$51 million provided for FY2022). These grants are administered within DOJ-OJP, which requested the following for FY2023: \$50 million for Children's Advocacy Centers (CACs) and related technical assistance and training (compared to \$33 million provided for FY2022); \$14 million for Court Appointed Special Advocates (CASAs) (same as FY2022 funding); and \$6 million for training to improve judicial handling of child abuse and neglect proceedings (compared to \$4 million provided for FY2022).⁷⁴

⁶⁹ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, pp. 154-156.

⁷⁰ Most children found to be victims of child abuse or neglect are found to have experienced *neglect*. Further, *neglect* is the most commonly reported circumstance associated with children's entry to foster care. See HHS, ACF, ACYF, Children's Bureau, *Child Maltreatment 2020*, February 2022; and *AFCARS Report #28*, preliminary estimates as of October 4, 2021. *Neglect* is generally defined as a "failure to provide" and/or "failure to supervise" and state definitions of neglect generally reference inadequate shelter, clothing, and food. Each of these, like failure to supervise, may principally reflect financial need. A 2019 review of state neglect definitions (including those in the 50 states, the District of Columbia, and Puerto Rico) found that 29 states provide exemptions to their definition of neglect related to financial need, while 23 did not. See State Child Abuse and Neglect (SCAN) Policy Database, including the Data Users Codebook, <https://www.scanpoliciesdatabase.com>.

⁷¹ HHS, ACF, *FY2023 Justifications of Estimates for the Appropriations Committees*, pp. 160-162.

⁷² *Ibid.*, pp. 164-166.

⁷³ *Ibid.*, pp. 226-227.

⁷⁴ U.S. Department of Justice, Office of Justice Programs, *FY2023 Budget Request, Overview*, <https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/fy23budgetoverview.pdf>.

Appendix. PSSF Funding by Activity

The MaryLee Allen Promoting Safe and Stable Families (PSSF) program has two funding authorities: one provides capped mandatory support (§436(a) of the SSA) and the other provides discretionary funding (§437(a)). The majority of these program funds are provided to states, territories, and tribes for provision of child and family services (specifically, family support, family preservation, family reunification, and adoption promotion and support). These funds for services may be used in the same manner, regardless of whether they are appropriated on a mandatory or discretionary basis. Accordingly, states, territories, and tribes are not required to track whether the PSSF funds are provided based on discretionary or mandatory appropriations.

Before funding is distributed to states and territories, however, the PSSF program law provides that certain amounts of the mandatory funding and of any discretionary dollars must be reserved for tribal child and family services; the Court Improvement Program; and Evaluation, Training, Technical Assistance & Research. Additionally, PSSF program law provides that a portion of mandatory PSSF funding must be set aside for two *targeted purposes*: Regional Partnership Grants (RPGs) to improve outcomes for children and families affected by parental substance use disorder and Monthly Caseworker Visits (MCV) grants to improve caseworker visits with children in foster care. The PSSF program does not provide for any PSSF discretionary funding to support these activities (see §§436(b) and 437(b) of the SSA).

Beginning with the FY2018 appropriations process, annual appropriations laws have specified additional uses for discretionary PSSF funds. This has included funding for kinship navigator program grants and additional funding for evaluation, training, technical assistance, and research, including to support efforts to increase the number of programs that meet the evidence-based practice standards required for Title IV-E support of prevention services. In some years, the discretionary funding has also been used to provide additional support for RPGs and to increase funding for the Title IV-E Prevention Services Clearinghouse, which is charged with carrying out systemic independent reviews of programs and services to identify those that may be supported with Title IV-E prevention services funding.

As discussed previously, the President's FY2023 budget proposes to increase mandatory funding for the PSSF program by \$300 million (compared to FY2022 funding) and also seeks an amendment to program law to annually designate a larger portion of the mandatory PSSF funds for the Court Improvement Program (CIP) (\$60 million rather than the \$30 million under current law) and for RPGs (\$60 million rather than the \$20 million under current law). Additionally, the FY2023 budget proposes to set aside \$50 million in mandatory PSSF funding each year for grants to provide civil legal services for child welfare-involved families.

Additionally, the budget proposes to maintain discretionary funding authority for PSSF at \$200 million each year (the same as the most recent authorization level) but would seek \$106 million in PSSF discretionary funding for FY2023 (\$83 million was provided for FY2022). The FY2023 budget request includes appropriations language to stipulate that \$60 million of the PSSF discretionary funds is to be distributed based on PSSF program law and the remainder (\$46 million) is to be provided as follows: \$30 million for kinship navigator program grants, \$7 million for RPGs, and \$9 million for the Title IV-E Prevention Services Clearinghouse (except that each of those sums must be reduced to ensure that 5% of the \$46 million is made available for evaluation and research activities).

