# RESOLUTION OF THE NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE 23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

#### AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND NAABIK'ÍYÁTI' COMMITTEES; SUPPORTING NAVAJO DIVISION OF SOCIAL SERVICES POSITION RELATING TO FAMILY FIRST PREVENTION SERVICES ACT AND COMMENTS TO U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### WHEREAS:

- A. The Health, Education, and Human Services Committee (HEHSC) is the oversight committee of the Navajo Division of Social Services. 2 N.N.C. § 401(C)(1).
- B. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'íyáti' Committee to coordinate with all committees, Chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees and departments of the United States government. See 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(8).
- The Family First Prevention Services Act was signed into C. law as part of the Bipartisan Budget Act on February 9, 2018, and reforms the federal child welfare financing streams, Title IV-E and IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The bill aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training. seeks to improve the well-being of children already in foster by incentivizing states to reduce placement of children in congregate care. See https://campaignforchildren.org.
- D. The Family First Prevention Services Act provides three types of prevention services but only if the services are determined to be evidenced-based practices promising, supported or well-supported. The requirement is that 50% of the prevention services be well-supported.
- E. There are unique provisions in the Act that Tribes may face some special issues if a Tribe decides to implement the Act. How these provisions are implemented will be critical in determining the extent to which the Navajo Nation may make use of the Family First Prevention Services Act.

F. The U.S. Department of Health and Human Services plans to issue guidance on practice criteria and pre-approved services no later than October 1, 2018 and the Navajo Division of Social Services, Department of Family Services, prepared key talking points to consider for the upcoming Tribal Consultation, attached as Exhibit A.

# NOW, THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation supports the Navajo Division of Social Services, Department of Family Services' Advocacy Paper regarding the Navajo Nation key points to the Family First Prevention Services Act, attached as **Exhibit A**.
- B. The Navajo Nation authorizes the Navajo Nation President or his designee and the Navajo Nation Washington Office to advocate the Navajo Nation as presented in the Department of Family Services' Advocacy Paper.

#### CERTIFICATION

I, hereby, certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in Favor, and 00 Opposed, on this 11th day of October 2018.

LoRenzo C. Bates Chairman Naabik'iyati' Committee

Motioned: Honorable Davis Filfred
Second: Honorable Nathaniel Brown

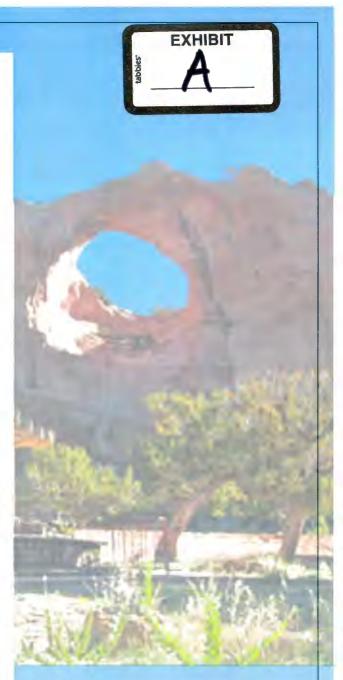
Chairman LoRenzo C. Bates not voting

Department of
Health & Human
Services
Tribal Consultation

Advocacy Papers

SEPTEMBER 10, 2018

Navajo Division of Social Services





Title:

Family First Prevention Services Act

**CFDA Number:** 

**Funding Agency:** 

Administration for Children and Families

# DEPARTMENT OF FAMILY SERVICES

#### **BACKGROUND**

The Family First Prevention Service Act (FFPSA) was enacted on February 9, 2018 as part of the Bipartisan Budget Act of 2018. FFPSA reauthorizes and amends Title IV-B, subparts 1 and 2; amends the Title IV-E foster care program to create new optional prevention funding under Title IV-E, places Title IV-E payment limits on child care institutions; and makes other changes. The Navajo Nation is a direct funded Title IV-E grantee via the Navajo Department of Family Services. Although the FFPSA appears to be positive federal action, it actually will have dramatic implications on the Navajo Nation's compliance with the federal legislation.

