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Joint Committee on Finance

Paper #187

State Foster Care, Subsidized Guardianship, and Adoption Assistance -- Statutory Changes (Children and Families -- Children and Families)

[LFB 2013-15 Budget Summary: Page 96, #2]

CURRENT LAW

Children may be placed in out-of-home care as a result of one of four types of actions: (a) a child in need of protection or services (CHIPS) court order, generally when the removal of a child from his or her home and placement into out-of-home care is necessary to assure the child's safety; (b) a juvenile in need of protection or services (JIPS) court order, as a result of certain behaviors, including being uncontrollable, running away, or truancy; (c) a delinquency court order, as a result of a criminal act; or (d) a voluntary placement agreement between a parent and a caregiver and involving the child welfare agency.

Each CHIPS, JIPS, and delinquency dispositional order and permanency plan identifies a permanence goal for each child in out-of-home care. Permanency plan goals may include: (a) reunification with the birth family, either on a trial basis or permanently; (b) transfer of legal guardianship, which may include subsidized monthly payments; or (c) adoption.

When a child is removed from his or her home and enters the child welfare system, the child is in the physical custody of the county or tribe. If the court terminates the parental rights (TPR) of a child, the child is legally available for adoption. The court may transfer guardianship and custody of the child pending adoptive placement to: (a) a county department authorized to accept guardianship; (b) a child welfare agency licensed to accept guardianship; (c) the Department of Children and Families (DCF); (d) a relative with whom the child resides, if the relative has filed a petition to adopt the child, is a kinship care relative, or is receiving foster care payments; (e) an individual who has been appointed guardian of the child by a court of foreign jurisdiction; or (f) the guardian if the court appoints a guardian.

State Foster Care Program

If the TPR involves a child with special needs, the court transfers guardianship of the child to DCF pending adoptive placement. The state serves as guardian for the child and assumes responsibility for the costs of the out-of-home care placement while the child awaits adoption under the state foster care program. Base funding for the state foster care program is \$5,038,700 (\$3,822,900 GPR and \$1,215,800 FED).

If, after being in the state's custody for two years, a child has not been adopted, custody of the child is transferred back to the county. The state maintains guardianship, and adoption state social workers continue to search for an adoptive placement for the child, but the county administers the daily case management and has financial responsibility for the case.

Subsidized Guardianship Program

If a child and a guardian are eligible for the statewide subsidized guardianship program, monthly payments may be made to the guardian if a subsidized guardianship agreement is entered into before the guardianship order is granted and the court either terminates a CHIPS order or dismisses any CHIPS proceeding.

To be eligible for the program, a child must meet all of the following conditions: (a) has been removed from his or her home under a voluntary agreement or under a court order containing a finding that continued placement of the child in his or her home would be contrary to the welfare of the child; (b) has been residing in the home of the guardian for not less than six consecutive months; (c) neither return to his or her home nor adoption is in the child's best interest; (d) demonstrates a strong attachment to the guardian; and (e) if over age 14, has been consulted regarding the guardianship arrangement.

The guardian must meet all of the following conditions: (a) is a relative of the child or is a person who has a significant emotional relationship with the child or the child's family and who, prior to the child's placement in out-of-home care, had an existing relationship with the child or the child's family that is similar to a familial relationship; (b) has a strong commitment to caring permanently for the child; (c) has been licensed as the child's foster parent for not less than six consecutive months immediately before being named guardian and meets, along with all adults residing in the home, background check requirements; and (d) has entered into a subsidized guardianship agreement.

The amount of the monthly subsidized guardianship payment is the same as the monthly foster care payment received in the month in which the guardianship order was granted, or a lesser amount if agreed to by the guardian and specified in the subsidized guardianship agreement. Base funding for the subsidized guardianship program is \$2,303,600 (\$1,687,700 GPR and \$615,900 FED).

