



Legislative Fiscal Bureau

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March 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 567 and Assembly Bill 780: Rates for Residential Care Centers, Group Homes, and Child Welfare Agencies

Senate Bill 567 was introduced on February 26, 2010, and referred to the Senate Committee on Children and Families and Workforce Development. Assembly Bill 780 was introduced on February 26, 2010, and referred to the Assembly Committee on Children and Families. On March 11, 2010, the Assembly Committee on Children and Families recommended adoption of Assembly Amendment 1 to AB 780 by a vote of 8 to 0, and passage of AB 780 as amended by a vote of 8 to 0. The bill was then referred to the Joint Committee on Finance.

BACKGROUND

Prior to 2009 Wisconsin Act 28

Prior to 2009 Wisconsin Act 28, residential care centers and group homes were required to establish a per client rate and were required to charge all purchasers the same rate. Residential care centers and group homes could set their own rates charged for placements based on actual costs with an allowance for the provider's reserves or profit. The Department of Children and Families (DCF) published these rates and reviewed audit reports to determine if rates should be adjusted to reflect actual costs. However, there were no restrictions on the amount of costs included in the rate and no review of whether the costs were appropriate. There were no requirements for child welfare agencies to establish a per client administrative rate.

2009 Wisconsin Act 28

As part of the 2009-11 biennial budget, the Governor proposed to regulate the rates charged by certain child welfare providers. Regulation of rates occurs in three phases. Phase I requires

child welfare agencies to establish a per client administrative rate, similar to the requirement of residential care centers and group homes to establish a per client rate. Phase II freezes rates at the December 31, 2009, level. The final phase requires DCF to establish rates for child welfare agencies, residential care centers, and group homes based on procedures described below.

Phase I. Child welfare agencies establish a per client administrative rate for the administrative portion of their treatment foster care services and charge all purchasers the same administrative rate for the same treatment foster care services. Child welfare agencies are agencies authorized to license treatment foster homes.

Phase II. Administrative rates charged by child welfare agencies and per client rates charged by group homes and residential care centers are frozen in calendar year 2010 at the same rates charged on December 31, 2009.

Phase III. Beginning on January 1, 2011, DCF must establish the per client rate that a residential care center or group home may charge for its services and establish the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services following the procedure to review proposed rates. All purchasers must be charged the same rates for the same services.

Residential care centers, group homes, and child welfare agencies must submit by October 1 annually, beginning October 1, 2010, to DCF the rates that they propose to charge for services provided in the following year. DCF is then required to review the proposed rates and to audit the residential care center, group home, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be provided, the qualifications of the residential care center, group home, or child welfare agency to provide those services, and the reasonable and necessary costs of providing those services. DCF must consider all of the following factors: (a) changes in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. Department of Labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted; (b) changes in the allowable costs of the residential care center, group home, or child welfare agency based on current actual cost data or documented projection of costs; (c) changes in program utilization that affect the per client rate or per client administrative rate; (d) changes in DCF's expectations relating to service delivery; (e) changes in service delivery proposed by the residential care center, group home, or child welfare agency and agreed to by DCF; (f) the loss of any source of revenue that had been used to pay expenses, resulting in a lower per client rate or per client administrative rate for services; (g) changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage; (h) competitive factors; (i) the availability of funding to pay for the services to be provided under the proposed rate; and (j) any other factor relevant to the setting of a rate that DCF may determine by rule.

If DCF determines that a rate is appropriate, then DCF must approve the proposed rate. If DCF does not approve the proposed rate, then DCF must negotiate with the residential care center,

group home, or child welfare agency to determine an agreed-to rate. If negotiations fail, then DCF and the residential care center, group home, or child welfare agency must engage in mediation under the rate resolution procedure to arrive at an agreed-to rate. If mediation fails, then the residential care center, group home, or child welfare agency cannot provide services for which the rate was proposed.

DCF must promulgate rules regarding the implementation of these procedures, including: (a) standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a residential care center, group home, or child welfare agency to provide those services, and the reasonable and necessary costs of providing those services; (b) factors for DCF to consider in reviewing a proposed rate; and (c) procedures for reviewing proposed rates, including rate resolution procedures for mediating an agreed-to rate when negotiations fail to produce an agreed-to rate.

The Legislature modified the Governor's proposal to require the Joint Legislative Council to study the implementation of the rate regulation system, including alternative methods of reducing the cost of out-of-home care placements for children.

