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ASSIGNMENT OF SUPPORT RIGHTS FOR FOSTER CARE PAYMENTS

House Bill 4769 as introduced
First Analysis (6-24-03)

Sponsor: Rep. Virgil Smith
Committee: Family and Children
Services

THE APPARENT PROBLEM:

Under Title IV-E of the federal Social Security Act a state plan for foster care must include a provision for making foster care maintenance payments payable to a foster care provider on behalf of a child. These payments cover the cost of purchasing and providing food, clothing, daily supervision, school supplies, personal incidentals, liability insurance for the child, and reasonable travel to and from the child's home for visitation. Payments are generally based on the age of the child as well as any special needs of the child.

Additionally, the federal Social Security Act requires, in cases when a family is receiving assistance from the state, that the state pay to the federal government its share of the amount of support collected, and retain or distribute the state's share of the amount of support collected. Federal law requires any amount of child support collected by the state on behalf of a child for whom the state is making foster care maintenance payments under Title IV-E to be retained by the state (42 U.S.C. 657). In general, the state is assigned support rights as a means of reimbursing the state for providing financial assistance. Legislation has been introduced that would make state statute conform to the provisions of federal law.

THE CONTENT OF THE BILL:

The bill would amend the Social Welfare Act to add provisions pertaining to the assignment of support rights and foster care payments and to make other amendments.

Specifically, the bill provides that all rights to current, past due, and future support payments payable on behalf of a child under the supervision of the Family Independence Agency, and for whom the FIA was making state or federally funded foster care maintenance payments, would be assigned to the FIA while the child was receiving or benefiting from

those payments. When the FIA ceased making foster care maintenance payments, any past due support accrued under the assignments would remain assigned to the FIA, and the assignment of current and future support rights to the FIA would cease. Further, the bill specifies that the maximum amount of support that the FIA could retain to reimburse the state and/or the federal government could not exceed the amount of foster care maintenance payments made from state and/or federal funds.

In addition, the act currently permits the FIA to pay a support subsidy to the adoptive parents of a child who is placed in the home of the adoptive parents pursuant to the Adoption Code or the adoption laws of any other state or tribal government if, among other reasons, the FIA certifies that the adopted child is indeed eligible for a support subsidy. Eligibility requires that a reasonable, albeit unsuccessful, effort has been made to place the adopted child with appropriate parents without the adoption subsidy or that a prospective placement is the only placement that is in the child's best interests and the adoptive parents are requesting a support subsidy, and that the adopted child was in foster care for at least four months prior to certification for the support subsidy. The bill would delete the above requirements, and simply require the FIA to certify that the adopted child is a "child with special needs". The act defines a "child with special needs" to mean an individual under 18 years of age for whom the state has determined, among other things, that the child cannot or should not be returned to the home of the child's parents. The bill would specify that there must be a judicial finding that the child cannot or should not be returned to the home of the child's parents.

Further, the act allows the Office of Children and Youth Services to spend money from the child care fund to provide for early intervention to treat problems of delinquency and neglect. The act places a limitation on the expenditure of not more than 20

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percent of the money appropriated. The bill would eliminate this limitation.

MCL 400.115b et al

BACKGROUND INFORMATION:

Foster Care Maintenance Payments. According to the Family Independence Agency's foster care manual, to be eligible for Title IV-E funding, the child and the family must qualify for the former Aid to Families with Dependent Children (AFDC), as that law was in effect on July 16, 1996. Eligibility for Family Independence Program (FIP) assistance does not automatically qualify a person to receive the foster care maintenance payments. In addition, recipients must be U.S. citizens or qualified aliens, have met the former AFDC requirements during the calendar month when the petition to receive maintenance payments was filed, and have lived with an acceptable relative at the time of, or within six months prior to, the initiation of court action. In determining eligibility, the income of the child, parents, step-parents, and siblings less than 18 years of age are considered during the initial determination. However, for redeterminations, income is not included except for the amount of any court ordered child support. Additionally, in order for a child to be eligible for Title IV-E funding, the court order must contain documentation of the evidence used by the court to make the judicial findings. Further, the child must be currently in foster care in a licensed foster home (including the homes of relatives), licensed nonprofit private child caring institution, or an FIA child care treatment facility of 25 beds or less. The state will not use Title IV-E funds for placement in a for-profit child placing agency, nor will foster parents with certain felony convictions receive payment.

According to the foster care manual, the foster care maintenance rates are as follows:

- The basic rate for children 0-12 years of age is \$14 per day with a semi-annual clothing allowance of \$107; for children 13-18 years of age the rate is \$17.30 per day with a semi-annual clothing allowance of \$122.
- There is a difficulty-of-care supplement ranging from \$5 to \$15 for children 0-12 years of age; \$6-\$16 for children 13-18; and \$8-\$18 for children deemed 'medically fragile'.
- There is an initial clothing allowance, based on need, of \$210 for children 0-5 years of age; \$310 for

children 6-12 years of age; and \$500 for children 13-18 years of age.

- There is a holiday allowance of \$25 per child.

Adoption Subsidies. In addition to the foster care maintenance payments, the state also administers three adoption subsidy programs: an adoption support subsidy, an adoption medical support subsidy, and a nonrecurring adoption expenses program. The purpose of the support and medical subsidies is to remove the financial barriers to adopting children with special needs. The reimbursement program seeks to assist adoptive families in paying certain out-of-pocket expenses for the adoption of special needs children. These subsidies are intended to help adoptive parents with the costs of raising an adopted child and are not intended to cover every expense. A support subsidy is based on the foster care maintenance payment rate for the child. The parent's income does not affect the amount of the support subsidy, though the subsidy may be affected if the child has, or is eligible for, income from other sources (such as Social Security).

Similar Legislation. The bill is similar to Public Act 570 of 2002 (House Bill 6010). Public Act 570 amended the Support and Parenting Time Enforcement Act to require, among other things, supports rights for a child for whom support is ordered and who is under the state's jurisdiction and placed in foster care to be assigned to the Family Independence Agency.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could partially defray state and federal foster care maintenance payments. No significant fiscal impact is expected on the FIA. (6-19-03)

ARGUMENTS:

For:

The bill is necessary for three main reasons. First, the bill simply codifies current departmental procedures. Second, the bill is necessary to bring the state in compliance with the federal Social Security Act. Finally, the bill squares the Social Welfare Act with the Support and Parenting Time Enforcement Act, which was recently amended to include language that is substantially similar to the bill.

Against:

As written, the bill automatically assigns support rights to the state. However, this fails to ensure that parents have the financial wherewithal to meet their needs and those of the children as well. As such, the bill should be amended to require an administrative or judicial hearing to determine the feasibility of the assignment of support rights prior to the actual assignment. As is often the case, child support represents a significant portion of the income of those receiving it on behalf of their children. Further, foster care maintenance payments are made to offset the costs of raising a foster child. Assigning support rights to the state, then, appears to undermine the true intentions of the child support and foster care payments. If a parent knows that his or her payments are being paid to the state rather than the mother or father that is caring for their children, he or she may be reluctant provide payments through the state.

Response:

The bill merely requires the assignment of support to be in an amount that is equal to the amount of the foster care maintenance payments. Any amount of support beyond that would be payable to the parent on behalf of the child.

POSITIONS:

The Friend of the Court Association supports the bill.
(6-2-03)

The Family Law Section of the State Bar Association supports the bill. (6-17-03)

Analyst: M. Wolf

■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.