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BILL ANALYSIS

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House Bill 6661 (Substitute H-1 as passed by the House)  
Sponsor: Representative Scott Hummel  
House Committee: Family and Children Services  
Senate Committee: Judiciary

Date Completed: 12-12-06

### **CONTENT**

#### **The bill would amend the Social Welfare Act to do the following:**

- **Provide for adoption assistance and medical assistance, rather than support subsidies, for the adoptive parent or parents of a child with special needs.**
- **Require, rather than permit, the Department of Human Services (DHS) to provide adoption assistance and medical assistance based on conditions specified in the Act.**
- **Require the DHS to notify a prospective adoptive parent or parents of the availability of adoption assistance and medical assistance.**
- **Permit an adoptive parent or parents to sign a deferred adoption assistance or medical assistance agreement that would preserve future eligibility for assistance.**
- **Require the DHS to give an adoptive parent or parents a copy of an adoption assistance agreement 14 days before it was signed, and encourage the parent or parents to seek legal advice before signing the agreement.**
- **Require, rather than permit, the DHS to continue assistance under the Act for an adoptee under the age of 21 who was attending a high school, college, university, or vocational school.**

#### Assistance Eligibility

Under the Act, the DHS may pay a support subsidy under certain conditions to an

adoptive parent of an adoptee who is placed in that parent's home under the Adoption Code or the laws of another state or a tribal government, if the DHS has certified that the adoptee is a child with special needs.

The bill would refer to adoption assistance or medical assistance, rather than a support subsidy, and would require the DHS to provide adoption assistance, medical assistance, or both, under the conditions specified in the Act, unless otherwise directed by the adoptive parents through a signed written agreement.

Under the Act, the DHS may pay a support subsidy to an adoptive parent if the Department has certified, before the adoptee's 18<sup>th</sup> birthday and before the petition for adoption is finalized, that the adoptee is a child with special needs, and if the adoptive parent requests the support subsidy by the date the adoption is confirmed.

The bill would remove reference to certification by the DHS, instead requiring that the adoptee meet the definition for a child with special needs under the Act (described below). This requirement would have to be met before the adoptee's 18<sup>th</sup> birthday, as currently required for certification, and before the adoption was finalized. In addition, the request by the adoptive parent for adoption assistance also would have to be made before the adoption was finalized.

As presently required for completion of the certification process, the DHS would have to

determine eligibility for adoption assistance and/or medical assistance within 30 days after receiving a request.

Under the Act, the DHS may pay a medical subsidy to the adoptive parent or parents of an adoptee if the expenses are made necessary by a physical, mental, or emotional condition of the adoptee that existed, or the cause of which existed, before the adoption petition was filed, or certification was established, whichever occurred first. The certification must be made before the adoptee's 18<sup>th</sup> birthday, and the adoptee must have been in foster care at the time the petition for adoption was filed.

The bill, instead, would require the DHS to pay medical assistance to the adoptive parent or parents if the expenses to be covered by the assistance were necessary because of a physical, mental, or emotional condition of the adoptee that existed, or the cause of which existed, before the adoption petition was filed or eligibility was determined.

The Act requires the DHS to determine the amount of the medical subsidy without respect to the income of the adoptive parent or parents. The bill would remove that provision.

The Act prohibits the DHS from paying a medical subsidy until all other available public money and third party payment are used. The bill, instead, would require the DHS first to seek all other available public money and third party money when paying medical assistance.

The bill would require the DHS to notify prospective adoptive parents about the availability of adoption assistance, medical assistance, and nonrecurring adoption assistance, in writing at the time of placement or at least 14 days before an adoption was finalized.

The Act defines "adoption assistance" as a support subsidy or medical assistance, or both. Under the bill, the term would mean payment for support of a child with special needs who had been placed for adoption. Currently, "medical subsidy" means payment for medical, surgical, hospital, and related expenses necessitated by a specified physical, mental, or emotional condition of a

child who has been placed for adoption. Under the bill, the term "medical assistance" would have the same definition but refer to a child "with special needs".

### Special Needs

Under the Act, "child with special needs" means an individual under 18 years of age for whom there is a specific judicial finding that the child cannot or should not be returned to the home of his or her parents, and a specific factor or condition or a combination of factors and conditions exists so that it is reasonable to conclude that the child cannot be placed with an adoptive parent without providing adoption assistance under the Act.

The factors or conditions to be considered in determining whether a child has special needs may include ethnic or family background; age; membership in a minority or sibling group; medical condition; physical, mental, or emotional disability; or length of time the child has been waiting for an adoptive home. The bill also would include consideration of whether the child was at risk based on a history of abuse or neglect. The bill would refer to a diagnosed medical, physical, or emotional condition or other clinically diagnosed disability documented by a licensed physician or a licensed mental health professional.

The current factors or conditions to be considered also include that a reasonable but unsuccessful effort was made to place the adoptee with an appropriate adoptive parent without providing adoption assistance under the Act, or a prospective placement is the only placement in the best interest of the child. Under the bill, this would apply unless there were significant emotional ties with prospective adoptive parents while the child was in their care as a foster child.

### Adoption Assistance Agreement

Under the Act, if adoption assistance is to be paid or medical subsidy eligibility is certified, the DHS and the adoptive parent must enter into an adoption assistance agreement or a medical subsidy agreement. A medical subsidy agreement must contain certain information, including the duration of the agreement and the conditions for continued eligibility for the medical subsidy as established by statute. The bill, instead,

would require a "medical assistance agreement" to include 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.

