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BILL



ANALYSIS

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Senate Bill 170 (Substitute S-2 as reported)
Sponsor: Senator Irma Clark-Coleman
Committee: Families and Human Services

(as enacted)

Date Completed: 12-10-07

RATIONALE

When a child who has been the victim of abuse or neglect is under the jurisdiction of the family court, grandparents or other relatives often are willing to care for the child, either temporarily or as permanent guardians if necessary. Many believe that such arrangements are in the best interest of the child, who may feel more comfortable staying with a known relative rather than being placed in the foster care system. Given the substantial costs of raising a child, however, many relatives simply cannot afford to take on that responsibility without some financial assistance, especially if a child has special needs. Unlike foster care providers, such guardians currently do not receive any financial support from the Department of Human Services (DHS). It has been suggested that a program of subsidized guardianship assistance should be established, to provide guardians with assistance while they are caring for children who otherwise could be difficult to place.

CONTENT

The bill would create the "Subsidized Guardianship Assistance Act" to do the following:

- **Provide that a child who was a ward of the court due to abuse or neglect or was under the jurisdiction of the Michigan Children's Institute would be eligible for subsidized guardianship assistance if specific factors existed making it reasonable to conclude that the child could not be placed without assistance, and if a reasonable effort had been made to place the child without assistance or a subsidized guardianship were the**

only placement in the child's best interest.

- **Permit the DHS to pay subsidized assistance to a court-appointed legal guardian on behalf of an eligible child if the guardian were the child's relative or legal custodian and were approved for the assistance by the DHS, and the child lived with the guardian.**
- **Require a guardian to apply for and maintain on behalf of the child any public or private medical insurance or assistance for which the child was eligible.**
- **Require the DHS to terminate relative guardianship assistance under particular circumstances.**
- **Provide for an appeal of the DHS's decision to terminate or alter the terms of guardianship assistance, or deny an application for assistance.**
- **Require the DHS to collect, assemble, and report all information required for reporting purposes, and require a guardian to provide information requested by the DHS.**

The bill is tie-barred to Senate Bills 668 through 672, which would amend provisions of the juvenile code concerning the placement of children in foster care. Senate Bill 170 (S-2) is described in detail below.

Eligible Child

A child (a person less than 18 years of age) would be eligible to receive subsidized guardianship assistance if he or she were a ward of the family court under Section 2(b) of the juvenile code or were under the jurisdiction, control, or supervision of the

Michigan Children's Institute, and both of the following applied:

- A reasonable but unsuccessful effort was made to place the child with an appropriate guardian without the provision of subsidy assistance under the bill, or a prospective placement was the only placement in the best interest of the child.
- A specific factor or condition, or a combination of factors and conditions, existed with respect to the child so that it was reasonable to conclude that the child could not be placed with a guardian without the provision of subsidy payments under the bill.

The factors or conditions to be considered could include ethnic or family background, age, membership in a minority or sibling group, medical condition, physical, mental, or emotional disability, or the length of time the child had been waiting for a permanent home.

(Under Section 2(b) of the juvenile code, the family court has jurisdiction concerning a juvenile under 18 years of age under the following circumstances:

- The juvenile's parent or other person legally responsible for the child's care and maintenance neglects or refuses to provide proper or necessary support, education, or health care; the juvenile is subject to a substantial risk of harm to his or her mental well-being; or the juvenile is abandoned by his or her parents, guardian, or other custodian, or is without proper custody or guardianship.
- The juvenile's home or environment is an unfit place to live due to the neglect, cruelty, drunkenness, criminality, or depravity on the part of the parent, guardian, nonparent adult, or other custodian.
- The juvenile's parent, without good cause, has substantially failed to comply with a limited guardianship placement plan regarding the juvenile.
- The juvenile has a guardian under the Estates and Protected Individuals Code and the parent, without good cause, for at least two years, has failed or neglected to provide regular and substantial support or to visit, contact, or

communicate with the juvenile, despite the ability to do so.)

Eligible Guardian

A guardian who met all of the following criteria could receive subsidized guardianship assistance on behalf of an eligible child:

- The guardian was the child's relative or legal custodian.
- The guardian was assessed and approved for subsidized guardianship assistance by the DHS.
- The child resided with the guardian in the guardian's residence.

"Guardian" would mean a person appointed by the court to act as a legal guardian for a child under Section 19a or 19c of the juvenile code. (Senate Bill 669 (S-1) would amend Section 19a to permit the court to appoint a guardian for a child in foster care, if termination of parental rights were not initiated. Senate Bill 672 (S-1) would amend Section 19c to permit the court to appoint a guardian for a child who remained in placement after parental rights were terminated.)

"Relative" would mean an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, or the spouse of any of those individuals, even after the marriage has ended by death or divorce. If there were no man with legally established rights to the child, the parent of a man whom the court had found probable cause to believe was the putative father could be considered a relative under the bill, although that designation would not be considered a finding of paternity and would not confer legal standing on the putative father.

"Legal custodian" would mean an individual who is at least 18 years of age in whose care a child remains or is placed after a court makes a finding under Section 13a of the juvenile code (Under that section, if a petition alleging abuse or neglect of a child is filed with the court, the court may release the juvenile in the custody of his or her

parents, guardian, or custodian; may order a parent, guardian, custodian, or other adult resident to leave the home; may not leave the child in the home if the petition alleges abuse by one of those individuals, unless the conditions of custody are adequate to safeguard the child; and, in determining placement pending trial, must order the juvenile placed in the most family-like setting available consistent with his or her needs.)

