House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

ADOPTION FACILITATORS

House Bill 4201 (Substitute H-4)
Second Analysis (11-18-93)

Sponsor: Rep. David M. Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

House Bill 4200 and companion legislation would authorize direct placement adoptions in which a parent or guardian chooses the adoptive parents, with or without the assistance of an adoption agency, and subject to the approval of the probate court; in practice, the proposal would mean that a parent could choose to work with an attorney rather than an adoption agency. The idea of allowing attorneys to facilitate adoptions has highlighted a long-standing problem in adoption: that of widely varying and sometimes exorbitant fees, particularly, it seems, when Michigan adoptive parents adopt their children from other states or countries. While some fear that allowing adoptions to be managed by attorneys will make an already expensive process even more costly, others note that many adoption agencies have been criticized for unjustifiably high fees. What is needed, many say, is a mechanism that will serve to keep fees low and enable prospective adoptive parents to evaluate services offered.

THE CONTENT OF THE BILL:

The bill would amend the Child Care Organization Act to provide for the collection and dissemination of information on adoption facilitators' fees and services, along with related expenses paid by an adoptive parent. Information would be reported to the probate court, which would forward it to the Department of Social Services (DSS); the DSS would maintain the information in a central clearinghouse.

Reporting requirements. Reporting requirements would apply to "primary adoption facilitators," who would be adoption agencies or attorneys who for compensation filed court documents on behalf of a prospective adoptive parents. Except for in-family adoptions or adoptions of state wards, for each adoption finalized after reporting requirements took effect, the primary facilitator would file with the probate court a DSS-provided form under oath which detailed the following:

** the type of adoption (that is, whether direct placement or agency placement, and whether intrastate, interstate, or intercountry);

** the names of the agency and individual who performed the preplacement assessment or home study required under the adoption code and House Bill 4200, and the cost of the assessment or home study;

** the name of each individual who provided counseling services (whether to a biological parent or adoptive parent), any agency affiliation of that individual, the number of hours of counseling, and the cost;

** the total amount paid by an adoptive parent for medical expenses incurred by a biological parent or the adoptee in connection with the birth or any illness of the adoptee;

** the total amount paid by an adoptive parent for a biological parent's living expenses;

** the name of any attorney representing an adoptive or biological parent, the number of hours of service performed by each attorney in connection with the adoption, and the total cost of that attorney's services;

** the name of any agency assisting a biological parent or adoptive parent, and the cost of all services provided by the agency other than those enumerated above;

** the total amount paid by an adoptive parent for a biological parent's travel expenses;

** any other expense approved by the court under the adoption code and House Bill 4200;

** any fees or expenses disallowed by the court;

** the total amount of all adoption-related expenses paid for by the adoptive parent.

All of the above would be public information, but the form would also contain a detachable portion for the reporting of certain confidential information, including descriptive information on biological parents, adoptees, adoptive parents, and the names of the adoptive parents.

Central clearinghouse. The DSS would accept forms from the probate court and maintain them in a central clearinghouse. An individual interested in adoption facilitators serving a particular county could obtain a list from the DSS that also gave the numbers of adoptions each person facilitated in that county during the previous year, and the fees that the DSS charged for transmitting copies of public information forms. Upon paying a fee to cover DSS costs, a person could obtain copies of the nonconfidential portions of information forms submitted by facilitators during the preceding year; if a facilitator failed to submit a form, the department would send a copy of a blank form (a proposed companion amendment to House Bill 4200 would ensure the department would be notified when a facilitator did not complete a form). If the number of adoptions involved were so few as to endanger confidentiality, the DSS would include forms submitted by that facilitator in earlier years or in other counties. These additional forms would be sent without cost to the recipient.

Other DSS responsibilities. The DSS would have to develop reporting forms and distribute them to courts, adoption agencies, and other interested individuals and organizations. The DSS could promulgate rules to implement the bill.

Informational pamphlets. Adoption facilitators would have to provide informational pamphlets to people inquiring about services. Each document would have to include a description of services, a schedule of fees, a statement that each party to an adoption has the right to independent legal representation and that one attorney may not represent both biological and adoptive parents, and a summary of how to obtain informational forms from the DSS central clearinghouse, along with how to use them to evaluate the costs of an adoption and make informed decisions regarding facilitators.

Effective date, tie-bar. Reporting requirements would take effect 180 days after the bill was enacted. The bill could not take effect unless House Bill 4200, which provides for direct placement adoptions, was enacted.

BACKGROUND INFORMATION:

House Bill 4201 was first reported by the House Committee on Judiciary on May 18, 1993, with the recommendation that Substitute H-1 be adopted. That substitute would have required adoption agencies to submit annual reports to the DSS. On October 28, 1993, the House re-referred the bill to the Judiciary committee for further consideration.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have substantial revenue and expenditure implications for the DSS, the exact amount of which is not known at this time. (11-17-93)

ARGUMENTS:

For:

Through creating a central clearinghouse of information on adoption services and adoption service providers, the bill would establish an effective mechanism to keep fees competitively low and enable prospective adoptive parents and others to evaluate specific providers. Since an adoption facilitator would have to provide information on the clearinghouse in response to an adoption inquiry, prospective adoptive parents would learn of the clearinghouse and how to make use of its extensive information.

For:

Information to be compiled under the bill will be invaluable in ascertaining the types and amounts of adoption fees and expenses statewide, which, along with the basic demographic data to be collected on the confidential portion of informational forms, should enable policymakers to determine the characteristics of adoption in Michigan. In addition, the information should reveal whether, as some fear may happen, allowing attorney-assisted adoptions fostered a profit-oriented adoption industry in Michigan. The bill also would provide the means of ascertaining whether House Bill 4200, by specifically allowing various expenses of a birth mother to be paid by adoptive parents, failed to adequately

safeguard against abuses whereby babies in effect went to the highest bidder.

Against:

The bill would impose substantial burdens on the Department of Social Services. Last year, over 6,000 adoption petitions were filed in Michigan; the department thus would have the responsibility to organize and maintain thousands of forms. It could be that excessive administrative burdens coupled with inadequate funding would result in inability to organize, retrieve, and provide copies of forms received from the probate courts.

Response:

The bill would allow the department to charge fees to recoup costs of copying, postage or fax, and labor. This would mitigate any burdens imposed on the department.

Against:

Concerns linger over whether the bill is sufficiently clear in providing that the confidential demographic information to be collected is to be maintained as nonpublic information. A specific exemption to the Freedom of Information Act may be in order.

POSITIONS:

The Michigan Chapter of the National Association of Social Workers supports the bill. (11-16-93)

Family Tree/Parents for Private Adoption supports the bill. (11-17-93)

The Adoption Reform Movement of Michigan supports the concept of the bill. (11-17-93)

Right to Life of Michigan supports the concept of collection and comparison of adoption cost information. (11-16-93)

The Department of Social Services does not have a formal position on the bill at this time. (11-17-93)