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Senate Bill 890 (as introduced 3-26-14)
Sponsor: Senator Bruce Caswell
Committee: Families, Seniors and Human Services

Date Completed: 4-30-14

CONTENT

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

- **Require the Department of Human Services (DHS) to pay a deferred determination of care rate to an adoptive parent of an adoptee placed in the adoptive parent's home, if the adoptee would require extraordinary expense or care.**
- **Allow the DHS to pay a medical subsidy to an adoptive parent (as currently permitted) or to a service provider.**
- **Prohibit the payment of a medical subsidy to an adoptive parent for providing treatment to his or her adopted child.**
- **Require that an adoption support agreement include a deferred determination of care agreement, if applicable.**

Adoption Assistance

The Act allows the DHS to pay a support subsidy to an adoptive parent of an adoptee who is placed in the adoptive parent's home under the Adoption Code or the adoption laws of another state or a tribal government if: a) the DHS has certified that the adoptee is a child with special needs, b) certification is made before the adoptee's 18th birthday, and c) certification is made and a contract agreement is signed by the adoptive parents and the DHS before the adoption is finalized. The DHS must determine eligibility for the support subsidy without regard to the adoptive parent's income, where the maximum amount would be equal to the rate the child received, or would have received, in family foster care placement. The rate includes the difficulty of care rate, increased to reflect increases made in the standard age appropriate foster care rate paid by the DHS.

Where the Act refers to a support subsidy and difficulty of care rate, the bill instead would refer to adoption assistance and determination of care rate, respectively. The adoptive parents would have to sign an adoption support agreement rather than a contract agreement.

The bill would require the DHS to pay deferred determination of care rate to an adoptive parent of an adoptee who was placed in the adoptive parent's home under the Adoption Code or under the adoption laws of another state or a tribal government, if all of the following requirements were met: a) the DHS certified that the adoptee would require extraordinary expense or care due to a condition that existed before the adoption was finalized, b) certification was made before the adoptee's 18th birthday, and c) a deferred determination of care agreement was signed before the adoption was finalized.

Before an adoption was finalized, the DHS would have to explain the purpose of a deferred determination of care agreement to the adoptive parents. An adoptive parent could only request only one certification per adoptee placed in the adoptive parent's home.

The bill would define "adoption assistance" as "payment for support of a child who has been placed for adoption". Adoption assistance would include a determination of care rate or a deferred determination of care rate.

The bill would define "determination of care rate" as "a supplemental payment to the standard age appropriate foster care rate that may be justified when extraordinary care or expense is required". The supplemental payment would have to be based on one or more of the following for which additional care would be required of the foster care parent or an additional expense would exist:

- A physically disabled child for whom a foster care provider would have to provide measurably greater supervision and care.
- A child with special psychological or psychiatric needs that required extra time and a greater amount of care and attention by the foster care provider.
- A child requiring a special diet that more expensive than a normal diet and required extra time and effort to obtain and prepare.
- A child whose severe acting out or antisocial behavior required a measurably greater amount of the foster care provider's care and attention.

"Standard age appropriate foster care rate" would mean "the scheduled uniform rate that is to be paid for a child who requires no extraordinary care in relation to age other than what is normally expected of a child placed in foster care".

"Deferred determination of a care rate" would mean "a supplemental payment, in addition to adoption assistance, that may be justified when extraordinary care or expense is required according to a deferred determination of care agreement". A deferred determination of care rate would have to be equal to the rate that the child would have received if the DHS certification were made before the adoption was finalized. The supplemental payment for a deferred determination of care rate would have to be based on the same case situations listed for a supplemental payment for a determination of care rate.

The bill would define "deferred determination of care agreement" as "a written agreement to pay a deferred determination of care rate between the department and the adoptive parent of a child who is not considered to need extraordinary care or expense at the time an adoption is finalized, but who may need extraordinary care or expense after an adoption is finalized".