Table A-1 shows estimated PSSF funding by activity for FY2022 (as provided in P.L. 117-103) and for FY2023 as proposed in the President's FY2023 budget. PSSF mandatory funding is subject to sequestration and each activity funded by mandatory PSSF dollars must be

proportionately reduced. The estimated amounts shown for each activity in the table have been reduced to reflect required sequestration; therefore, the mandatory funding provided for a given activity in program law, or requested by the President in the FY2023 budget (e.g., for the CIP), are slightly higher than the amounts shown in the table. Additionally, the specific amounts provided in the appropriations law (for FY2022) and in the proposed appropriations language (for FY2023) are each also made subject to a 5% reduction for evaluation and research work; therefore, the numbers for that discretionary funding are higher in the appropriations law and proposed appropriations language than the numbers shown in the table.

The HHS-ACF is the agency charged with distributing PSSF funding. **Table A-1** estimates this distribution; however, actual distribution may vary based on various factors.⁷⁵

⁷⁵ For example, CRS has interpreted the FY2023 proposed PSSF discretionary appropriations language as requiring reservation of research and evaluation funding out of the full \$46 million in funding provided above the \$60 million to be distributed in accordance with program law. This is roughly consistent with the expected approach for FY2022 discretionary funding. However, technical adjustments may be needed in the appropriations language to clarify intent.

Table A-1. Estimated Funding for the MaryLee Allen Promoting Safe and Stable Families (PSSF) Program by Activity

(dollars in millions)

	FY2022 Funding Provided			FY2023 Funding Proposed (President's Budget)		
	Mandatory	+ Discretionary	= TOTAL	Mandatory	+ Discretionary	= TOTAL
TOTAL Funding —before sequestration	\$345	\$83	\$428	\$645	\$106	\$751
TOTAL Funding —after sequestration	\$325	\$83	\$408	\$608	\$106	\$714
FUNDING BY ACTIVITY (after sequestration)						
Child and Family Services	\$254	\$56	\$309	\$423	\$56	\$479
<i>subtotal—50 states, District of Columbia (DC), and territories</i>	\$245	\$54	\$299	\$407	\$54	\$462
<i>subtotal—Indian tribes, tribal organizations, or consortia</i>	\$9	\$2	\$10	\$16	\$2	\$18
Court Improvement Program	\$28	\$2	\$30	\$57	\$2	\$59
<i>subtotal—highest courts in states, DC, and territories with IV-E</i>	\$27	\$2	\$29	\$55	\$2	\$57
<i>subtotal—competitive grants for tribal courts</i>	\$1	NA	\$1	\$2	NA	\$2
Regional Partnership Grants	\$19	NA	\$19	\$57	\$7	\$63
Monthly Caseworker Visit Grants	\$19	\$0	\$19	\$19	NA	\$19
Evaluation, Training, Technical Assistance, and Research	\$6	\$3	\$9	\$6	\$4	\$10
Kinship Navigator Programs	NA	\$19	\$19	\$0	\$29	\$29
Title IV-E Prevention Services Clearinghouse ^a	\$0	\$3	\$3	\$0	\$9	\$9
Civil Legal Services Grants	NA	NA	NA	\$47	NA	\$47

Source: Table prepared by the Congressional Research Service based on program law (§§436(b), 437(b), and 438(c) of the Social Security Act [SSA]); FY2022 final funding (P.L. 117-103); HHS, ACF, *FY2023 Justifications of Estimates for Appropriations Committees*; and FY2022 and FY2023 sequestration orders under BBDECA 251A available at <https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/>.

Notes: Parts may not sum to total due to rounding. NA = not authorized. Typically, this means that program law does not provide for funding of this activity out of this kind of PSSF funding (i.e., *mandatory* or *discretionary*). However, the PSSF program law (Title IV-B, Subpart 2 of the SSA) does not provide funding in either case for kinship navigator program grants or for the Title IV-E Prevention Services Clearinghouse. Nonetheless, these activities have in recent years been funded out of PSSF discretionary funds based on authority included in final appropriations acts. Current law does not reserve funds for Civil Legal Services Grants; they are proposed only. HHS-ACF is the agency charged with awarding these funds. Estimates shown in this table may vary from amounts as determined by HHS based on several factors, including interpretation of final and proposed appropriations language.

- a. The Title IV-E Prevention Services Clearinghouse receives \$1 million annually in mandatory funding under Title IV-E of the SSA (§476(d)(5)). Any funding provided or proposed for the clearinghouse out of PSSF funds is in addition to that amount.

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