

Legislative Analysis



GUARDIANSHIP ASSISTANCE

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Senate Bill 227 as passed by the Senate
Sponsor: Sen. Irma Clark-Coleman
House Committee: Families and Children's Services
Senate Committee: Families and Human Services

First Analysis (3-31-09)

BRIEF SUMMARY: The bill would amend the Subsidized Guardianship Assistance Act to rename it the Guardianship Assistance Act, revise the criteria for child eligibility for guardianship assistance, require a guardian to be a licensed foster parent and undergo a criminal background check and a central registry check for child abuse and neglect, require the Department of Human Services (DHS) to enter into a written binding agreement with a prospective guardian, require DHS to pay up to \$2,000 for total costs of non-recurring expenses associated with obtaining guardianship and require DHS to include in the case plan the steps taken to determine that reunification or adoption is not appropriate. A detailed explanation of the bill follows. *Information in this analysis was derived from the analysis by the Senate Fiscal Agency, dated 3-18-09.*

FISCAL IMPACT: The FY 2008-09 DHS appropriation allocated \$4.575 million GF/GP for operation of the subsidized guardianship program. This bill would align the requirements for subsidized guardianship in Michigan with the eligibility criteria for payment through Title IV-E of the Social Security Act. The bill would permit the state to obtain Title IV-E reimbursement for guardianship arrangements, reducing state expenditure per child by about 65 percent. Total GF/GP savings would be driven by the number of children in guardianships eligible for Title IV-E reimbursement.

THE APPARENT PROBLEM:

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 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).

In 2008, the Subsidized Guardianship Assistance Act was enacted to permit the DHS to pay assistance to a court-appointed legal guardian on behalf of a child under certain circumstances. The Act has not yet been implemented, however, and recent changes to federal law have made federal matching funds available to support guardianship assistance if the program conforms to certain federal requirements. It has been suggested

that the Subsidized Guardianship Assistance Act be revised to meet those requirements, in order to allow the program to qualify for Federal funding. Legislation has been introduced to address this concern.

THE CONTENT OF THE BILL:

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

- Rename the Act the "Guardianship Assistance Act", and replace references to "subsidized guardianship assistance" with "guardianship assistance" throughout the act.
- Revise the criteria for a child to be eligible for guardianship assistance.
- Require a guardian to be a licensed foster parent, and to undergo a criminal background check and a central registry check for child abuse and neglect.
- Require the DHS to enter into a written, binding, guardianship assistance agreement with a prospective guardian.
- Require the DHS to pay up to \$2,000 for the total cost of nonrecurring expenses associated with obtaining legal guardianship of an eligible child.
- Require the DHS, if a child's permanency plan included placement with a guardian and the receipt of guardianship assistance, to include in the case plan the steps taken to determine that reunification or adoption was not appropriate, among other information.

The bill also specifies that only a relative who was a licensed foster parent caring for a child who was eligible to receive Title IV-E-funded foster care payments for six consecutive months would be eligible for federal funding under Title IV-E for guardianship assistance, although a child who was not eligible for Title IV-E funding who was placed with a licensed foster parent could be eligible for state funding.

Eligibility Criteria

Currently, a child is eligible to receive subsidized guardianship assistance if he or she is a ward of the court under Section 2(b) of the juvenile code (e.g., due to abuse, neglect, or abandonment) or is under the jurisdiction, control, or supervision of the Michigan Children's Institute, and both of the following apply:

- Specific factors or conditions make it reasonable to conclude that the child cannot be placed with a guardian without the provision of subsidy payments under the act.
- A reasonable but unsuccessful effort was made to place the child with an appropriate guardian without the provision of subsidy assistance, or a prospective placement is the only placement in the best interest of the child. The bill would delete those provisions. Instead, a child would be eligible to receive guardianship assistance if the DHS determined that all of the following applied:
 - The child had been removed from his or her home as a result of a judicial determination that allowing him or her to remain in the home would be contrary to his or her welfare.