Special Committee on Child Welfare Provider Rate Implementation

The Special Committee on Child Welfare Provider Rate Implementation was established to study the implementation of the child welfare rate regulation system. The Special Committee was directed to advise DCF on the creation of administrative rules for implementing the rate regulation system, including: (a) standards for determining whether a proposed rate is appropriate to the level of services to be provided, the qualifications of a residential care center, group home, or child welfare agency to provide those services, and the reasonable and necessary costs of providing those services; (b) factors for DCF to consider in reviewing a proposed rate; and (c) procedures for reviewing proposed rates, including rate resolution procedures for mediating an agreed-to rate when negotiations fail to produce an agreed-to rate. The Special Committee also examined alternative methods of reducing the cost of out-of-home care placements for children.

The Special Committee met five times from September, 2009, to January, 2010, and recommended legislative changes to the Joint Legislative Council. The Joint Legislative Council approved the recommended changes and introduced SB 567 and AB 780 on February 26, 2010.

SUMMARY OF BILLS

The bills would make several changes to the child welfare provider rate-setting process established under Act 28 described below.

Surplus Funds

Exemption from Requirement that Retention of Surplus Funds be Limited to 5%. The bills

would exempt residential care centers, group homes, and child welfare agencies from the limit of the amount that a service provider may retain from the surplus generated by a rate-based service in a contract period to 5% of the contract amount.

Exception to Requirement that Accumulated Surplus Funds be Limited to 10%. The bills would allow DCF, upon request from a residential care center, group home, or child welfare agency, to grant an exception to the requirements that apply to a provider if the amount of the surplus funds accumulated from all contract periods for a rate-based service exceeds 10% of the amount of all current contracts for that service. Current law requires that the amount in excess of 10%: (a) upon request of a purchaser, be returned to that purchaser for the purchaser's proportional share of that excess; and (b) for any excess not returned to a purchaser, be used to reduce the per client rate for that rate-based service in the next contract period. In addition, if a provider has held an accumulated reserve for a rate-based service that is equal to or exceeds 10% of the amount of all current contracts for that rate-based service for four consecutive contract periods, the provider must apply 50% of that accumulated amount to reducing its per client rate for that rate-based service in the next contract period.

Factors to Consider in Rate-Setting Process

The bills would include two additional factors that DCF must consider in the rate-establishing process: (a) changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. Department of Labor, for the 12 months ending on June 30 of the year in which the proposed rate is submitted; and (b) whether the agency is accredited by a national accrediting body that has developed child welfare standards.

Ordering a Rate if Mediation Fails

Instead of prohibiting a residential care center, group home, or child welfare agency from providing a service for which a rate was proposed if a rate is not agreed to after mediation, the bills would require DCF to order a rate for the service after considering all of the factors noted above under Phase III of the original proposal and the two additional factors under these bills. DCF would have to promulgate rules regarding the procedures for ordering a rate.

Appeal of Rate Set by DCF

The bills would authorize a residential care center, group home, or child welfare agency to appeal the rate set by DCF as a contested case under the Department of Administration's hearings process if the provider files with DCF a request for a hearing within 30 days after the date of the order.

Advisory Committee

The bills would require the DCF Secretary to create an advisory committee, which would

consist of: (a) representatives of purchasers; (b) county departments of human/social services; (c) DCF, in a county having a population of 500,000 or more; (d) tribes; (e) consumers; and (f) a statewide association of private, incorporated family and children's social service agencies representing all groups of providers that are affected by the rate regulation process.

The bills would require the advisory committee to advise DCF on the following: (a) the development of administrative rules to implement the rate-setting process; (b) the implementation of rate regulation for residential care centers, group homes, and child welfare agencies; and (c) the identification of the measurements for performance-based contracting and the development of payment levels under performance-based contracting.

Performance-Based Contracting System

The bills would define a performance-based contracting system as a system of paying a provider for services based on the achievement of specified measurable outcomes. To implement a performance-based contracting system, the bills would require DCF, in cooperation with the advisory committee to: (a) identify measurements by which to evaluate the performance of residential care centers, group homes, and child welfare agencies in meeting the goals for the children placed in their care and the goals for the out-of-home care system in the state, as well as to adjust, as needed, those measurements; and (b) develop payment levels that correspond to the achievement of the measurements under (a) based on the assessed level of care of a child.

The bills would require DCF to submit a report that outlines a plan for implementing a performance-based contracting system to the standing committee of each house of the Legislature that is concerned with child welfare issues by November 1, 2010. The report would have to include the measurements and payment levels under the performance-based contracting system.

The bills would require DCF to select a representative sample of residential care centers, group homes, and child welfare agencies, beginning January 1, 2011, and evaluate the performance of those providers in attaining the measurements under the performance-based contracting system. The bills would require DCF, in consultation with the advisory committee, to adjust, as needed, any measurements based on the evaluation by December 31, 2011.

