

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

AB 1301 (Cooley) – As Amended April 12, 2019

SUBJECT: Child welfare: adoption

SUMMARY: Requires, beginning July 1, 2020, county child welfare agencies to compensate licensed private adoption agencies for the unreimbursed costs of supporting families through the adoption process, and allows counties to utilize certain unspent funds for additional activities related to permanency, as specified. Specifically, **this bill:**

- 1) Makes inoperative as of July 1, 2020, certain provisions of current law related to state compensation for private adoption agencies, and repeals those provisions as of January 1, 2021.
- 2) States Legislative intent to provide children and nonminor dependents with permanent adoptive homes, to encourage counties and private adoption agencies to support families, and states the necessity of changing the construction of the Private Agency Adoption Reimbursement Program (PAARP) to allow for local control of the program.
- 3) Requires a county child welfare agency to compensate private adoption agencies, as specified, for the costs of supporting families through the process of adopting children or nonminor dependents eligible for the adoption assistance program (AAP), as defined in current law.
- 4) Requires specified private adoption agencies to be compensated for otherwise unreimbursed costs for the placement of children or nonminor dependents eligible for the AAP, as specified, and further requires one-half of the compensation to be paid at the time the adoptive placement agreement is signed and the remainder be paid at the time the adoption petition is granted by the court.
- 5) Requires reimbursement procedures to be established by the California Department of Social Services (CDSS) in consultation with counties and private adoption agencies.
- 6) Prohibits reimbursement, pursuant to the provisions of this bill, to be authorized for private adoption agencies for intercountry adoption services.
- 7) Allows a county, to the extent that reimbursements made pursuant to the provisions of this bill total less than the amount provided to the county for those services, to utilize unspent funds for additional activities related to permanency, including, but not limited to, pre- and post-permanency support related to the establishment of adoptions and guardianships for foster children.
- 8) Delays implementation of the provisions of this bill until July 1, 2020.

EXISTING LAW:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (Welfare and Institutions Code [WIC] Section 202)
- 2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)
- 3) States the intent of the Legislature to preserve and strengthen a child's family ties whenever possible and to reunify a foster youth with his or her biological family whenever possible, or to provide a permanent placement alternative, such as adoption or guardianship. (WIC 16000)
- 4) Requires out-of-home placement of a child in foster care to be based upon selection of a safe setting that is the least restrictive family setting that promotes normal childhood experiences and the most appropriate setting that meets the child's individual needs, as specified. (WIC 16501.1)
- 5) Establishes AAP in order to benefit eligible children residing in foster care by providing the stability and security of permanent homes, and providing payments to adoptive parents to enable them to meet the needs of certain children as specified. (WIC 16115, *et seq.*)
- 6) Deems a child eligible for AAP if certain conditions are met, including, if it has been determined that the child cannot or should not be returned to the home of their parents or the child has certain barriers to their adoption, such as an adoption without financial assistance being unlikely, among others. (WIC 16120)
- 7) Establishes the "Local Revenue Fund 2011" in the State Treasury and requires the fund to receive all revenues, less refunds, derived from certain taxes, revenues as may be allocated to the fund, and other moneys that may be specifically appropriated to the fund, as specified, and further, creates the "Protective Services Growth Special Account" within the Local Revenue Fund 2011. (Government Code [GOV] Section 30025(b)(2)(F))
- 8) Requires a designated county or city and county that receives an allocation pursuant to current law to place the funds in a Contract Special Account, within the Protective Services Subaccount of the County Local Revenue Fund 2011, and further, allocates up to \$32,721,000 annually to the Contract Special Account. (GOV 30029.8(b) and 30029.5(a)(1)(B))
- 9) Allows a county to elect and, in consultation with the California State Association of Counties, be designated by CDSS to contract directly with CDSS for certain social services programs, functions, and services, including the PAARP, among others. (GOV 30029.8(a))
- 10) States Legislative intent to provide children or nonminor dependents who would otherwise remain in long-term foster care with permanent adoptive homes and to encourage private adoption agencies to continue placing these children, and in so doing, to achieve a substantial savings to the state in foster care costs. (WIC 16122(a))

- 11) Requires the state to compensate private adoption agencies for the unreimbursed costs of placing for adoption children or nonminor dependents eligible for AAP benefits in an amount no greater than \$10,000 per child adopted, and further, requires that half the compensation be paid at the time the adoptive placement agreement is signed and the remainder be paid at the time the adoption petition is granted by the court. (WIC 16122)
- 12) Prohibits reimbursement to private adoption agencies for intercountry adoption services. (WIC 16122 (b))
- 13) Defines “full-service adoption agency” as any licensed entity engaged in the business of providing adoption services, that: assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child; assesses the birth parents, prospective adoptive parents, or child; places children for adoption; and, supervises adoptive placements. Further, requires private full-service adoption agencies be organized and operated on a nonprofit basis, and requires that, in order to provide intercountry adoption services, a full-service adoption agency be accredited and in good standing, as defined in current federal law. (Health and Safety Code [HSC] Section 1502(a)(9))
- 14) Requires CDSS, in consultation with county child welfare agencies, foster parent associations, and other interested community parties, to implement a unified, family friendly, and child-centered resource family approval process to replace the existing multiple processes for licensing foster family homes, certifying foster homes by licensed foster family agencies, approving relatives and nonrelative extended family members (NREFMs) as foster care providers, and approving guardians and adoptive families. (WIC 16519.5)

