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Senate Bill 890 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Bruce Caswell  
Committee: Families, Seniors and Human Services

Date Completed: 9-8-14

### **RATIONALE**

The Social Welfare Act allows a parent of an adoptive child to receive financial assistance if the adoptee requires extraordinary care because of a medical condition or other impairment. The decision of whether an adoptive parent can or will accept such financial assistance, and the amount of the assistance provided, is made during the adoption process. On occasion, an impairment does not become apparent until well after the adoption process is completed. Some have expressed concern that adoptive parents do not get the option to receive financial assistance when a child has an impairment that existed at the time of the adoption but was not obvious. To address these situations, it has been suggested that the Act should allow adoptive parents to receive the allowed financial assistance or get an adjustment in financial assistance that they already receive.

### **CONTENT**

**The bill would amend the Social Welfare Act to do the following:**

- **Require the Department of Human Services (DHS) and an adoptive parent to enter into an agreement for redetermined adoption assistance if an adopted child were eligible for such assistance due to a condition that existed before the adoption.**
- **Require an adoption assistance agreement to include a notice of potential eligibility for redetermined adoption assistance.**
- **Extend to redetermined adoption assistance agreements certain conditions and requirements that currently apply to adoption assistance agreements and medical subsidy agreements.**
- **Allow an adoptive parent who had an adoption assistance agreement in effect before January 1, 2015, to request redetermined adoption assistance between January 1 and March 31, 2015.**
- **Allow the DHS to pay a support subsidy based on a "determination of care rate" to an adoptive parent of an adoptee who required extraordinary expense or care.**
- **Require an adoptive parent to sign a separate form that he or she accepted or rejected a support subsidy.**
- **Require the parent, if he or she accepted the support subsidy, to present the first offer of the amount requested for the subsidy.**
- **Allow the DHS to pay a medical subsidy to an adoptive parent (as currently permitted) or to a service provider.**
- **Prohibit the payment of a medical subsidy to an adoptive parent for providing treatment to his or her adopted child.**

The bill would take effect on January 1, 2015.

#### Adoption Assistance: Support Subsidy

The Act allows the DHS to pay a support subsidy to an adoptive parent of an adoptee who is placed in the adoptive parent's home under the Michigan Adoption Code or the adoption laws of

another state or a tribal government if: a) the DHS has certified that the adoptee is a child with special needs, b) certification is made before the adoptee's 18<sup>th</sup> birthday, and c) certification is made and an agreement is signed by the adoptive parents and the DHS before the adoption is finalized. The DHS must determine eligibility for the support subsidy without regard to the adoptive parent's income. The maximum amount must equal the rate the child received, or would have received, in family foster care placement at the time of adoption. The rate includes the difficulty of care rate, increased to reflect increases made in the standard age appropriate foster care rate paid by the DHS.

Where the Act refers to the difficulty of care rate, the bill instead would refer to the determination of care rate.

The bill would require the DHS, on a separate form, to require an adoptive parent to sign that he or she either accepted or rejected a support subsidy. The adoptive parent would have to present to the DHS the first offer of the amount requested for a support subsidy. The DHS could accept the offer or present a counteroffer. The counteroffer could not be less than 95% of the family foster care rate, including the determination of care rate, that was paid for the adoptee while he or she was in family foster care or the amount he or she would have received in family foster care at the time the adoption was finalized.

The bill would define "determination of care rate" as "a supplemental payment to the standard age appropriate foster care rate that may be justified when extraordinary care or expense is required". The supplemental payment would have to be based on one or more of the following for which additional care would be required of the foster care parent or an additional expense existed:

- A physically disabled child for whom a foster care provider would have to provide measurably greater supervision and care.
- A child with special psychological or psychiatric needs who required extra time and a greater amount of care and attention by the foster care provider.
- A child who required a special diet that was more expensive than a normal diet and required extra time and effort to obtain and prepare.
- A child whose severe acting out or antisocial behavior required a measurably greater amount of the foster care provider's care and attention.
- Any other condition for which the DHS determined that additional care would be required of the foster care parent or an additional expense existed.

#### Medical Subsidy

Currently, the DHS may pay a medical subsidy to the adoptive parent of an adoptee placed in the adoptive parent's home if: a) the expenses to be covered are necessitated by the adoptee's physical, mental, or emotional condition that existed before the adoption petition was filed or the certification was established, whichever was first, b) the adoptee was in foster care at the time the petition for adoption was filed, and c) certification was made before the adoptee's 18<sup>th</sup> birthday. The bill would allow the DHS to pay a medical subsidy to either a service provider or an adoptive parent. The bill would prohibit the DHS from paying a medical subsidy to an adoptive parent for providing treatment or services to his or her own adopted child.