Medical Subsidy

Currently, the DHS is permitted to pay a medical subsidy to the adoptive parent of an adoptee placed in the adoptive parent's home if: a) the expenses to be covered are necessitated by the adoptee's physical, mental, or emotional condition that existed before the adoption petition was filed or the certification was established, whichever was first, b) the adoptee was in foster care at the time the petition for adoption was filed, and c) certification was made before the adoptee's 18th birthday. The bill would allow the DHS to pay a medical subsidy to either a service provider or an adoptive parent. The bill would prohibit DHS from paying a medical subsidy to an adoptive parent for providing treatment or services to his or her own adopted child.

The bill would define "medical subsidy" as "a reimbursement program that assists in paying for medical costs for an adopted child who has an identified physical, mental, or emotional condition that existed, or the cause of which existed, before finalization of the adoption".

Adoption Support

Under the Act, if adoption assistance is to be paid, the DHS and the adoptive parents must enter into an adoption assistance agreement that includes the following: a) the duration of the adoption assistance to be paid, b) the amount to be paid, and eligibility for medical assistance, if appropriate, c) conditions for continued payment of the adoption assistance as established by statute, d) any services or other assistance to be provided under the adoption assistance agreement, and e) provisions to protect the interests of the child in cases in which the adoptive parents move to another state while the agreement is in effect.

Where the Act refers to adoption assistance and an adoption assistance agreement, the bill would refer to adoption support and an adoption support agreement, respectively. An adoption support agreement also would have to include a deferred determination of care agreement, if it were necessary. The bill would define "adoption support" as "adoption assistance or medical assistance".

MCL 400.115f et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a fiscal impact on the Department of Human Services budget. Based on the information that is currently available, the bill could increase State spending by \$9.5 million to \$28.8 million Gross, some of which would be one-time costs. The actual costs would be determined by Department policies and the implementation of the bill, as well as the responsiveness of adoptive parents in submitting a request for a revised Determination of Care payment. As such, the costs could vary from this range. Based on some additional mitigating factors discussed below, it is reasonable to expect that the costs would be closer to the lower end of the range.

The bill would have no fiscal impact on local units of government.

Determination of Care Payments

The DHS provides Determination of Care payments to adoptive parents in order to provide care for children with special health care needs. The term "special health care needs" as it is used in this analysis includes behavioral, emotional, and mental health conditions, physical or medical impairments, and exceptional educational support needs.

The DHS assesses a child for these potential needs, in order to determine the qualifying level of care that a parent may claim. The categories of care are determined by age or level of care, with DOC I being the lowest level of care and DOC Level IV being the highest level of care. Table 1 shows the categories of care and payments.

Table 1

Determination of Care (DOC) Description	Daily Rate
DOC I for ages 13+	\$6.00
DOC II for ages 13+	\$11.00
DOC III for ages 13+	\$16.00
DOC I for ages 0-12	\$5.00
DOC II for ages 0-12	\$10.00
DOC III for ages 0-12	\$15.00
DOC Level IV	Average \$23.51
DOC Medically Fragile I	\$8.00
DOC Medically Fragile II	\$13.00
DOC Medically Fragile III	\$18.00
Unspecified DOC Level	Average \$11.05

Source: Department of Human Services

Calculations

This analysis assumes that 20.0% to 60.0% of parents of adopted children ages 13 and over would request and qualify for a new or revised Determination of Care payment at an ongoing cost of \$7.3 million to \$21.9 million Gross.

Based on the results of the 2005-2006 National Survey of Children with Special Health Care Needs,¹ 42.3% of children ages 13 and over who were adopted from foster care have a special health care need. These special health care needs include 1) ongoing limitations in the ability to perform activities that other children of the same age can perform; 2) ongoing need for prescription medications; 3) ongoing need for specialized therapies; 4) ongoing need for more medical, mental health, or educational services than are usual for most children of the same age; and 5) the presence of ongoing behavioral, emotional or developmental conditions requiring treatment or counseling.

Data from the DHS show that there are approximately 26,500 adoption subsidy cases, and approximately 13,100 cases receiving a Determination of Care payment. As of March 2014, 12,256 children ages 13 and over were receiving an adoption subsidy. Based on the national incidence of special health care needs in this age group, approximately 5,148 – or 42.0% – of this group could qualify under the bill for a Determination of Care payment. Currently, approximately 3.0% of this group receives the Determination of Care payment under the defined levels of care for children ages 13 and over.² This analysis does not include cost adjustments for children ages 0-12, because the Determination of Care payments for this group already exceed the national incidence of special health care needs, which is 58.0%.