Under the Act, the DHS must give a copy of the adoption assistance agreement or the medical subsidy agreement, or both, to the adoptive parent or parents. Under the bill, the DHS would have to give a copy to the adoptive parent or parents at least 14 days before signing the agreement, with recommendation that the parent or parents seek legal counsel before signing the agreement.

#### Deferred Assistance

Under the bill, if the adoptive parent or parents chose not to receive adoption assistance or medical assistance at the time the adoptee was placed in the adoptive parent's home, the parent or parents would have to be encouraged to sign a deferred adoption assistance or medical assistance agreement with a payment amount of \$0.00 listed in the agreement. The bill specifies that establishing a deferred adoption assistance or medical assistance agreement would preserve future recurring adoption assistance eligibility and/or medical assistance eligibility for the adoptee in the event that the adoptive parent or parents needed assistance in meeting the adoptee's needs.

The bill would require an adoption assistance agreement to be negotiated and signed before the child's adoption was finalized, although in some cases, a child could be eligible to receive adoption assistance after his or her adoption was finalized. An adoptive parent could request that an application for adoption assistance be made on the child's behalf, and the adoptive parent would have to receive an administrative hearing to determine the child's eligibility for State or federally funded assistance. If the child were found eligible for the program, an adoption assistance agreement would have to be negotiated on his or her behalf, and would be effective beginning on the date that his or her special needs became apparent, as documented by a licensed physician.

#### Nonrecurring Assistance

The Act requires the DHS to enter into an agreement with the adoptive parent or parents of a child with special needs for the payment of nonrecurring adoption expenses incurred by or on behalf of the adoptive parent or parents. The agreement may be a separate document or part of an adoption assistance agreement. The bill would refer to the payment of "nonrecurring adoption assistance" rather than nonrecurring adoption expenses, and would require this agreement to be a separate document from the adoption assistance agreement.

The bill also would require the DHS to provide the adoptive parent or parents with a form containing clear instructions on how to submit a claim for nonrecurring adoption assistance.

Under the Act, "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and "other expenses that are directly related to the legal adoption of a child with special needs". The phrase means adoption costs incurred by or on behalf of the adoptive parent and for which he or she carries the ultimate liability for payment, including the adoption study, health and psychological examinations, supervision of the placement before adoption, and transportation and reasonable costs of lodging and food for the child or adoptive parent if necessary to complete the adoption or placement process. Under the bill, "nonrecurring adoption assistance" would include all of those expenses, as well as costs for replacement of birth certificates, and expenses for travel for visits to the adoptee. As currently provided, the term would not include costs or expenses incurred in violation of State or Federal law or reimbursed from other sources or funds.

#### Continuation of Assistance

Under the Act, adoption assistance or medical subsidy assistance must continue until the adoptee becomes 18 years of age, is emancipated, or dies; the adoption is terminated; or the DHS makes a determination of ineligibility. The bill, instead, would require assistance to continue until one of the following occurred:

- The adoptee died, married, or entered military service.
- The DHS determined that the adoptive parents no longer were legally responsible for support of the adoptee, or no longer were providing any support to the adoptee.

Under the Act, unless the adoptee's medical condition no longer exists, or an event described above has occurred, the DHS may not modify or discontinue a medical subsidy. The bill would prohibit the Department from modifying or discontinuing medical assistance under these conditions unless the adoptive parent or parents submitted to the DHS a signed request to modify or discontinue the assistance.

In addition, the Act provides that if sufficient money is appropriated, the DHS may continue adoption assistance or a medical subsidy, or both, for an adoptee under 21 years of age if it determines that the adoptee is a student regularly attending a high school or postsecondary school in pursuance of a course or study leading to a high school diploma, college degree, or gainful employment. The bill would require, rather than permit, the DHS to continue assistance under those circumstances, and would remove the reference to the appropriation of sufficient money.

#### DHS Pamphlet

The Act requires the DHS to prepare and distribute to adoption facilitators and other interested individuals a pamphlet describing the adoption process and the adoption assistance and medical assistance programs established under the Act. Under the bill, that description would have to include a statement about the importance of seeking legal counsel before signing an agreement dealing with adoption assistance or medical assistance, and a statement that coercive behavior from DHS staff or an employee of a child placing agency was not protected by governmental immunity and should be reported to law enforcement officials.

#### Other Provisions

The Act permits an adoptee, his or her guardian, or his or her adoptive parent or parents to appeal a determination of the DHS made under the Act. The appeal must be conducted under the Administrative

Procedures Act. The bill also would permit an adoptee or his or her adoptive parent or parents or legal guardian to file an appeal in the appropriate State court.

The Act requires the adoptive parent or parents to file with the DHS at least once each year a verified report that includes the location of the adoptee and other matters. The bill would require that report to be filed every two years.

MCL 400.115f et al.

Legislative Analyst: Curtis Walker

#### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Department of Human Services' budget. The provision that allows support subsidy payments if the Department certifies the presence of certain factors would be revised to require the Department to pay an adoption assistance when an adoption of a child with special needs was final, which would increase the number of adoption assistance cases. The clarification of the list of nonrecurring adoption assistance factors and the required notification of prospective adoptive parents also could increase the caseload and associated administrative costs. The ability of adoptive parents to decline adoption assistance and the requirement that the DHS first seek other public money and third party payment would help offset the cost to the State for the medical subsidies. At this time, there is insufficient information to determine the exact cost and potential savings.

Fiscal Analyst: Constance Cole

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.