The bill would define "medical subsidy" as "a reimbursement program that assists in paying for services for an adopted child who has an identified physical, mental, or emotional condition that existed, or the cause of which existed, before the adoption is finalized".

The Act specifies that payment of a medical subsidy for treatment of a mental or emotional condition is limited to outpatient treatment unless one or more of the following apply: a) the certification for the medical subsidy was made before the date the adoption was finalized, b) the adoptee was placed in foster court by the court before the petition for adoption was filed, or c) the adoptee was certified for a support subsidy. Under the bill, the exception would apply if the adoptee were certified for a support subsidy *or* redetermined adoption assistance.

## Redetermined Adoption Assistance

Under the Act, if adoption assistance is to be paid, the DHS and the adoptive parents must enter into an adoption assistance agreement that includes the following: a) the duration of the adoption assistance to be paid, b) the amount to be paid and, if appropriate, eligibility for medical assistance c) conditions for continued payment of the adoption assistance as established by statute, d) any services or other assistance to be provided under the adoption assistance agreement, and e) provisions to protect the interests of the child in cases in which the adoptive parents move to another state while the agreement is in effect. Under the bill, an adoption assistance agreement also would have to include a notice of potential eligibility for redetermined adoption assistance.

The bill would define "redetermined adoption assistance" as "a payment as determined by a certification that may be justified when extraordinary care or expense is required for a condition that existed or the cause of which existed before the adoption from foster care was finalized".

If it were determined that a child was eligible for redetermined adoption assistance, the DHS and the adoptive parent would have to enter into a redetermined adoption assistance agreement. The agreement would have to contain the same information as required for an adoption assistance agreement, and the conditions for continued payment of the redetermined adoption assistance would be the same as for adoption assistance.

The Act requires the DHS to give a copy of the adoption assistance or medical subsidy agreement to the adoptive parent, and states that neither agreement affects the legal status of the adoptee or the legal rights and responsibilities of the adoptive parent. At least once a year, the adoptive parent must report to the DHS as to the location of the adoptee and other matters relating to his or her continuing eligibility for adoption assistance or a medical subsidy. Adoption assistance and a medical subsidy must continue even if the adoptive parent leaves the State. These requirements also would apply to redetermined adoption assistance and redetermined adoption assistance agreements.

As with adoption assistance or a medical subsidy, redetermined adoption assistance would continue until one of the following occurred: a) the adoptee reached 18 years of age, b) the adoptee was emancipated, c) the adoptee died, d) the adoption was terminated, or e) the DHS made a determination of ineligibility.

If sufficient funds are appropriated by the Legislature in the DHS's annual budget, adoption assistance agreements and medical subsidy agreements may be extended for an adoptee under 21 years of age if all of the following are met: a) the adoptee has not completed high school or a GED program, b) the adoptee is regularly attending high school or a GED program or a program for children with disabilities on a full-time basis and is progressing toward achieving a high school diploma, certificate of completion, or GED, and c) the adoptee is not eligible for Supplemental Security Income. The bill would extend this provision to redetermined adoption assistance agreements.

Adoption assistance agreements may be extended for a child adopted on or after his or her 16<sup>th</sup> birthday if the DHS determines that the eligible adoptee meets the requirements set forth in the Young Adult Voluntary Foster Care Act. Under the bill, this also would apply to redetermined adoption assistance agreements.

Under the Social Welfare Act, a support subsidy must continue during a period in which the adoptee is removed for delinquency from his or her home as a temporary court ward. Also, upon the death of the adoptive parent, the DHS must continue making support subsidy payments or continue medical subsidy eligibility through State funding to the guardian of the adoptee if a guardian is appointed. The bill also would require continued payment of redetermined adoption assistance payments under both of those circumstances.

## Request for Redetermined Adoption Assistance

If sufficient funds were appropriated in the DHS's annual budget, beginning January 1, 2015, the bill would require the DHS to pay redetermined adoption assistance to an adoptive parent of an adoptee who was placed in the adoptive parent's home under the Adoption Code or under the adoptions laws of another state or a tribal government if the adoptive parent requested redetermined adoption assistance and both of the following requirements were met: a) the DHS certified that the adoptee would require extraordinary care or expense due to a condition that existed before the adoption was finalized, b) certification was made before the adoptee's 18<sup>th</sup> birthday. If the DHS denied or the adoptive parent disagreed with the certification, the adoptive parent could request a hearing through an administrative law judge in a manner consistent with the rules promulgated under the Administrative Procedures Act. Redetermined adoption assistance would have to be determined in the same manner as provided for the support subsidy. An adoptive parent who had an adoption assistance agreement signed and in effect before January 1, 2015, would have until March 31, 2015, to request redetermined adoption assistance under these provisions. If redetermined adoption assistance were requested, it would have to be determined and provided for in the same manner as required above.

