

SPECIAL NEEDS ADOPTION ASSISTANCE

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House Bill 6661

Sponsor: Rep. Scott Hummel

Committee: Family and Children Services

Complete to 12-4-06

A REVISED SUMMARY OF HOUSE BILL 6661 AS INTRODUCED 11-28-06

The bill would make a number of amendments to sections of the Social Welfare Act that deal with adoption subsidies for children with special needs.

In general, the bill replaces the term "subsidy" with "assistance" and refers to "adoption assistance" and "medical assistance." The bill also imposes a number of requirements on the Department of Human Services by replacing the term "may" with "shall" in various places in the act.

Among other things, the bill would appear to do the following.

- Amend the definition of "child with special needs" to require that certain new factors or conditions be considered, including (1) a diagnosed medical, physical, or emotional condition, or other clinically diagnosed disability documented by a licensed physician and (2) whether the child is at high risk based on history of abuse or neglect. Retained as factors or conditions are ethnic or family background, age, membership in a minority or sibling group, and length of time the child has been waiting for an adoptive home.
- Modify the current criterion for determining that a child has special needs that says a reasonable but unsuccessful effort must be made to place the child with an adoptive parent without providing adoption assistance, by adding "unless there are significant emotional ties with prospective adoptive parents while the child is in the care of those prospective adoptive parents as a foster child."
- Add to the description of the adoption process in the DHS pamphlet provided to prospective adoptive parents (1) a statement about the importance of seeking legal counsel before signing an agreement dealing with adoption assistance or medical assistance, and (2) a statement that coercive behavior from department staff or an employee of a child placing agency is not protected by governmental immunity and should be reported to law enforcement officials.
- Provide that an adoption assistance agreement would have to be negotiated and signed before adoption finalization. In some cases, a child could be eligible to receive adoption assistance after the adoption is legally finalized. An adoptive parent could request an application for adoption assistance be made on behalf of the child and would receive an administrative hearing to determine eligibility for state or

federally funded assistance. If the child is found eligible for the program, an adoption assistance agreement would be negotiated on behalf of the child and would be effective beginning on the date the child's special needs became apparent, as documented by a licensed physician.

- Require the department give a copy of the adoption assistance agreement or medical assistance agreement to the adoptive parents at least 14 days before signing an agreement, along with the recommendation that the adoptive parents seek legal counsel before signing an agreement.
- Require the department to notify prospective adoptive parents regarding the availability of adoption assistance, medical assistance, and nonrecurring adoptive assistance. Notification would be given in writing at the time of placement or at least 14 days before adoption finalization.
- Specify that a medical assistance agreement must cover, among other things, the amount to be paid, the nature and all types of services and assistance, and any preapproval or reimbursement procedures to be followed by the parties.
- Specify that the adoption assistance or medical assistance would continue until the adoptee dies, marries, enters military services, become 18 years of age, or the department determines the adoptive parents are no longer legally responsible for support of the adoptee or are no longer providing any support for the adoptee.
- Require the department to pay adoption assistance, medical assistance, or both, to an adoptive parent (unless otherwise directed by the adoptive parents through a signed written agreement) if the adoptee is a special needs child; meets the definition of a special needs child before his or her eighteenth birthday; meets the definition before the adoption is finalized; and the adoptive parent requests adoption assistance or medical assistance, or both, no later than the date of confirmation of the adoption. Currently, the act's provides that the department "may" pay a support subsidy if it has "certified" that those factors are present.
- Require the department pay medical assistance to the adoptive parent if the expenses to be covered by the medical assistance are necessitated by a physical, mental, or emotional condition that existed before the petition were filed or eligibility was determined. However, the department would be required to first seek all available public money and third-party payment when paying medical assistance.
- Require the department to provide an adoptive parent with a form that has clear instructions on how to submit a claim for nonrecurring adoption assistance. That term would be newly defined to go beyond the current adoption fees, court costs, and attorney fees. It would include home study fees, costs for replacement of birth certificates, and expenses for travel for visits to the adoptee. The definition would also be modified to include items now covered under "other expenses directly related to adoption of a child with special needs," and that term would be deleted.
- Provide that if the adoptive parents choose not to receive adoption assistance or medical assistance at the time the child is placed in the adoptive parent's home, they

must be encouraged to sign a deferred adoption assistance or medical agreement with a payment amount of \$0.00 listed in that agreement.

- Specify that establishing a deferred adoption assistance or medical assistance agreement preserves future recurring assistance eligibility for the adoptee in the event that the adoptive parent or parents needs assistance in meeting the needs of the adoptee.
- Provide that an adoptee, the adoptee's guardian, or the adoptive parents may appeal a determination of the department made under the act in the appropriate state court or under the Administrative Procedures Act of 1969. (Currently, appeals are made under the APA.)

MCL 400.115f et. al.

FISCAL IMPACT:

The bill would increase state costs as it would increase the number of families eligible for adoption subsidies and medical subsidies. Information is not available as to the exact number of new subsidy cases that might be opened as a result of the bill.

A key provision of the bill affecting potential eligibility is a change in the definition of "child with special needs." The bill includes a new factor in this definition: "The child is at high risk based on history of abuse or neglect." Since most children in most care have some history of abuse or neglect, this provision could conceivably increase the number of children eligible for subsidy significantly. Data provided by the DHS indicate that around 10 percent of children adopted out of foster care in FY 2006 (255 children in total) do not receive subsidies - mostly because they do not meet the current "special needs" definition. If most of these children become eligible under the new definition, annual adoption subsidy costs could increase by over \$1 million in the first year. Furthermore, any new eligibles would continue to remain eligible for assistance for the rest of their childhood years. Thus, costs would continue to accumulate over time for the program as new eligibles under the bill enter the system each year and prior year eligibles under the bill remain in the system. Thus, long-run costs would greatly exceed short-run costs. Again, however, this depends largely on this definition of "high risk based on history of abuse and neglect."

Other provisions of the bill that could also result in increased eligibility include, although to a smaller extent:

- a) The requirement in Section 115g that adoption subsidies be paid under listed circumstances. Current law allowed, but did not mandate, subsidies when conditions are met. In addition, the bill amends the circumstances under which an adoptive parent can be eligible for a subsidy to include eligibility in cases where a child meets the "special needs" definition but the need is not officially certified before the finalization of the adoption.

- b) Elimination of the requirement that adoptees receiving what are now referred to as medical subsidies be in foster care at the time the adoption petition is filed, and that the condition on which eligibility is based be certified prior to the adoptee's 18th birthday.
- c) Provisions in Section 115u which allow for adoptive parents to apply for and receive adoption assistance after finalization of the adoption through an administrative hearing process when a child's special needs do not become apparent until after adoption finalization.
- d) A slight broadening of the definition of "nonrecurring adoption expenses" for which adoptive parents may receive reimbursement from the State.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.