The FFPSA provides funding for three types of prevention services – mental health and substance abuse treatment programs, kinship navigator services, and in-home skills-based services, but only if the services have been determined to be evidence-based practices (*EBP*) – promising, supported or well-supported. The requirement is that 50% of the prevention services be well supported. By September 30, 2018, U.S. Department of Health & Human Services is supposed to issue a listing of promising, supported, and well-supported EBP in a clearinghouse.

There are unique tribal provisions in the law which recognize that tribes may face some special issues if a tribe decides to implement the Act. How these provisions are implemented will be critical in determining the extent to which the Navajo Nation can make use of the FFPSA. The following are key talking points to consider for the upcoming Tribal Consultation.

# Cultural Adaptation:

**Talking Point #1:** The law as written requires EBP, practices, and services as part of the financial reimbursement structure. The scientific rigor and clinical studies (also known as clinical trials) required for a treatment approach or assessment tool to be designated as "evidence-based" are not realistic with the small population size of tribal communities.

EBP programs developed without a tribal focus can be implemented with fidelity in tribal communities, but most often, implementers must adapt utilizing models such as the evidence-based practice model. Typical EBP research designs often do not account for differences in culture and context found across underserved populations. The most effective prevention programs are those developed by tribal communities and likely will not be included in the Clearinghouse of Evidence-Based Practices (EBPs) that will be established by HHS.

Federal Register text (page 29122): FFPSA requires an independent systematic review of evidence to designate programs and services as 'promising,' 'supported,' and 'well supported' practices.

Talking Point #2: Clarify the definition and principals of the "independent systematic review"; the review process should adhere to the principal standard of the U.S. Department of Health and Human

Services Office of Minority Health National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (National CLAS standards) that states:

Provide effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy and other communication needs.

Talking Point #3: Designation of programs and services as "promising," "supported," and "well supported" practices are heavily weighted toward providing proof of scientific rigor of a study designed for two levels of practices (Supported and Well-Supported Practices) through the use of randomized controlled trials or a rigorous quasi-experimental research design. This includes reliance on the use of control groups (comparing those who receive certain treatment to those who do not), and the use of conventional standards of statistical significance as part of the determination of effectiveness. The FFPSA law is very specific on these requirements and the different levels (promising, supported and well-supported practices). It is important to note that the FFPSA requires that at least 50% of the FFPSA funding for prevention services and programs be for well-supported practices.

There is a generally-applicable provision in FFPSA that the Secretary may waive the strict scientific requirements for determining that a practice is well-supported. If the Secretary finds the evidence of the effectiveness of a given practice to be compelling, and the tribe has a plan for continually monitoring fidelity to the practice model and evaluating outcomes to refine and improve services. Clarify this process.

Talking Point #4: The study and evaluation of the effectiveness of culture-centered practices can pose unique challenges. Researchers often discover that they cannot conduct randomized controlled trials (RCTs) or rigorous quasi-experimental designs (QEDs) for small, but high priority, populations like AI/AN for pragmatic, cultural, and ethical reasons. In addition, the type of evidence required by registries or clearinghouses of evidence-based practices may not be compatible with culture-centered practices.

Challenges in building evidence for culture-based practices include small sample sizes, difficulty in identifying appropriate comparison groups, ethics of randomly assigning individuals for care in communities with high need and limited resources, and methodology that is incompatible with cultural values, beliefs, mores, and the traditions of local communities.

While RCTs and QEDs play important roles in establishing evidence, they represent only a sliver of the available information about practice effectiveness. Other approaches to evidence building is needed to fully explore the breadth of practices available to the widest range of populations.

Practitioners and researchers have been able to demonstrate the effectiveness of culture-centered practices by using different research methods and metrics. A practice-based evidence (PBE) approach uses research methods that quantify existing community practice outcomes and demonstrates the effectiveness of culture-centered practices using culturally syntonic research methods and metrics. In addition, a PBE approach can more clearly document the characteristics and treatment significance of cultural practices designed for underserved populations.

Talking Point #5: Implementation science has developed alongside of EBP registries, as researchers explored the challenges of implementing EBP, with fidelity to the practice and in the field (in other words, on-the-ground in the community). A major theme that emerged is implementing programs in the field is complex, especially when programs and practices are implemented in culturally diverse

<u>communities</u>. In some situations, programs can be implemented with fidelity, but most often, implementers must adapt the evidence-based practice.

