



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 529 and 530 (as introduced 9-6-17)
Sponsor: Senator Peter MacGregor
Committee: Oversight

Date Completed: 9-6-17

CONTENT

Senate Bill 529 would amend provisions of the Social Welfare Act related to the Child Care Fund to do the following:

- Allow the Department of Health and Human Services (DHHS) or a county to appeal a determination regarding reimbursement of a child care cost.
- Prohibit the DHHS and a county from seeking reimbursement of expenditures unless they were made under an approved plan and budget or according to DHHS policy.

The bill also would repeal Section 117d, which requires the consideration of certain factors in the allocation of State appropriations to a county juvenile justice services program.

Senate Bill 530 would amend the Social Welfare Act to provide for the distribution of appropriations for children in the juvenile justice system as follows:

- Expenditures for children placed with the DHHS could be paid by the DHHS or a county, depending on which entity spent the money.
- Expenditures for children not placed with the DHHS would have to be paid by a county and reimbursed by the DHHS.

The bill also specifies that expenditures for children not placed with the DHHS could include direct expenditures for out-of-home care, administrative or indirect expenditures for out-of-home care, direct expenditures for in-home care, and administrative or indirect expenditures for in-home care; and the bill identifies items that direct expenditures could include.

In addition, the bill would change distribution requirements by: deleting a provision under which a distribution to a county may be reduced by the amount of uncontested liability; providing that a reduction in the amount distributed to a county under certain circumstances would be subject to the county's approval; limiting reimbursement for the duplication of services to those necessary for out-of-home or in-home care; and imposing a one-year time limit on reimbursement for a service, status determination, or billing receipt.

Each bill would take effect 90 days after its enactment. The bills are tie-barred.

Senate Bill 529

Child Care Fund

The Social Welfare Act requires certain money have to be deposited in the Fund. This money includes all funds made available to the county for the foster care of children from any other source, except gifts that are conditioned on a different disposition or reimbursements of the General Fund. The bill would delete the requirement that this money be deposited in the Fund.

Appeal

The Act provides for the payment of expenses related to juveniles who are in out-of-home placements, such as foster care, county-operated facilities, and private child caring institutions, as well as expenses for in-home care services. (The payment structure is largely based on a 50-50 cost share between the State and the counties. Using the Child Care Fund, the State reimburses the per diem costs of community-based programs, residential treatment, or detention for juveniles under court supervision, to the county/circuit court at a 50% rate. Based on this funding mechanism, the counties pay the up-front costs and are reimbursed by the State.)

The bill would allow the Department of Health and Human Services or a county to appeal a determination regarding reimbursement of a child care cost made under the Act. The appeal would have to be conducted according to the Administrative Procedures Act.

An appeal from a final order issued in an administrative hearing would have to be made to the Circuit Court of Ingham County, which would have jurisdiction with respect to these cases as in nonjury cases under the authority provided in the Revised Judicature Act.

Reimbursement of Expenditures

The Social Welfare Act requires a county annually to develop a plan and budget for funding foster care services and submit the plan and budget to the "office" (the DHHS) for approval. Funds may not be distributed under Section 117a (which provides for distributions to counties for juvenile justice services, including foster care) except for reimbursement of expenditures made under an approved plan and budget.

The bill provides that neither the DHHS nor the county could seek reimbursement for expenditures unless they were made under an approved plan and budget or according to Department policy.

The bill would delete a provision prohibiting the office from approving plans and a budget that exceed the amount appropriated by the Legislature.

Senate Bill 530

Distribution of Appropriations for Expenditures: DHHS & Non-DHHS Placement

For purposes of Section 117a and other sections of the Act concerning the juvenile justice funding system, the bill would define "in-home care" as expenditure of Child Care Fund money for services and items listed in Section 117a to be an alternative to out-of-home care or to provide an early return home for a child placed out of his or her home. "Out-of-home" care would mean placement outside of the residence of a child's parent, legal guardian, or, except as provided, relative where the child is found, from which the child was removed by the authority of the court, or in which the child will be placed on a permanent basis.