An adoptive parent could request only one redetermined adoption assistance certification to be made per adoptee placed in the adoptive parent's home. An adoptive parent of an adoptee who was adopted from foster care between the ages of zero and 18 could request redetermined adoption assistance as specified above.

MCL 400.115f et al.

### **BACKGROUND**

Michigan controls three adoption subsidy programs: the Adoption Support Subsidy, the Nonrecurring Adoption Expense Reimbursement, and the Adoption Medical Subsidy.<sup>1</sup> Adoption subsidy programs provide financial assistance to parents who adopt children from foster care through the child welfare system.

The Adoption Support Subsidy provides monthly financial assistance for the adoptive parents of eligible adoptees. The goal of this program is to assist adoptive parents with the expenses of caring for an adopted child, not to meet all of a parent's expected needs.<sup>2</sup> Eligibility requirements for this program are defined in Title IV-E of the Social Security Act, Michigan law, and DHS policy. Funding is provided at the State and Federal levels.

A Nonrecurring Adoption Expense Reimbursement is paid to an adoptive parent for specific expenses paid by the parent arising from the adoption process.<sup>3</sup> The program will reimburse an eligible adoptive parent up to \$2,000.<sup>4</sup> An adoptive parent's eligibility for this program is determined before the final order of adoption according to Title IV-E and Michigan law, and an adoption assistance agreement must be signed before the final order of adoption.<sup>5</sup>

The Adoption Medical Subsidy program assists adoptive parents as a last resort in paying for medical treatment costs for adopted children who have a mental, physical, or emotional condition that existed before an adoption petition was filed.<sup>6</sup> Routine expenses for typical illnesses and over-the-counter supplies are not covered by the program. Eligibility may be determined before and after the adoption but must be made before adoptee's 18th birthday, and is otherwise established under Michigan law.<sup>7</sup>

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<sup>1</sup> "Michigan's Adoption Assistance Program-Information for Prospective Adoptive Parents", DHS Publication No. 538, 6-2014.

<sup>2</sup> "AAM 100. Program Overview", p. 1, *Adoption Subsidy Policy Manual*, Michigan Department of Human Services, 10-1-2013.

<sup>3</sup> *Id.*

<sup>4</sup> See n. 1.

<sup>5</sup> See n. 2, at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would allow adoptive parents of children who have latent impairments at the time of their adoption to gain access to medical subsidies and other assistance if the impairment becomes apparent later. This would reduce the burden on adoptive parents and help them care for children who are sick or otherwise need assistance. The bill would require future adoptive parents seeking redetermined assistance for children with impairments to show that an impairment existed at the time of the adoption. It also would require future adoptive parents to be notified about the availability of such assistance. In addition, the bill would create a four-month window during which parents who adopted children before January 1, 2015, could request a redetermination of assistance.

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

The bill would have a negative fiscal impact on the Department of Human Services budget. If all of the parents of adoptive children who are potentially eligible for redetermined adoption assistance applied for the update within the limited given time frame, the bill could increase spending by \$9.5 million to \$28.8 million Gross, some of which would be one-time costs. The actual costs would be determined by Department policies and the implementation of the bill, as well as the responsiveness of adoptive parents in submitting a request for redetermined adoption assistance. Therefore, the costs could vary from this range. Based on some additional mitigating factors discussed below, it is reasonable to expect that the costs would be closer to the lower end of the range.

Determination of Care Payments. The DHS provides Determination of Care payments to adoptive parents in order to provide care for children with special health care needs. The term "special health care needs", as it is used in this analysis, includes behavioral, emotional, and mental health conditions, physical or medical impairments, and exceptional educational support needs.

The DHS assesses a child for these potential needs, in order to determine the qualifying level of care that a parent may claim. The categories of care are determined by age or level of care, with DOC I being the lowest level of care and DOC Level IV being the highest level of care. Table 1 below shows the categories of care and payments.

**Table 1**

<b>Determination of Care (DOC) Description</b>	<b>Daily Rate</b>
DOC I for ages 13+	\$6.00
DOC II for ages 13+	\$11.00
DOC III for ages 13+	\$16.00
DOC I for ages 0-12	\$5.00
DOC II for ages 0-12	\$10.00
DOC III for ages 0-12	\$15.00
DOC Level IV	Average \$23.51
DOC Medically Fragile I	\$8.00
DOC Medically Fragile II	\$13.00
DOC Medically Fragile III	\$18.00
Unspecified DOC Level	Average \$11.05

Source: Department of Human Services

Calculations. This analysis assumes that 20.0% to 60.0% of parents of adopted children ages 13 and over would request and qualify for a new or revised Determination of Care payment at an ongoing cost of \$7.3 million to \$21.9 million Gross.