- The child had resided in the home of the prospective guardian for at least six consecutive months.
- It had been determined that reunification or placing the child for adoption was not an appropriate permanency option.
- The child demonstrated a strong attachment to the prospective guardian, and the guardian had a strong commitment to caring for the child permanently.
- If the child had reached 14 years of age, he or she had been consulted regarding the guardianship arrangement.

Guardianship Agreement

For a child who met the eligibility requirements, the bill would require the DHS to negotiate and enter into a written, binding guardianship assistance agreement with the child's prospective guardian and give him or her a copy of the agreement.

The agreement would have to specify all of the following:

- The amount of the guardianship assistance to be provided under the agreement for each eligible child, and the manner in which the payment could be adjusted periodically in consultation with the guardian, based on his or her circumstances and the child's needs.
- The additional services and assistance the child and the guardian would be eligible for under the agreement.
- The procedure by which the relative guardian could apply for additional services if needed.
- That the DHS would pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of an eligible child, to the extent that the total cost did not exceed \$2,000. The agreement would remain in effect without regard to the State residency of the guardian. A guardianship assistance payment on a child's behalf could not exceed the foster care maintenance payment that would have been paid on that child's behalf if he or she had remained in a foster family home.

Permanency Plan

Under the bill, for a child whose permanency plan included placement with a guardian and would include the receipt of guardianship assistance payments, the DHS would have to include in the case plan all of the following:

- The steps that the child placing agency or the DHS had taken to determine that reunification or placing the child for adoption was not an appropriate permanency option.
- The reason for any separation of siblings during placement.
- The reason a permanent placement through guardianship was in the child's best interest.
- The way in which the child met the eligibility requirements for a guardianship assistance payment. The case plan also would have to include the efforts the child placing agency or the DHS had made to discuss adoption by the prospective guardian as a permanent alternative to legal guardianship and, in the case of a relative foster parent who had chosen not to pursue adoption, documentation of the reasons. In cases in which the parental rights had not been terminated, the case plan would have to include the

efforts the DHS had made to discuss with the child's birth parent or parents the guardianship assistance agreement, or the reasons that the efforts were not made. The act defines "subsidized guardianship assistance agreement" as an agreement regarding financial support for children who meet the qualifications for subsidized guardianship assistance as specified in the act or in the department's administrative rules. The bill would replace that definition with a definition of "guardianship assistance agreement," which is the same except that it refers to a "negotiated binding agreement" and omits "subsidized."

Rights of Guardian

Under the bill, the legal guardianship would be a judicially created relationship between the child and his or her guardian that was intended to be permanent and self sustaining as shown by the transfer to the guardian of the following parental rights with respect to the child:

- Protection.
- Education.
- Care and control of the person.
- Custody of the person.
- Decision making.

Assistance Criteria

The bill would require a guardian to be a licensed foster parent to receive guardianship assistance under the act. The current eligibility criteria include a requirement that the eligible child reside with the guardian in the guardian's residence. The bill would require the child to reside in the prospective guardian's residence for at least six months before the DHS received the application for guardianship assistance. In addition, the act requires the guardian to be assessed and approved for guardianship assistance by the DHS before receiving guardianship assistance. The bill would require the assessment to include criminal record checks and child abuse and neglect central registry checks on the guardian and all adults living in his or her home, as well as fingerprint-based criminal record checks on the guardian. If the guardian's fingerprints were stored in the automated fingerprint identification system (AFIS) under the child care licensing act, the DHS would have to use those fingerprints for the criminal record check. (That act requires applicants for a foster care home license to undergo criminal history checks, and requires the State Police to store fingerprints submitted under the act in an AFIS database.)