The bill also would define "juvenile detention facility" as a county-operated or court-operated juvenile facility licensed or approved as a child caring institution that houses and provides group care, shelter care, or detention administered and staffed by county or court employees.

Section 117a includes requirements for the DHHS to distribute money appropriated to counties for the cost of juvenile justice services. Under the bill, the Department would have to distribute money appropriated for purposes described in Section 117a as follows:

- Payment for expenditures for children placed with the DHHS for care, supervision, or placement, including children within the court's jurisdiction under Section 2(a) or 2(b) of the juvenile code, could be paid by the Department or a county, depending on which entity spent the money.
- Payment for expenditures for children not placed with the DHHS for care, supervision, or placement, including children within the court's jurisdiction under Section 2(a) or 2(b) of the juvenile code, would have to be paid by a county and be reimbursed by the Department with notice to the county when reimbursement was made, and the Department would have to make reimbursement payments for all undisputed charges.

(Section 2(a) of the juvenile code provides for the court's jurisdiction of children who violate the law, run away from home, are disobedient, or are truant. Section 2(b) provides for the court's jurisdiction of children who subject to neglect or abuse.)

Expenditures for Non-DHHS Placements

Expenditures for children not placed with the DHHS would include, but not be limited to:

- Direct expenditures for out-of-home care.
- Administrative or indirect expenditures for out-of-home care.
- Direct expenditures for in-home care.
- Administrative or indirect expenditures for in-home care programs administered by the circuit court, county government, or local county department or tribe.

Regarding out-of-home care, an administrative or indirect cost payment equal to 10% of a county's total monthly gross expenditures would automatically be distributed to the county on a monthly basis. ("Gross expenditure" would mean the total adjusted expenditures included in a county's monthly expenditure report and submitted to the DHHS.)

Direct expenditures for out-of-home care would include, but not be limited to, the following:

- Salaries of county- or court-operated detention center, shelter care, or group care facility specific employees, including management staff, direct service staff, mental health staff, support staff, janitorial, maintenance, and/or ground staff, kitchen staff, and security staff of a facility, and circuit court employees who support the Child Care Fund county- or court-operated detention center, shelter care, or group care facility.
- Fringe benefits, including payroll taxes, medical, vision and dental insurance, group life insurance, disability insurance, accident insurance, health savings accounts, retirement contributions, worker's compensation, and accrued severance benefits of county- or court-operated detention center, shelter care, or group care facility specific employees and circuit court administration who administrate and support the Child Care Fund county- or court operated detention center, shelter care, or group care facility.
- Clothing and food for children.
- Meals furnished to on-duty staff assigned responsibilities for the supervision and care of the youths during facility mealtime.
- Hygiene supplies for children, including shampoo, soap, or toothpaste.

- Education costs for children who are temporary residents in a county- or court-operated detention center, shelter care, or group care facility and for whom attendance in a public school system or local education agency is not an option.
- Utilities, janitorial supplies, kitchen supplies, laundry supplies and linen supplies or service of a county- or court-operated detention center, shelter care, or group care facility.
- Office supplies dedicated solely to the county- or court-operated detention center, shelter care, or group care facility.
- Cellular telephones, landline telephones, and two-way radios used for communication dedicated solely to the county- or court-operated detention center, shelter care, or group care facility.
- Copy machine charges dedicated to the county- or court-operated detention center, shelter care, or group care facility.
- Mattress, box spring, or bed frame used in a county- or court-operated detention center, shelter care, or group care facility.
- Medical, dental, psychological, and psychiatric services, including medication, for children not covered by another source, other than services to determine competency.
- Periodicals and books of a county- or court-operated detention center, shelter care, or group care facility.
- Recreational supplies, programs, and television in a county- or court-operated detention center, shelter care, or group care facility.
- Training for Child Care Fund-funded staff and in-service education directly related to the out-of-home program, excluding tuition grants or scholarships for college credit.
- Drug testing for children.
- Birth certificates for children.
- Incentives for youths.
- Interpreter fees for nonjudicial processes.
- Printing, binding, and postage for materials relating to the education or correspondence relating to children in the county- or court-operated detention center, shelter care, or group care facility.
- Membership dues or fees for professional credential maintenance of staff who provide or support a service to children under the Child Care Fund, or professional staff for whom professional licensure is required in their respective job description.
- Contracted personnel, programming, or services, or any combination of these.
- Nonscheduled payments.
- Technology and software operating expenses for a county- or court-operated detention center, shelter care, or group care facility and necessary technology and software operating expenses associated with all aspects of tracking cases and caring for youth.