Finally, the bills would require DCF to evaluate the performance of all residential care centers, group homes, and child welfare agencies, beginning January 1, 2013, in attaining the measurements under the performance-based contracting system. The bills would then require DCF, based on that evaluation and in consultation with the advisory committee, to adjust, as needed, any measurements by December 31, 2013, and in subsequent years as DCF determines necessary.

SUMMARY OF ASSEMBLY AMENDMENT 1

The Assembly Committee on Children and Families recommended passage of Assembly Amendment 1 to AB 780. AA 1 to AB 780 would: (a) require DCF to determine and certify in

writing a need for additional placement resources before issuing either a license for a new group home or an amendment to a license to increase the bed capacity of an existing group home; (b) require DCF to promulgate rules to implement this determination of need provision; and (c) authorize DCF to implement emergency rules.

Determination of Need

Under current law, residential care centers are subject to a determination of need requirement. DCF is required to review the need for the additional placement resources that would be made available by licensing or continuing the license of any residential care center providing authorized care. Neither DCF nor the Department of Corrections can place a child in a residential care center where DCF failed to indicate the need for the additional placement resources.

AA 1 to AB 780 would expand this requirement to group homes. As a requirement of licensure, a group home would have to meet the determination of need requirement. No person would be allowed to apply for a license to operate a new group home or for an amendment to a license that would increase the bed capacity of an existing group home until DCF has reviewed the need for the additional placement resources that would be made available by the issuance or amendment of the license and has certified in writing that a need exists for the proposed additional placement resources.

Permanent Rules

AA 1 to AB 780 would require DCF to promulgate rules to implement the determination of need requirement for group homes. DCF would be required to submit the rules in proposed form to the Legislative Council no later than the first day of the third month beginning after the effective date of the bill.

Emergency Rules

AA 1 to AB 780 would authorize DCF to promulgate rules regarding the determination of need requirement for group homes as emergency rules. AA 1 would exempt these emergency rules from the time limits for emergency rules. Emergency rules remain in effect for 150 days and may be extended for up to 60 days at a time, not to exceed 120 days for all extensions. Instead, AA 1 would allow the emergency rules to remain in effect until the permanent rules would take effect.

In addition, AA 1 to AB 780 would exempt DCF from the requirement to provide evidence that promulgating the rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and to provide a finding of emergency.

FISCAL EFFECT

In a fiscal note to the bills, DCF indicates it would need one-time funding of \$250,000 and

incur ongoing costs of \$278,900 annually with 3.0 FTE positions. These costs are associated with implementation of the performance-based contracting system.

One-time costs of \$250,000 would support modifications to the electronic Wisconsin Statewide Automated Child Welfare Information System (eWISACWIS), the state's automated child welfare system that assists case workers and administrators in managing child welfare services. The system maintains information on intake, assessment, eligibility determination, case management, court processing, financial reporting, and administration.

This one-time funding would be used to modify eWISACWIS to support data collection activities related to measurements established for the performance-based contracting system, including development of capacity for providers to submit information in an automated manner that can be matched with existing child records in the computer system.

Ongoing costs would consist of 3.0 FTE positions, and the associated costs of \$278,900 annually, to collect, analyze, and verify data, as well as monitor compliance, for the performance-based contracting system.

DCF indicates that a 1.0 FTE program and planning analyst position would be needed to develop eWISACWIS performance-based data and coordinate information collection activities with providers. The cost of this position is estimated at \$96,100 annually.

In addition, DCF indicates that 2.0 FTE child welfare licensing specialist positions would be necessary to verify information submitted to DCF regarding the performance-based measures and to monitor providers for compliance with the requirements for performance-based reimbursements. The cost of these positions is estimated at \$182,800 annually.

DCF also notes that there could be a fiscal impact from exempting and granting exceptions for residential care centers, group homes, and child welfare agencies from surplus fund requirements, as well as from using performance-based reimbursements. However, the extent of the fiscal impact is unknown.

Finally, in addition to the information provided in its fiscal note, DCF has indicated that no additional funding would be necessary to implement the determination of need requirement for group homes.

The bills would not appropriate any funding or provide additional staff to DCF to implement the performance-based contracting system. Therefore, DCF would have to reallocate existing resources in order to implement the bills, or seek additional funding in future legislation.

If the Committee chooses to provide funding, the Committee could provide one-time funding of \$250,000 GPR and funding for ongoing costs of \$220,300 GPR, which would generate matching funds of \$58,600 FED.

On January 27, 2010, this office issued a memorandum regarding the status of the state's general fund. At that time, the gross balance of the general fund, as of June 30, 2011, was estimated at \$55.7 million, or \$9.3 million below the \$65.0 million balance required under s. 20.003(4) of the state statutes. As a result, if funding is provided in the bill, an amendment would be needed to include a notwithstanding clause relative to s. 20.003(4).

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