PBE is designed to increase understanding of how practices work in real-world settings, and can be especially useful in underserved communities. PBE is part of the on-going efforts of practitioners and communities to implement programs in ways that best serve their populations, while also documenting fidelity, and changes, to programs. It is critical to be systematic and thoughtful about the selection and implementation of programs for tribal communities.

Talking Point #6: Policymaker concern about cost, ineffective treatments, and the opioid crisis have contributed to the continued emphasis on EBP and, more specifically, on EBPs that were developed from randomized controlled trials and quasi-experimental designs.

Research that relies on RCT and QED designs typically use assessment instruments that have been developed for mainstream populations and do not account for differences in culture and context found across underserved populations. It cannot be assumed that EBP will be effective in underserved tribal communities.

Public health and other community-based researchers have cautioned policymakers and funding agencies against a simplistic acceptance of the superiority of RCTs. For tribal practices, less rigor does not mean less effectiveness. Providing and evaluating services for an underserved population does not mean working without documentation of evidence. It means that in cases where RCTs and QEDs are impractical or not culturally appropriate, other methods of documenting effectiveness can be used to provide evidence for longstanding community practices and should be considered as culturally effective practices.

**Talking Point #7:** The goals of Participatory Action Research (PAR) and Community Based Participatory Research (CBPR) ensure that community members participate in the development, evaluation, and improvement of the programs and interventions that affect them. These strategies facilitate community ownership and engagement, which lead to improved insights into how to tailor practices for specific populations. <u>PAR and CBPR is in alignment with tribal sovereignty and should be considered in ACF's evaluation and effectiveness of EBP for preventative services.</u>

**Talking Point #8:** The complexity of field-based practice for tribal communities lends itself to participatory research strategies. The PBE approach to evidence-building emphasizes external validity based on community knowledge and longstanding cultural customs of why a particular intervention may or may not work.

A broad range of culturally appropriate research methods can be used to gain an understanding of program effectiveness with tribal populations. Some research methods used with underserved populations are ethnography, focus groups, structured and unstructured interviews, single group pre-test and post-test studies, analysis of extant epidemiological evidence, reviews of existing literature and research, document review, and historical analysis, which are not listed as viable research methods in the Act.

PBE is an example of how cultural practices for behavioral health interventions are discovered, adapted, monitored, and evaluated in real-world contexts. The PBE approach addresses the research-to-practice

challenge in real-world settings and recognizes the need for cultural context for meaningful practice improvement.

Talking Point #9: The scientific rigor required for the Navajo Nation to conduct its own research for the cultural adaptation of EBPs poses formidable challenges in research ethics. To effectively ensure high external validity, a thorough research methodology and adequate sample base approved by the Nation's Institutional Review Board (IRB) is needed. Often, the Nation's IRB is consciousness regarding human subject research, particularly in social science interventions. Often, such innervations have both direct and indirect implications on human subject's biopsychosocial functioning. While the intent is good, encouraging AI/AN to conduct research for federal compliance may increase the potential for harm to tribal members through the exposure of intervention/stimuli in randomized controlled trials and quasi-experimental designs. If the federal government is promoting human subject research, compensation to sample subjects should readily be available and accessible to tribal grantees.

In addition, <u>DHHS</u> needs to be <u>cognizant</u> of <u>AI/AN</u> IRB <u>processes</u>. The process for a research methodology to be approved by the Navajo's IRB can be timely, and thus could delay the implementation of FFSPA service provisions outlined by ACF timelines. DHHS needs to be cognizant of such systemic delays in their implementation timelines.

# **Planning Grants**

Talking Point #10: Since the Fostering Connections legislation was passed in 2008, two-year planning grants have been provided to tribes who wish to pursue direct Title IV-E funding based upon a competitive grant process. Implementation of FFPSA on Navajo will be will be costly. Currently, HHS has not provided any information on availability of planning and/or implementation grants other than a Kinship Navigator Grant. Given the implications of FFPSA on all affected service systems, HHS should allow tribes the option to access funding for planning and implementation.