Adoption Assistance Program

DCF makes monthly adoption assistance maintenance payments to the adoptive or proposed adoptive parents of a child after an adoption agreement has been signed and the child is

placed in the home of the adoptive or proposed adoptive parent. The payments are intended to assist in the cost of care for that child. Adoption assistance can only be provided for a child with special needs and when DCF has determined that such assistance is necessary to assure the child's adoption.

To be eligible for adoption assistance, a child must have at least one of the following special needs at the time of the adoption: (a) the child is 10 years of age or older, if age is the only factor in determining eligibility; (b) the child is a member of a sibling group of three or more children that must be placed together; (c) for an adoption assistance agreement entered into before July 1, 2011, the child exhibited, or was at high risk of developing, moderate or intensive physical, emotional, or behavioral needs; (d) for an adoption assistance agreement entered into on or after July 1, 2011, the child has, or is at high risk of developing, a total of five or more moderate or intensive needs due to adjustment to trauma, life functioning (including physical, mental, and dental health; relationships with family members; and social skills), functioning in a child care or school setting, behavioral and emotional needs, or risk behaviors; or (e) the child belongs to a minority race in which children of that race cannot be readily placed due to lack of appropriate placements.

Under federal law, states cannot use a means test to determine adoptive parents' eligibility for the adoption assistance program, but may consider the adoptive parents' circumstances in determining the amount of the adoption assistance payment. In addition, states cannot reduce the adoption assistance payment because of a change in the adoptive parents' income without the adoptive parents' agreement.

The circumstances of the adoptive parents and the needs of the child are considered together in determining the level of adoption assistance a family receives. The amount of the maintenance payment is based on the applicable uniform foster care rate in effect at the time the adoption agreement was made and on the care needs of the child.

Adoption assistance payments are determined based on whether the child has a special need described above. Therefore, adoption assistance payments may be made for children adopted privately, as well as children adopted from the state child welfare system, if the child otherwise meets the eligibility requirements. Base funding for adoption assistance is \$96,785,700 (\$48,063,800 GPR and \$48,721,900 FED).

GOVERNOR

State Foster Care Program

Expand the purpose of the state foster care program to allow DCF to seek to enter into a subsidized guardianship agreement, as well as a permanent adoptive placement under current law, for a child under the state's guardianship. Specify that if a subsidized guardianship placement is not in progress within two years, then DCF could petition the court, or tribal court, to transfer legal custody to a county department or Indian tribe.

Subsidized Guardianship Program

Require DCF to determine a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child in an amount that may not exceed the foster care payment received in the month immediately preceding the month in which the guardianship order was granted, rather than equal to this amount. Specify that payments made by county departments may be made from their children and family aids allocations or, in the case of guardianships ordered by tribal courts, from the interagency and intra-agency aids; tribal placements and guardianships appropriation created under the bill. The new payment structure would first apply to subsidized agreements entered into or amended on the bill's effective date.

Adoption Assistance Program

Require DCF to determine the amount of adoption assistance payments based on the circumstances of the adoptive family and the needs of the child in an amount that may not exceed the foster care or subsidized guardianship payment or uniform foster care rate applicable to the child, rather than equal to this amount.

In addition, limit eligibility for adoption assistance agreements to those children who, at the time of placement for adoption, are in the guardianship of a county department or are otherwise eligible for adoption assistance payments under federal law. Eliminate reference to children who are in the guardianship of an "other agency" to reflect that adoption assistance payments would no longer be available in private adoptions.

The adoption assistance provisions would first apply to agreements entered into or amended on the bill's effective date.

DISCUSSION POINTS

State Foster Care Program

1. In April, 2010, the federal Department of Health and Human Services (DHHS) conducted a second comprehensive review of Wisconsin's child welfare program. DHHS conducts this child and family services review (CFSR) for each state. Overall, DHHS determined that Wisconsin was not in substantial conformance with all seven outcome factors and with three of the seven systemic factors. The results of the second CFSR findings compared with the first (2003) CFSR are detailed in the Attachment. The state received its CFSR findings of the second review from DHHS in June of 2010, and was given 90 days to produce a statewide program improvement plan (PIP). The PIP was approved by DHHS on December 21, 2010.