Direct expenditures for out-of-home care also could include mileage reimbursement rate costs for transporting children of a county- or court-operated detention center, shelter care, or group care facility. Mileage reimbursement rates used would have to adhere to the county or tribe published rates. Mileage reimbursement rates would cover all costs of operating a vehicle, including maintenance, repairs, taxes, gas, insurance, and registration fees.

Direct expenditures for in-home care would include, but not be limited to, the following:

- Salaries and fringe benefits of circuit court employees who support the Child Care Fund in-home care program.
- Mileage reimbursement rate costs associated with the child care fund in-home care program.
- Program supplies and materials.
- Other program-specific activities costs, including entrance fees for programs.
- Conference travel costs for other non-Child-Care-Fund-related training, including evidence-based and promising practices training.

- Contracted personnel, programming, or service, or any combination of these.
- Unit costs contracts.
- Closed-end contracts, including university contracts, private agency services contracts, educational services contracts, court appointed special advocate and wraparound contracts, and other contracts identifiable to the program.
- Nonscheduled payments or case services payments.

Regarding fringe benefits, for a county receiving the juvenile court officer grant and the appointed juvenile court officer works within an approved program, the proportional fringe benefits for the juvenile court officer could be reimbursed.

Program supplies and materials would include, but not be limited to:

- Program-specific supplies, including risk or needs assessment, recognition plaques, and educational or program licenses.
- Office supplies related to program activities and prosocial activities.
- Food related to program activities and prosocial activities.
- Drug test kits.
- Tethers and other forms of electronic monitoring.

Unit costs contracts could include, but would not be limited to:

- Contracted - drug testing - lab (per "drug test" basis).
- Contracted - counselor fees (per "hour" basis).
- Contracted - group session dollar per session (per "session" basis). Group roster documentation required.
- Contracted - psychological evaluations, excluding competency examinations - (per "evaluation" basis).
- Contracted - service (per "service" basis).

A nonscheduled payment would be a payment to an individual or organization for items specified and defined in the Child Care Fund handbook that are not included in the State-established per diem rate. A nonscheduled payment could include, but would not be limited to:

- Emergency costs, including immediate food, clothing, medical, or dental needs not covered by another source.
- Gymnasium or other prosocial activity requiring a membership related to program activities.
- Rewards or incentive pay for youths related to program activities.
- Bus tokens or gas cards related to program activities.
- Mentor costs - meals, mileage, movies, or social costs related to program activities.
- Noncontracted service provider related to program activities.
- Noncontracted group session related to program activities.
- Noncontracted psychological evaluations, excluding competency examinations.
- Family assessment or evaluations.
- Noncontracted counselor fees.
- Noncontracted drug testing - labs.
- Camps or field trips.
- Birth certificates for children.

Direct expenditures for in-home care also could include other costs, including, but not limited to all of the following:

- Cellular telephones, landline telephones, and other safety tracking technology for child care fund-funded staff.
- Training for Child Care Fund-funded staff and in-service education related to the in-home care component, excluding tuition grants or scholarships for college credit.
- Education costs for children who are prohibited from school attendance in a public school system or the local education agency or have severe educational issues and have been court ordered into a child care fund-funded educational program.
- Printing, binding, or postage for materials relating to the education or correspondence on behalf of children in the in-home care program.
- Membership dues or fees - professional credential maintenance of staff who provide or support a service to children under the Child Care Fund or professional staff from whom professional licensure is required in their respective job descriptions.
- Business cards.
- Technology and software operating expenses for a county- or court-operated detention center, shelter care, or group care facility and necessary technology and software operating expenses associated with all aspects of tracking cases and caring for youths.