## Technical Assistance

Talking Point #11: Technical assistance on manners regarding Title IV-B and Title IV-E from Regional ACF offices have been inconsistent and in some instances, ineffective. With the implementation of FFPSA, Regional ACF offices should be able to provide accurate and effective technical assistance in a timely manner. That is tribally specific because as the Nation has consistently made clear, tribes are not states. In addition, the Capacity Building Center for Tribes will be wrapping up its five-year contract with the Children's Bureau soon. What technical assistance will continue to be available to tribes, particularly if they are going to make effective use of the FFPSA legislation?

# Title IV-E AFDC Overview:

Title IV-E permits the Nation to claim reimbursement for a portion of foster care expenditures for children who are removed from home and placed in foster care, and who are eligible based on the former pre-welfare reform Aid to Families with Dependent Children (AFDC), in effect July 16, 1996. The Nation spans across three states; each with its own pre-welfare reform AFDC standards rate. To date, the Nation determines Title IV-E eligibility based upon a child's state residence, and not upon Navajo's own AFDC standard. This presents concerns as Navajo children are treated unfairly due to their residence. A Navajo child who resides in one region of the Nation, may not be eligible for federal foster care entitlements in another region. This includes:

Talking Point #1: Navajo received guidance from ACF after inquiry of cross-state eligibility indicating: "...the IV-E Agency must use the AFDC rate, however the tribal Title IV-E Agency may determine the state in which a child resides in accordance with tribal law or policy." To date, the Navajo Nation still advocating for clarification of the above statement. If the Nation is referred to as a state, the Nation should be allowed to use one pre-welfare reform AFDC rate, rather than three, so entitlement funds are provided to Navajo children equally.

Talking Point #2: May a Title IV-E agency re-determine a child's AFDC eligibility after the child was determined to be eligible at time of removal? Example: When eligibility has already been determined in one state (Arizona), the new guardian takes the children to another state (New Mexico) and the children are removed again. Since the child was already determined eligible in one state, the tribe is told eligibility has to be re-determined using the state in which the child now lives using the guardian's income. Further, the removal is considered as an entirely new removal episode. Clarification is needed.

Talking Point #3: How should the Title IV-E agency determine financial need for AFDC program eligibility purposes when the child is removed from a specified relative other than a parent? Must the title IV-E agency consider the relative's income and resources? Again, we are required to consider the three states AFDC standards, demonstrating inequality of Navajo children and families.

Talking Point #4: If a child is removed from a specified relative who is the child's legal guardian, must the Title IV-E agency determine whether the child meets the AFDC criteria of deprivation based on the legal guardian or the parent? How would deprivation requirement be applied when movement from one to another is occurring. The specified relative may live in an entirely different state from the parent.

# Rachel T. Toledo

From:

Eric Gale

Sent:

Thursday, September 13, 2018 9:05 AM

To:

Rachel T. Toledo

Subject:

FW: NABI Meeting 9/6/2018

See below from Kandis...

From: Kandis Martine [mailto:kmartine@nndoi.org]

Sent: Friday, September 7, 2018 11:10 AM

To: Terrelene Massey <tmassey@navajo-nsn.gov>; Gladys Ambrose <gambrose@navajo-nsn.gov>; Eric Gale

<egale@navajo-nsn.gov>

Cc: Rachel T. Toledo < rtoledo @navajo-nsn.gov>

Subject: RE: NABI Meeting 9/6/2018

# Good Morning,

In regards to any Navajo Nation Policy Statements, only the Nabi Committee can authorize the issuance of such statements. That is why all policy statements have to go through committees and why I previously recommend the Family First comments be finalized in mid-August, so there would be enough time to go through the committees. As it is, written comments are due on September 28<sup>th</sup>, which is less than three weeks away. I doubt this can be done on time. DOJ has no authority to authorize the issuance of such statements.

Continue to try to get these through the process to them done by the 28<sup>th</sup>. Sorry, I have no other suggestions.

### Kandis

From: Terrelene Massey [mailto:tmassey@navajo-nsn.gov]

Sent: Friday, September 7, 2018 11:03 AM

To: Gladys Ambrose <gambrose@navajo-nsn.gov>; Eric Gale <egale@navajo-nsn.gov>
Cc: Kandis Martine <kmartine@nndoj.org>; Rachel T. Toledo <rtoledo@navajo-nsn.gov>

Subject: RE: NABI Meeting 9/6/2018

Good morning Gladys and Eric:

First, thank you for attending the Nabi meeting Eric. Sounds like a long night.

