



## Legislative Fiscal Bureau

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June 6, 2007

Joint Committee on Finance

Paper #433

### **Tribal Out-of-Home Care Placements (DHFS -- Children and Families)**

#### *Bill Section*

[LFB 2007-09 Budget Summary: Page 322, #9]

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#### **CURRENT LAW**

*Out-of-Home Care Costs for Tribal Children.* Counties may make payments to foster homes, treatment foster homes, group homes, and residential care centers for out-of-home care for American Indian children in cases where a tribal court determines there is a need for the placement, and the placement is made under an agreement between the county human services department and the tribal governing body. This authority was provided to counties under 1983 Act 161. The agreements counties make with tribes relating to the placement of these children are commonly referred to as "161 agreements."

*Income Augmentation Funds.* Income augmentation funds are unanticipated federal funds the Department of Health and Family Services (DHFS) receives under Title IV-E (foster care), Title XIX (medical assistance, or MA), and Title XVIII (Medicare) of the federal Social Security Act as reimbursement for costs that were initially paid with state or local revenue, or revenue from one of these sources that would not otherwise have been available had it not been for activities conducted to augment federal income. Annually, the Department of Administration submits a proposed plan for the use of uncommitted income augmentation funds to the Joint Committee on Finance for its review and approval. Funds that have not been expended or encumbered in the Department's excess federal revenue appropriation must lapse to the general fund at the end of each fiscal year.

## **GOVERNOR**

Authorize DHFS in 2007-08 and the Department of Children and Families (DCF, which would be created in the bill) in 2008-09 to expend up to \$500,000 in income augmentation services receipts, MA targeted case management, and excess federal revenues the agency received in fiscal year 2006-07 or 2007-08 for unexpected or unusually high-cost out-of-home care placements of American Indian children ordered by tribal courts. Specify that the total amount available for this purpose is \$500,000 over the biennium, and that DCF may only expend the difference between \$500,000 and the total amount expended by DHFS in 2007-08. Specify that DHFS or DCF may only expend funds for this purpose if it determines, in light of overall child welfare needs and after paying federal disallowances, that there are sufficient moneys in the income augmentation appropriation and an appropriation DHFS uses to pay federal disallowances to expend for that purpose.

## **DISCUSSION POINTS**

1. A tribal court has the option of maintaining its jurisdiction over a child welfare case that involves an American Indian child or transferring the case to a circuit court that serves the county in which the child resides. If the tribe transfers the case to a circuit court and the circuit court orders the child to an out-of-home placement, the county is responsible for funding the entire costs of the out-of-home placement.

If a tribal court orders a child to an out-of-home placement, either the county or the tribe may be responsible for funding the out-of-home placement. Some tribes have 161 agreements with counties, and those agreements stipulate the tribe's and the county's cost liability for cases where tribal courts order a child to out-of-home care. Other tribes do not have 161 agreements, and are, therefore, solely responsible for funding the placement. Some 161 agreements between counties and tribes specify a maximum amount of funding that the county will provide to support out-of-home care costs for these children. Some agreements specify that, while some types of placements, such as foster homes will be covered, more expensive types of placements, such as placements in group homes or residential care centers (RCCs), require prior consultation and approval by the county. Some tribes provide tribal funds to supplement funding that is available to support costs funded through the 161 agreements.

2. If a child is placed in foster care, the county or tribe makes a monthly foster care payment equal to between \$317 to \$411 per month (depending on the age of the child), plus any supplemental or exceptional payment. However, if a child is placed in a group home or RCC, the county or tribe's costs to fund the placement are significantly greater. The average monthly cost of group homes and RCCs is \$4,900 and \$9,300, respectively.

3. In recent years, there have been cases in which the out-of-home placement of an American Indian child by a tribal court resulted in an unexpected and/or unusually high cost that exceeded the amount a county budgeted for these placements. For example, in 2005, the Red Cliff

tribal court recommended that an American Indian child with significant mental health needs be placed in an RCC. Although the Red Cliff band and Bayfield County had a 161 agreement, the cost of this placement exceeded the annual amount historically provided under the agreement by more than 800%, and, therefore, exceeded the amount of available funding budgeted by Bayfield County for out-of-home care placements. DHFS provided one-time funding of \$195,000 to Bayfield County to support the placement of the child.

4. DHFS staff believes that tribal courts transfer some child welfare cases that involve American Indian children with significant care needs to circuit courts to improve the chances that a child will receive appropriate (but high-cost) services because the tribal court may believe that an order from a circuit court would have a better chance to secure county funding for costly out-of-home care, than an order from a tribal court. It is not known how frequently this occurs.

5. Current DHFS information systems do not provide the type of information necessary to determine whether tribal courts were transferring a disproportionate number of high-cost cases to circuit courts to ensure that counties would be liable for the costs of these placements. However, a high-cost tribal court case can be especially problematic because counties typically budget a relatively small amount for tribal court placements because caseloads tend to be small. However, when an unexpected high-cost placement arises, it can exhaust the county's entire budget for out-of-home placements for that year.

6. DHFS is developing criteria it would use to determine, under what circumstances, the agency would make funds available. In general, funding would be available if DHFS determines that the funding is needed to support an American Indian child placed by a tribal court and only for placements that are unbudgeted, unforeseen and unusually high. DHFS would consult with tribes to more clearly define the placements that meet these criteria. DHFS would allocate the funds in six-month increments so that DHFS could periodically re-evaluate need for the emergency supplemental funds.

7. The administration indicates that the current 161 agreement structure and level of tribal and county funding available to support out-of-home care costs for these children impedes the ability of tribes to exercise their sovereignty in child welfare cases. Allowing DHFS to set aside income augmentation revenue for this purpose would allow DHFS to act immediately when such cases arise. For these reasons, the Committee may wish to approve the Governor's recommendation.

8. The Governor recommends funding this item with unanticipated federal revenue DHFS receives from revenue-maximization activities by DHFS. In 2006, the Joint Committee on Finance approved the expenditure of \$15.8 million in income augmentation revenue, and in 2005 the Committee approved the expenditure of \$4.6 million. The provision would allow DHFS to set aside up to \$500,000 in income augmentation revenue over the biennium to fund unanticipated high-cost cases.

9. If the Committee approves the Governor's recommendation and DHFS provides

funding to assist counties and tribes with these unbudgeted, high-cost cases, the amount of uncommitted revenue available for the 2007 and 2008 income augmentation plans would be reduced by a total of \$500,000. The Committee could delete this provision from the bill and instead consider funding this high-cost emergency fund as part of the next income augmentation plan, which will be submitted to the Committee on October 1, 2007. This alternative would permit the Committee to weigh the need to provide this funding with other proposed uses of federal income augmentation funds.

#### **ALTERNATIVES TO BILL**

1. Approve the Governor's recommendation.
2. Delete provision.

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