Funding Distribution Requirements

The bill would make several changes to the distribution requirements. Currently, for a county that is not a "county juvenile agency", the amount distributed must equal 50% of the annual expenditures from the child care fund of the county (subject to certain limitations). The bill would delete the reference to a county that is not a county juvenile agency.

The Act states that this distribution may be reduced by the amount of uncontested liability. The bill would delete that provision. Also, the Act permits the DHHS to reduce the amount distributed to the county by the amount owed to the State for care received in a State-operated facility or for care received under Public Act 220 of 1935 (which provides for the Michigan Children's Institute), or under the Youth Rehabilitation Services Act. Under the bill, this reduction would be subject to a county's approval. Additionally, upon written request of the juvenile court or county, the juvenile court or county would be exempt from submitting revenue to the DHHS from funds generated within the facility.

Also, under the bill, the purposes for which money would have to be distributed by the DHHS for juvenile justice services could duplicate the purposes under other public assistance programs to the extent necessary to achieve the goals and outcomes for in-home care or out-of-home care. The Department could not disallow costs that duplicated other public assistance programs.

In addition, a bill submitted up to one year after the date of service, original status determination, or receipt would have to be paid and reimbursed. A bill submitted more than one year after the date of service, original status determination, or receipt would not have to be paid or reimbursed.

MCL 400.117c et al. (S.B. 529)
400.117a (S.B. 530)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 529

The bill could have offsetting fiscal impacts on State and local government. To the extent that the Department of Health and Human Services or local governments currently seek reimbursements for expenditures not made under an approved plan and budget, there would

be a reduction in reimbursement funds received. Additionally, any increase in administrative costs associated with filing an appeal of determination for a reimbursement could be a fiscal cost to the participating parties.

Senate Bill 530

The bill would have an unknown, but likely cost to the Department of Health and Human Services and county governments. The extent of the cost is uncertain due to the complexity of estimating the responses of 97 separate local entity (83 counties and 14 tribal entities) to changes in the Child Care Fund proposed under the bill. The portion of the bill that addresses timing of payments or which entity is the first payer of expenditures would likely not change the total amount of Fund expenditures. Under current law, the State is required to fund services that conform to Child Care Fund rules promulgated under the Social Welfare Act. The core basis that the DHHS has used for "promulgated rules" is the Child Care Fund handbook, the annual Child Care Fund plan and budget, and the DHHS policy manuals. A potential for a cost increase to the DHHS is the descriptive list of goods and services that support out-of-home care and in-home care. To the extent that the bill would expand the list of reimbursable expenditures relative to existing DHHS promulgated rules or published policies and procedures, there would be a cost to the State.

Additionally, the bill would provide for a payment for administrative or indirect expenditures by providing a monthly distribution equal to 10% of a county's total monthly gross expenditures for all out-of-home care. In fiscal year 2015-16, the total expenditures for Child Care Fund out-of-home care were \$234.5 million. In prior years, the DHHS reimbursed annually approved indirect expenditures, so it is not possible simply to use \$23.4 million as the administrative or indirect cost increase. The cost increase would likely be less than this amount, possibly in the \$5.0 million to \$7.5 million range.

Also, the bill includes a provision to allow for duplication of public assistance programs, to the extent necessary, in order to achieve outcomes for out-of-home or in-home care. Currently, the DHHS will not reimburse for programs that could contain an element of a separate public assistance program. For example, a county could attempt to be reimbursed through the Child Care Fund for an emergency housing program. Since other public assistance programs currently cover this type of need, the DHHS would deny the 50% reimbursement. The proposal would limit the duplication of services to those necessary for out-of-home or in-home care. If a county or tribe were to seek reimbursement for the cost of a service that would be reimbursable through the Child Care Fund, there would be a cost to the local entity and to the State. The estimated increased cost is not determinable at this time since these costs have not been reimbursable in the past.

In addition, the bill proposes a one-year time limit on reimbursement to both the State and the local entity for any service, status determination, or billing receipt. Since there would be no expansion in service or programming, total net costs of this change to the State and local entities would be zero, but the increased cost or savings to either individually would depend on the extent to which there are current status redeterminations or reimbursement requests that exceed one year in length.

Fiscal Analyst: John Maxwell

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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.