Second, these papers were already submitted to ACF for the Navajo Regional Tribal Consultation and the online submission. I had authorization to provide that already. There are no changes with these papers so I think we can refer to those submission.

Third, the Family First may be the only one that is pending. I was out last week, but were you able to start the 164 process for that? My recommendation is that we get approval to submit these, as they are due today for the tribal consultation. I am copying Kandis to provide that authorization.

Last, an update, it appears that President Begaye will not be attending the consultation. I am inquiring with NNWO if there is anyone else. President Begaye is also designating me, as I will already be in DC for other ACF meetings.

Thanks.

Terrelene

From: Gladvs Ambrose

Sent: Friday, September 7, 2018 10:42 AM

To: Eric Gale <egale@navajo-nsn.gov>; Terrelene Massey <tmassey@navajo-nsn.gov>

Subject: RE: NABI Meeting 9/6/2018

Thank you for the update, I will consult with Mrs. Massey as to what this means for the consultation meeting.

Good Day; Gladys

From: Eric Gale

Sent: Thursday, September 6, 2018 8:21 PM To: Terrelene Massey; Gladys Ambrose Subject: Fwd: NABI Meeting 9/6/2018

NABI never got the AFCARS position paper and June Tribal Consultation report. They debated two separate topics for seven hours and lost quorum at 8:05 p.

Sent from my iPhone

Begin forwarded message:

From: "Rebecca. Healing" < <a href="mailto:rhealing@navajo-nsn.gov">rhealing@navajo-nsn.gov</a>>

Date: September 6, 2018 at 12:57:56 PM MDT

To: Eric Gale < egale@navajo-nsn.gov > Subject: RE: NABI Meeting 9/6/2018

Most likely they will need someone from our office because it pertains to AFCARS in case there are questions. But up to you.

----Original Message----

From: Eric Gale

Sent: Thursday, September 06, 2018 12:46 PM

To: Rebecca. Healing

Subject: Re: NABI Meeting 9/6/2018

Ok. Let me if I'm needed. The Verizon reception is horrible here, barely getting this now

Sent from my iPhone

On Sep 6, 2018, at 10:11 AM, Rebecca. Healing < rhealing@navajo-nsn.gov > wrote:

FYI, you may need to attend for AFCARS legislation today

From: Rachel T. Toledo

Sent: Thursday, September 06, 2018 9:52 AM

To: Gladys Ambrose; George Tallman; Rebecca. Healing; Laura Mike; Nicolette

Begay; Emma Hannah

Cc: Terrelene Massey; Virgil Pablo; Brenda Tsosie; Vernon L. Livingston; Francine

Roanhorse

Subject: NABI Meeting 9/6/2018

# Good morning,

NABI is having a meeting today at 10:00am at the Navajo Nation Council Chambers, there are two items pertaining to NDSS on the agenda. See attachment for details.

Thank you,

Rachel Toledo

**Division of Social Services** 

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(F): 928.871.7372

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Document No	011108	Date Issued:	09/11/2018
	EXECUTIVE	OFFICIAL REVIEW	
Title of Document:	FFPSA Tribal Consul Position Pape	Contact Name: AMBI	ROSE, GLADYS
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Email:	gambrose@navajo-nsn.gov	Phone Number:	928.871.6556
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Pursuant to 2 N.N.C. § 164 and Executive Order Number 07-2013

# **NAVAJO NATION**

RCS# 1059

Naa'bik'iyati Committee

10/11/2018

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Amd# to Amd#

Legislation 0306-18: Supporting

**PASSED** 

**MOT Filfred** 

Navajo Division of Social

SEC Brown

Services Position Relating to

Family First Prevention Services

Yea: 14

Nay: 0

Excused: 0

Not Voting: 9

Yea: 14

**Bennett** 

Damon

Pete

Tso

Brown

Daniels Filfred Phelps

Tsosie

Chee Crotty

Perry

Smith

Witherspoon

Nay: 0

Excused: 0

Not Voting: 9

**Bates** 

Begay, K

BeGaye, N

Hale

Jack

Shepherd

Slim

Yazzie

Begay, NM