Based on the results of the 2005-2006 National Survey of Children with Special Health Care Needs, 42.3% of children ages 13 and over who were adopted from foster care have a special health care need. These special health care needs include: 1) ongoing limitations in the ability to perform activities that other children of the same age can perform; 2) ongoing need for prescription medications; 3) ongoing need for specialized therapies; 4) ongoing need for more medical, mental health, or educational services than are usual for most children of the same age; and 5) the presence of ongoing behavioral, emotional, or developmental conditions requiring treatment or counseling.

Data from the DHS show that there are approximately 26,500 adoption subsidy cases, and approximately 13,100 cases receiving a Determination of Care payment. As of March 2014, 12,256 children ages 13 and over were receiving an adoption subsidy. Based on the national incidence of special health care needs in this age group, approximately 5,148 – or 42.0% – of this group could qualify under the bill for a Determination of Care payment. Currently, approximately 3.0% of this group receives the Determination of Care payment under the defined levels of care for children ages 13 and over.<sup>8</sup> This analysis does not include cost adjustments for children ages 0-12, because the Determination of Care payments for this group already exceed the national incidence of special health care needs, which is 58.0%.

The DHS data show that 65.0% of these children ages 0-12 receive a Determination of Care rate. The estimated cost increase is based around the 42.0% incidence level, and assumes that 20.0% to 60.0% of children ages 13 and over could qualify for the payment.

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<sup>8</sup> The 3.0% estimate refers only to the defined age categories. The total percentage of children ages 13 and over is likely to be higher than 3.0%. The Level IV and Medically Fragile categories of care, as seen in the table, are not categorized by age. These categories are likely to include children ages 13 and over, however.

Additionally, the bill would result in some administrative hearing and staffing costs that would likely be one-time costs, possibly spread over two or more years. The costs of the additional administrative hearings would range from \$1.8 million for 6,600 hearings to \$5.6 million for 19,900 hearings (based on three hours per hearing and a fee of \$93.15 per hour). The costs of additional staffing to process the applications or requests for review would range from \$440,000 for approximately 4.0 FTEs to \$1.3 million for 13.0 FTEs. These estimates assume that 25% to 75% of all 26,500 adoption subsidy cases would submit a request for a revised payment, which would result in administrative and staffing costs, whether or not the cases were approved for a revised Determination of Care payment.

Additional Factors. The actual costs would likely fall within the lower range of the estimate due to several mitigating factors (based on the best available information).

First, the burden of medical proof would rest on the adoptive parents. Parents of a child over the age of 13 would likely face challenges to prove that the child had a special health care need that was not identified at the time of adoption. In some cases, the adoption could have taken place years earlier.

Second, current adoptive parents would have a limited window of opportunity in which to submit a request for redetermined adoption assistance. The parents would have to submit their request by March 31, 2015.

Further, the data and evidence suggest that the number of adoptive parents who are receiving a subsidy and who would pursue a revised or new Determination of Care rate likely would be well below half of the 26,500 caseload. A national study conducted by the U.S. Department of Health and Human Services found that 67.0% of adoptive parents receiving a subsidy believe that it is sufficient to take care of their children's needs. Furthermore, the DHS's legislative report for Section 556 of Article X (the DHS FY 2013-14 appropriation), Public Act 59 of 2013, states: "During FY 2013, the Department received zero complaints from adoptive parents stating that they were not notified that their children had special needs." The DHS's new adoption subsidy negotiation policy does not create a financial incentive for all foster parents to become adoptive parents, suggesting that the funds are not a prime motivator for the adoption. Previous case examples suggest that many clients choose to forego the administrative hearing process when given the option. For example, when the time limits went into effect for the Family Independence Program (FIP), the data show that, at most, 25.0% of those who depended on FIP for basic needs went through the administrative hearing process over the course of two years. Adoptive families are not dependent on the adoption subsidy to meet basic needs and perhaps have less incentive to initiate the administrative hearing process, unless circumstances are exceptional.

The annual costs of the bill would be based on several unknown factors, some of which would be determined by departmental policy and others of which would be based on the actions of individual clients. Research on other states did not result in a model that could be used to predict the outcomes of this bill. Other factors that could affect the revision of a Determination of Care rate include, but are not limited to: 1) the threshold at which a client would qualify for an increased level of care, 2) deadlines for requesting administrative hearings, and 3) knowledge that a revision was possible.

Fiscal Analyst: Frances Carley

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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.