Title IV-E Assistance

Under the bill, only a relative who was a licensed foster parent caring for a child who was eligible to receive Title IV-E-funded foster care payments for six consecutive months would be eligible for federal funding under Title IV-E for guardianship assistance. A child who was not eligible for Title IV-E funding who was placed with a licensed foster parent, related or unrelated, and who met the bill's eligibility criteria described above, could be eligible for state-funded guardianship assistance. If a child were eligible for Title IV-E-funded guardianship assistance under the bill but had a sibling who was not eligible, then the child and any of the child's siblings could be placed in the same relative

guardianship arrangement if the DHS and the relative agreed on the appropriateness of the arrangement for the sibling. Title IV-E funded relative guardianship assistance could be paid on behalf of each sibling placed under that provision. Under the Subsidized Guardianship Assistance Act, "Title IV-E" of the Social Security Act refers to the federal assistance provided through the U.S. Department of Health and Human Services to reimburse states for foster care and adoption assistance payments. The bill would add a reference to guardianship assistance payments.

Annual Review

The Subsidized Guardianship Assistance Act requires the DHS to review the eligibility of the guardian and child for continuation of subsidized guardianship assistance annually. The guardian must provide the eligibility information requested by the DHS or the court for purposes of the annual review. The bill would remove the reference to the court in that provision.

Termination of Assistance

Currently, the DHS may not provide subsidized guardianship assistance after one of the following occurs:

- The child reaches 18 years of age, or 19 if he or she is still attending high school.
- The child is incarcerated in an adult correctional facility under a sentence and commitment order of a court of competent jurisdiction.
- The child is placed in a child caring institution for at least 90 days.
- The child is removed from the guardian's residence by court order.
- The child no longer resides in the guardian's residence.
- The guardian fails to submit information required or requested by the DHS for the required annual review.
- The guardian no longer satisfies one or more of the criteria for subsidized guardianship assistance.
- The guardian dies and no new guardian is appointed by the court within 30 days after that death.
- The DHS determines that funds no longer are available to support continuation of subsidized guardianship assistance.

Under the bill, the DHS could not provide guardianship assistance after one of the following occurred:

- The child reached 18 years of age.
- The DHS determined that the guardian no longer was legally responsible for support of the child.
- The DHS determined that the child no longer was receiving any support from the relative guardian.
- The guardian died.

The bill would retain provisions requiring termination of assistance if the child dies, the child is adopted by the guardian or another individual, or the guardianship is terminated by order of the court having jurisdiction in the guardianship proceeding.

The bill would delete the remainder of the current provisions under which assistance must be terminated.

Repeals

The bill would repeal Sections 7 and 10 of the act. Section 7 requires the guardian to apply for and maintain on behalf of the child any public or private medical insurance or assistance for which the child is eligible.

Under Section 10, if Title IV-E eligibility is approved as a funding source for subsidized guardianship assistance, the DHS is subject to all Federal laws and regulation requirements, including cooperation with the Title IV-B program and assignment of child support. (Title IV-B of the Social Security Act deals with Child Welfare Services.)

MCL 722.871 et al.

ARGUMENTS:

For:

The bill amends the Subsidized Guardianship Assistance Act to comply with federal law. It would make financial assistance available for relatives of children when financial assistance is necessary to ensure the safety and welfare of the child. The bill would allow children to be permanently placed with guardians and entitle guardians to needed subsidies.

Response:

It's important to realize that there is a relationship between the Subsidized Guardianship Act, the Probate Code and the Estates of Protected Individuals Code (EPIC). Enactment of Senate Bill 227 as written will mean the only report required by the court for children placed in a guardian's home is that required of guardianships established under Section 5216 of the Probate Code which is a self declaratory form relating to the child's continued residence in the guardian's home and the health, education and activities of the child. Follow up legislation should be considered to ensure the continued safety and welfare of the child and the integrity of the guardianship assistance funding.

Rebuttal:

Although, the safety, welfare, and best interests of the child are primary concerns, securing the funding and bringing the current language into federal compliance prior to the deadline of April 1, 2009 allows follow up legislation to be introduced at a later time.

POSITIONS:

Department of Human Services testified in support of the bill. (3-25-09)

Michigan County Social Services Association indicated support with amendments. (3-25-09)

Legislative Analyst: E. Best

■ 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.