Assistance

Subject to the provisions of the bill, the DHS could make pay subsidized guardianship assistance to an eligible guardian on behalf of an eligible child. The guardian would have to apply for subsidized guardianship assistance to the DHS. The DHS would have to make a determination within 30 days after receiving the request.

The DHS would have to review the eligibility of the guardian and child for continuation of subsidized guardianship assistance annually. The guardian would have to provide the eligibility information requested by the DHS for purposes of that annual review.

Families would be eligible for postpermanency services in the same manner as adoptive families.

Termination of Assistance

The DHS could not provide subsidized guardianship assistance after one of the following occurred:

- The child reached 18 years of age, or 19 if he or she were still attending high school.
- The child was incarcerated in an adult correctional facility under a sentence and commitment order of a court of competent jurisdiction.
- The child was placed in a child caring institution as defined under the child care licensing Act for a period of at least 90 days.
- The child was removed from the guardian's residence by court order.
- The child died.
- The child was adopted by the guardian or another individual under the Michigan Adoption Code or the adoption laws of another state or country.

- The guardianship was terminated by order of the court having jurisdiction in the guardianship proceeding.
- The child no longer resided in the guardian's residence.
- The guardian failed to submit to the DHS information it required or requested for the annual review required under the bill.
- The guardian no longer satisfied one or more of the criteria to be an eligible guardian.
- The guardian failed to maintain on behalf of the child any public or private medical insurance or assistance for which the child was eligible.
- The DHS determined that funds no longer were available to support continuation of subsidized guardianship assistance.
- The guardian died and no new guardian was appointed by the court within 30 days.

The DHS would have to send notice of termination of subsidized guardianship assistance by mail to the guardian at his or her current or last known address, and to the court with jurisdiction over the guardianship case. The notice would have to include a statement of the Department's reason for termination.

Appeal

An applicant for subsidized guardianship assistance under the bill or a guardian or child who had received subsidized guardianship assistance under a subsidized guardianship assistance agreement could appeal a decision of the DHS denying the application, establishing or modifying the subsidized guardianship assistance, or terminating subsidized guardianship assistance, according to the Administrative Procedures Act.

"Subsidized guardianship assistance agreement" would mean an agreement regarding financial support for children meeting the qualifications for subsidized guardianship assistance as specified in the bill or in the DHS's administrative rules.

Medical Insurance

A guardian would have to apply for and maintain on behalf of the child any public or private medical insurance or assistance for which the child was eligible, including eligibility under applicable laws providing

financial assistance for medical or health care expenses.

Reporting Requirements

The DHS would be responsible for collecting, assembling, and reporting all data and information required for reporting purposes.

A guardian would have to cooperate with the DHS and provide all information that he or she possessed as requested by the DHS to facilitate compliance with these requirements.

Title IV-E Funding

If Title IV-E eligibility were approved as a funding source for subsidized guardianship assistance, the DHS would be subject to all Federal laws and regulation requirements, including cooperation with the Title IV-B program and assignment of child support. (Title IV-E of the Social Security Act provides Federal assistance to states for foster care and adoption payments. Title IV-B deals with child and family services.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The DHS is required to seek permanent placements for children under the jurisdiction of the family court. One of the most common options is to place the child with a member of the family or a legal custodian who knows the child, is familiar with his or her needs, and will be able to provide for him or her in a familiar setting. Placement with a relative or legal custodian allows the child to retain some sense of continuity and permanency during an emotionally stressful period. Families also may feel more comfortable knowing the child is with a relative rather than being placed in the foster care system. Despite these benefits, potential guardians sometimes lack the financial resources to provide adequately for the child's needs. Grandparents or others, often living on limited incomes, may struggle with the considerable expense of feeding, clothing, and providing for a child. If a potential guardian is living in a small apartment, he or she may need to move to a bigger home to

provide space for the child, or make other costly accommodations. In some cases, the guardian may need to give up his or her job to care for the child. Subsidized guardianship assistance could give the guardian the necessary financial support to provide a stable environment for the child, without requiring the guardian to deplete his or her savings or take on unsustainable debt.

Even with the subsidized assistance, guardianships likely would be less expensive than the alternative of foster care placement, potentially saving the State money and reducing the foster care case load. The bill would provide strict limits on who would qualify for subsidized guardianship assistance, ensuring that it went only to children who otherwise would be unlikely to find permanent placements. These could include older children or children with additional needs such as mental or physical health problems. It is sometimes difficult to find appropriate placements for such children, and the bill would provide the resources for potential guardians who are willing to take on that responsibility.

The 2007-08 DHS budget appropriates about \$4.6 million for a subsidized guardianship program, and the bill would establish the framework for implementing it. According to testimony before the Senate Families and Human Services Committee, that appropriation could provide subsidized guardianships for about 1,200 children for half a year. The bill would impose no financial cost on local governments or county DHS offices, because the subsidized guardianships would be completely funded at the State level.

The bill is similar to a subsidized guardianship program in Illinois, under which a relative guardian or the unrelated guardian of a child 12 years of age or older may be eligible for a guardianship subsidy, which may include a monthly payment determined by the child's needs and other circumstances; assistance for employment related day care; payment for physical or mental health costs not covered through other funding sources; and other types of assistance. That program reportedly has resulted in significant savings and permanent placements for a number of children in Illinois. By implementing a

similar subsidized guardianship program, the bill could produce similar results for children seeking permanent placements in Michigan.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The FY 2007-08 budget includes \$4.6 million GF/GP for the estimated first 12 months of costs associated with the subsidized guardianship program.

Fiscal Analyst: Bill Bowerman

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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.