2. If a state is found to be in nonconformance, DHHS can assess financial penalties against the funds received by the state under Titles IV-B and IV-E of the federal Social Security Act. Under the CFSR, penalties are withheld pending successful completion of the PIP, including achievement of federally-approved performance improvement targets.

3. In order to address issues with the permanency outcomes, the PIP provided three

steps to achieve its goal of enhancing utilization of permanency goals: (a) continue implementation of permanency consultations to expedite permanency for children and youth in out-of-home care in the Bureau of Milwaukee Child Welfare (BMCW); (b) implement permanency roundtables; and (c) expand the subsidized guardianship program statewide. Provisions of 2011 Wisconsin Act 32 created the statewide subsidized guardianship program.

4. The subsidized guardianship program is intended to provide a long-term permanence solution for children in situations where termination of parental rights or adoption may not be feasible options. For example, if the foster parent is a relative of the child, the foster parent may not wish to contribute to family strife by pursuing adoption. Rather than removing the child from the relative's care in order to pursue permanence with adoption, the subsidized guardianship program provides permanence for the child with the relative, while providing the relative with monthly payments to continue to care for the child.

5. Under the current subsidized guardianship program, county departments may pursue subsidized guardianship agreements as a permanency goal and make subsidized guardianship payments for counties other than Milwaukee County. DCF makes subsidized guardianship payments on behalf of the children who are in out-of-home care in Milwaukee County. However, when created, the statewide subsidized guardianship program did not modify the state foster care program to allow DCF to pursue subsidized guardianship as a permanency option in addition to adoption for children with special needs statewide. The bill would expand the subsidized guardianship program to allow DCF to pursue subsidized guardianships for children with special needs as a permanency goal in addition to adoption.

6. The Committee could approve the Governor's proposal to require DCF to seek a permanent adoptive placement for the child in state foster care or seek to enter into a subsidized guardianship agreement and to authorize DCF to petition the court, or tribal court, to transfer legal custody to a county department or Indian tribe if a permanent adoptive or subsidized guardianship placement is not in progress within two years (Alternative A1).

7. On the other hand, the Committee could deny the Governor's proposal (Alternative A2). For the children in state foster care, if adoption is not in progress within two years, the financial responsibility for the out-of-home care costs revert back to the county or tribe. By allowing DCF to also pursue subsidized guardianship agreements, there may be additional costs to the state to continue to provide payments under subsidized guardianship agreements that would otherwise have been paid by counties after the two-year period to find an adoptive placement ended.

8. However, DCF indicates that the proposed change would affect only a small number of state foster care cases (under 10 cases annually), such that there would be a minimal fiscal effect. DCF anticipates, therefore, that the current state foster care program would absorb these costs. In addition, the proposal could improve permanency for these children.

Subsidized Guardianship Program

9. As noted above, the statewide subsidized guardianship program was created under 2011 Act 32. The intent of the program was to make it cost-neutral. Subsidized guardianship

payments would not increase expenditures because payments would equal what would otherwise have been spent on foster care payments. Therefore, subsidized guardianship payments were set equal to the foster care payment amount that the foster parent received in the month immediately before the month in which the subsidized guardianship agreement was entered, or a lesser amount if agreed to by the guardian and specified in the agreement.

10. The bill would modify the payment structure to, instead, require DCF to determine a monthly subsidized guardianship payment based on the circumstances of the guardian and the needs of the child in an amount that may not exceed the foster care payment received in the month immediately before the month in which the guardianship order is granted, rather than equal to this amount. The bill would also authorize county departments to make these payments from their children and family aids allocation and, for guardianships ordered by tribal courts, from the interagency and intra-agency aids; tribal placements and guardianships appropriation created under the bill.

11. The administration has also requested that in referring to the amount of monthly payments under subsidized guardianship agreements, the word "initial" should be inserted in the statutes as appropriate to indicate that it is the initial payment that is set according to the foster care payment at the time the agreement is entered.