¹ Bramlett, Matthew D. and Radcliff, Laura F. *ASPE Research Brief: Adopted Children with Special Health Care Needs: Characteristics, Health, and Health Care by Adoption Type*. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, US Department of Health and Human Services, October 2008.

² The 3.0% estimate refers only to the defined age categories. The total percentage of children ages 13 and over is likely to be higher than 3.0%. The Level IV and Medically Fragile categories of care, as seen in [Table 1](#), are not categorized by age. These categories are likely to include children ages 13 and over, however.

The DHS data show that 65.0% of these children ages 0-12 receive a Determination of Care rate. The estimated cost increase is based around the 42.0% incidence level, and assumes that 20.0% to 60.0% of children ages 13 and over could qualify for the payment.

Additionally, the bill would result in some administrative hearing and staffing costs that would likely be one-time costs, possibly spread over two or more years. The costs of the additional administrative hearings would range from \$1.8 million for 6,600 hearings to \$5.6 million for 19,900 hearings (based on three hours per hearing and a fee of \$93.15 per hour). The costs of additional staffing to process the applications or requests for review would range from \$440,000 for approximately 4.0 FTEs to \$1.3 million for 13.0 FTEs. These estimates assume that 25% to 75% of all 26,500 adoption subsidy cases would submit a request for a revised payment, which would result in administrative and staffing costs, whether or not the cases were approved for a revised Determination of Care payment.

Additional Factors

While the estimated cost of the bill ranges from \$9.6 million to \$28.8 million Gross, the actual costs would likely fall within the lower range of the estimate (based on the best available information).

First, the burden of medical proof would rest on the adoptive parents. Parents of a child over the age of 13 would likely face challenges to prove that the child had a special health care need that was not identified at the time of adoption. In some cases, the adoption could have taken place years earlier.

Second, the data and evidence suggest that the number of adoptive parents who are receiving a subsidy and who would pursue a revised or new Determination of Care rate likely would be well below half of the 26,500 caseload. A national study conducted by the Federal Department of Health and Human Services found that 67.0% of adoptive parents receiving a subsidy believe that it is sufficient to take care of their children's needs.³ Furthermore, DHS's legislative report for Section 556 of Article X, Public Act 59 of 2013, states: "During FY 2013, the Department received zero complaints from adoptive parents stating that they were not notified that their children had special needs." The DHS's new adoption subsidy negotiation policy does not create a financial incentive for all foster parents to become adoptive parents, suggesting that the funds are not a prime motivator for the adoption. Previous case examples suggest that many clients choose to forego the administrative hearing process when given the option. For example, when the time limits went into effect for the Family Independence Program (FIP), the data show that, at most, 25.0% of those who depended on FIP for basic needs went through the administrative hearing process over the course of two years. Adoptive families are not dependent on the adoption subsidy to meet basic needs and perhaps have less incentive to initiate the administrative hearing process, unless circumstances are exceptional.

The annual costs of the bill would be based on several unknown factors, some of which would be determined by Departmental policy and others of which would be based on the actions of individual clients. Research on other states did not result in a model that could be used to predict the outcomes of this bill. Other factors that could affect the revision of a Determination of Care rate include, but are not limited to: (1) The threshold at which a client would qualify for an increased level of care, (2) deadlines for requesting administrative hearings, and (3) knowledge that a revision was possible.

³ Malm, Karin, Vandivere, Sharon, and McKlindon, Amy. *ASPE Research Brief: Children Adopted from Foster Care: Adoption Agreements, Adoption Subsidies, and Other Post-Adoption Supports*. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, US Department of Health and Human Services, May 2011.

There is a pending request to the Department for more information regarding fiscal projections and any other potential mitigating factors that would inform the assumptions and results of this analysis.

Fiscal Analyst: Frances Carley

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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.