12. The Committee could approve the Governor's proposal to require subsidized guardianship payments in an amount that does not exceed the foster care payment received in the month immediately preceding the month in which the guardianship order was granted, based on the circumstances of the guardian and the needs of the children (Alternative B1). This alternative would provide flexibility in setting monthly payments based on the needs of the child and the circumstances of the guardian, while ensuring that the subsidized guardianship program does not cost more than out-of-home care would.

13. On the other hand, the Committee could deny the Governor's proposal (Alternative B2). Setting the subsidized guardianship payments under current law ensures that the guardian would receive a minimum amount that would be the same as the amount the guardian received as a foster parent before becoming a guardian.

14. In addition, the Committee could adopt the administration's recommended changes to clarify that these provisions apply to the "initial" subsidized guardianship payment (Alternative B3). This alternative would allow flexibility for the subsidized guardianship payment to decrease or increase based on the needs of the child and circumstances of the guardian after the agreement is entered.

Adoption Assistance

15. Similar to subsidized guardianship payments, adoption assistance payments are set based on the foster care rate in effect at the time the adoption assistance agreement is entered, or, for private adoptions, what the foster care rate would be if the child were in the child welfare system in out-of-home care.

16. According to DCF, when a child enters into out-of-home care, the county child

welfare agency determines the foster care payment using the child and adolescent needs and strengths (CANS) assessment tool. This tool determines the appropriate payment rate for the child's needs and the provider's level of skill in the care provided. The payment rate is based on the basic monthly foster care rate, a supplemental rate, and an exceptional rate. The basic rate is set by statute, and the CANS tool has standardized the supplemental rate provided to families. Child welfare agencies have some flexibility when determining the exceptional rates.

17. When a child's parental rights are terminated and a child enters the adoption assistance program, DCF has up to 30 days to determine the child's pre-adoptive foster care payment. Prior to the adoption's finalization, the child's monthly payment rate is reevaluated using the adoption assistance CANS-related tool in order to determine whether or not the rate will cover all of the child's needs until the child reaches age 18, 19, or 21, based on the child's individual needs and circumstances. As a result, the adoption assistance payment indicated by the CANS tool may be different than the foster care payment in effect prior to this reevaluation. This new payment calculation is put in effect before the adoption takes place, so the adoption assistance payment is set at this new "foster care rate," even though the payment may have been in effect for 30 days or less.

18. The Committee could approve the Governor's proposal to require an initial adoption assistance payment to be an amount that does not exceed the foster care payment, subsidized guardianship payment, or uniform foster care rate applicable to the child at the time the adoption assistance agreement is entered, based on the circumstances of the adoptive family and the needs of the child (Alternative C1). This alternative would provide flexibility in setting monthly payments based on the needs of the child and the circumstances of the adoptive family.

19. On the other hand, the Committee could deny the Governor's proposal (Alternative C2). Setting the adoption assistance payments according to the adoption assistance CANS-related tool ensures that the adoptive family would receive an amount based on a more recent assessment of what would be needed given the circumstances of the adoptive family and the needs of the child. Even though the foster care rate based on the more recent assessment may be higher than the foster care rate in effect before this assessment was done, and this new, higher foster care rate may be in effect for less than 30 days, it may be a more accurate reflection of what the adoptive family needs.

20. Under current law, children at risk of developing a moderate to intensive level of special needs are eligible for adoption assistance payments. At-risk children are children who do not currently have special needs, but the child's characteristics or background demonstrates that it is likely that the child may develop special needs in the future. Children who are eligible for the adoption assistance program because they are considered at-risk are categorically eligible for medical assistance (MA).

21. Some of these cases are for children who were never involved in the child welfare system. Rather, these adoptions are arranged and finalized through private adoption agencies. According to DCF, there are an average of 125 of these private adoption cases per year that involve at-risk children. Of this amount, 75 cases receive MA only. The remaining 50 cases receive an average monthly adoption assistance payment of \$785.

22. DCF indicates that allowing private adoptions to qualify for at-risk status has raised

workload and policy concerns. Private adoptions require regional and central office state staff time to approve the adoption assistance application packet and MA eligibility. Second, all private adoptions must be reviewed by Maximus, DCF's IV-E eligibility contractor, and state adoption staff. Finally, with the exception of children receiving supplemental security income (SSI), private adoption cases are funded entirely with GPR if they receive adoption assistance payments. Federal matching funds are not available.

23. The Committee could approve the Governor's proposal to limit adoption assistance agreements to children who are in the child welfare system (Alternative D1). This alternative would maximize the amount of federal funding the state could receive for adoption assistance payments. In addition, DCF could realize potential future savings of approximately \$471,000 annually as no additional private adoption assistance agreements would be made.

24. On the other hand, the Committee could deny the Governor's proposal (Alternative D2). Agencies that oversee private adoptions have indicated that the ability to receive adoption assistance payments for eligible children has been an incentive for families to adopt a child who has extra needs. If adoption of these children is not financially feasible without adoption assistance payments, these children may end up in the child welfare system, rather than never having been involved in the child welfare system. Many families who adopt children through private agencies are not wealthy, and children with special needs may require additional expenses that adoptive families may not be able to provide without the financial assistance of adoption assistance.

ALTERNATIVES

A. State Foster Care Program

1. Approve the Governor's proposal to require DCF to seek a permanent adoptive placement for the child in state foster care or seek to enter into a subsidized guardianship agreement and to authorize DCF to petition the court, or tribal court, to transfer legal custody to a county department or Indian tribe if a permanent adoptive or subsidized guardianship placement is not in progress within two years.

2. Delete the Governor's proposal to allow DCF to seek subsidized guardianship agreements for children in the state foster care program.

B. Subsidized Guardianship Program

1. Approve the Governor's proposal to require subsidized guardianship payments in an amount that does not exceed the foster care payment received in the month immediately preceding the month in which the guardianship order was granted, based on the circumstances of the guardian and the needs of the children.

2. Delete the Governor's proposal. As a result subsidized guardianship payments would equal the foster care payment received in the month immediately preceding the month in which the guardianship order was granted.

3. In addition to Alternative B1 or B2, approve the administration's recommended changes that would insert "initial" into the statutes to reflect that the initial subsidized guardianship payment would be set in accordance with the alternative chosen.

C. Adoption Assistance Payments

1. Approve the Governor's proposal to require an initial adoption assistance payment to be an amount that does not exceed the foster care payment, subsidized guardianship payment, or uniform foster care rate applicable to the child at the time the adoption assistance agreement is entered, based on the circumstances of the adoptive family and the needs of the child

2. Delete the Governor's proposal. As a result initial adoption assistance payments would equal the foster care payment, subsidized guardianship payment, or uniform foster care rate applicable to the child at the time the adoption assistance agreement is entered.

D. Adoption Assistance for Private Adoptions

1. Approve the Governor's proposal to limit adoption assistance agreements to children who are in the child welfare system.

2. Delete the Governor's proposal to limit adoption assistance agreements to children who are in the child welfare system.

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ATTACHMENT 1

Summary of Outcome Measures, Systemic Factors, and Results Under the Child and Family Services Review

Outcome Measures:

2003		2010			Percent Achieved		Substantial Conformance	
Strength	Needs Improvement	Strength	Needs Improvement		2003	2010*	2003	2010
				Safety Outcome 1				
				<i>Children are first and foremost protected from abuse and neglect</i>				
	X		X	Timeliness of CPS investigations	79.1%	65.5%	No	No
	X	X		Repeat maltreatment				
				Safety Outcome 2				
				<i>Children are safely maintained in their homes when possible and appropriate</i>				
	X		X	Services to prevent removal	83.3	63.1	No	No
X			X	Risk of harm				
				Permanency Outcome 1				
				<i>Children have permanency and stability in their living situations</i>				
	X	X		Out-of-home care re-entry	48.0	32.5	No	No
	X		X	Stability of out-of-home care placements				
	X		X	Permanency goal for child				
	X		X	Reunification, guardianship, and placement with relatives				
	X		X	Adoption				
	X		X	Other planned living arrangement				
				Permanency Outcome 2				
				<i>Continuity of family relationships and connections is preserved</i>				
		X		Proximity of placement	44.0	55.0	No	No
	X		X	Placement with siblings				
	X		X	Visiting with parents and siblings in out-of-home care				
	X		X	Preserving connections				
	X		X	Relative placement				
	X		X	Relationship of child in care with parents				
				Well-Being Outcome 1				
				<i>Families have enhanced capacity to provide for children's needs</i>				
	X		X	Needs/services of child, parents, and foster parents	54.0	32.3	No	No
	X		X	Child/family involvement in case planning				
X			X	Worker visits with child				
	X		X	Worker visits with parents				
				Well-Being Outcome 2				
				<i>Children receive services to meet their educational needs</i>				
			X	Educational needs of child	90.9	87.8	Yes	No
X				Well-Being Outcome 3				
				<i>Children receive services to meet their physical and mental health needs</i>				
	X		X	Physical health of child	68.8	72.2	No	No
	X		X	Mental health of child				

Systemic Factors:

2003		2010		Rating**	Substantial Conformance	
Strength	Needs Improvement	Strength	Needs Improvement		2003	2010
Statewide Information System						
<i>Ability to collect data</i>						
X		X		3	4	Yes Yes
System can identify the status, demographic characteristics, location, and goals of children in out-of-home care						
Case Review System						
<i>Court processes</i>						
	X		X	2	2	No No
X		X		Process for developing a case plan and for joint case planning with parents		
X			X	Process for 6-month case reviews		
	X		X	Process for 12-month permanency hearings		
	X		X	Process for seeking TPR in accordance with ASFA		
	X		X	Process for notifying caregivers of reviews and hearings for opportunity for them to be heard		
Quality Assurance System						
<i>Quality assurance program in DCF for counties; PEM in BMCW</i>						
X		X		2	4	No Yes
	X	X		Standards to ensure quality services, children safety, and health		
				Identifiable quality assurance system that evaluates the quality of services and improvements		
Staff and Provider Training						
<i>Child welfare staff and foster and adoptive parents</i>						
	X		X	2	1	No No
	X		X	Provision of initial staff training		
	X		X	Provision of ongoing staff training that addresses the necessary skills and knowledge		
	X		X	Provision of training for caregivers and adoptive parents that addresses the necessary skills and knowledge		
Service Array						
<i>Services available to serve families</i>						
	X	X		2	2	No No
	X		X	Availability of array of critical services		
X			X	Accessibility of services across all jurisdictions		
			X	Ability to individualize services to meet unique needs		
Agency Responsiveness to Community						
<i>Community investment in state plans</i>						
	X	X		3	4	Yes Yes
				Engages in ongoing consultation with critical stakeholders in developing the Child and Family Services State Plan		
X		X		Develops annual progress reports in consultation with stakeholders		
X		X		Coordinated services with other federal programs		
Foster and Adoptive Parent Licensing, Recruitment, and Retention						
<i>Standards and efforts to recruit foster and adoptive parents</i>						
X		X		3	3	Yes Yes
X			X	Standards for foster family and child care institutions		
X		X		Standards are applied equally to all foster family and child care institutions		
X		X		Conducts necessary criminal background checks		
		X		Diligent recruitment of foster and adoptive families that reflect children's racial and ethnic diversity		
	X	X		Uses cross-jurisdictional resources to find placements		

*Does not include percentage that partially achieved measure.

**On a scale of 1 to 4, with 4 being the highest rating. A rating of 1 or 2 means the factor is not in conformance; a rating of 3 or 4 means the factor is in conformance.