FISCAL EFFECT: Unknown

COMMENTS:

Child welfare services: California’s Child Welfare Services (CWS) system exists to protect children from abuse and neglect, and in doing so, provides for their health, safety, and overall well-being. When suspicions of abuse or neglect arise, often as a result of a report by a mandated reporter like a doctor or teacher, Child Protective Services is tasked with investigating the report. If the allegation of abuse or neglect is substantiated, it is then determined whether it is in the best interest of the child to remain in their parent’s custody or be placed within the CWS system. If a child is suspected to be at risk of neglect, abuse, or abandonment, the juvenile court holds legal jurisdiction, and the CWS system appoints a social worker to ensure that the needs of a youth are met. As of January 2019, there were 59,152 youth between the ages of 0 and 21 placed in California’s CWS system.

Efforts to increase permanency for foster youth in California: Youth placed in the CWS system often face significant challenges; a June 2015 report entitled “Funding Youth Permanency” found that more than one in five transition-age foster youth will become homeless, only half will graduate from high school, one in four will be incarcerated within two years of leaving foster care, and less than 3% will receive a college degree. In recognition of these challenges, and with the acknowledgement that each child deserves to grow up in a stable, loving, family home, the CWS system seeks to provide permanency and stability for foster children, be it through reunification with a child’s parents, or through the adoption or guardianship processes.

Adoption Assistance Program (AAP): The AAP is an entitlement program that provides financial and medical coverage to help facilitate the adoption of children for whom finding permanent placements can be difficult and who are therefore at risk of remaining in long-term foster care. Youth who may be eligible for AAP include youth who are older, have siblings also in the CWS system, face medical or psychological challenges, or youth for whom other circumstances may make it difficult to secure a permanent placement for them. Depending on circumstance, a youth may be eligible for state- or federally-funded adoption assistance payments. According to data provided by CDSS, there are approximately 84,000 AAP cases in California currently.

Private Agency Adoption Reimbursement Program (PAARP): Enacted in 1974, PAARP serves as an incentive for private adoption agencies to recruit adoptive families for children who would otherwise remain in foster care. Current law requires CDSS to reimburse private adoption agencies up to \$10,000 per child for costs that are otherwise unreimbursed when completing adoptions for children eligible for AAP, and whom it may be difficult to find adoptive families for. Expenses covered by PAARP include costs associated with recruitment, training, and services for families who do not end up adopting or for whom the adoption is disrupted prior to finalization. Data provided by CDSS demonstrate that in federal fiscal year (FFY) 2017, there were a total of 6,550 adoption finalizations for youth previously in the CWS system and, of those, a total of 5,614 finalized adoptions received AAP; in other words, 86% of adoptions from CWS in California received AAP benefits in FFY 2017. CDSS data also demonstrate that between 2016 and 2018, the average yearly total of adoptions was 6,755; of those, 3,477 were eligible for PAARP.

2011 Realignment: In 2011, AB 118 (Committee on Budget), Chapter 40, Statutes of 2011, was part of a package of bills that realigned the responsibility to fund various criminal justice, mental health, and social services programs to local governments (often referred to as Realignment, or 2011 Realignment). AB 118 established the “Local Revenue Fund 2011” to receive revenues generated from various sources, including dedicated sales and use tax and Vehicle License Fee revenues. Created within the Local Revenue Fund 2011 was the Health and Human Services Account, which included the Adoption and Adoption Assistance subaccounts. As a result of 2011 realignment, counties are responsible for providing 100% of the nonfederal costs for nearly the entire child welfare system, including CWS, foster care, adoptions, AAP, and child abuse prevention.

In 2012, SB 1020 (Committee on Budget and Fiscal Review), Chapter 40, Statutes of 2012, restructured various components of realignment, including certain components related to funding for adoption assistance activities. Specifically, SB 1020 created a permanent financing structure for PAARP, the funds for which are provided by counties pursuant to 2011 Realignment. The bill created the “Contract Special Account”, which allocated up to \$32,721,000 annually to the Contract Special Account administered by one particular county, to be used to contract directly with CDSS for certain programs, including PAARP. Of the allocated funds, PAARP receives \$15,673,000 annually.

SB 1020 specified that the funds in the Contract Special Account are not subject to the rules of reallocation and that if any funds are not fully expended in a given fiscal year, the funds are retained in the fund for expenditure in the following fiscal year. SB 1020 also tasked one of California’s 58 counties with the role of receiving the 2011 Realignment funds in order to reimburse the state for statewide contracts; this role is commonly referred to as the “59th

county.” During fiscal years 2013-14 and 2014-15, Santa Clara County served as the 59th county, however, San Francisco assumed the role of the 59th County in fiscal year 2015-16, and has administered the 2011 Realignment Contract Special Account ever since. It is therefore important to recognize that, due to 2011 Realignment, PAARP funds are county funds that are administered by the state through the 59th county.

PAARP reimbursement claims: Reimbursements for adoption-related activities are paid out of the Contract Special Account administered by the 59th county, although the provisional reimbursement rate is not flat for all private non-profit adoption agencies. The provisional reimbursement rate is based on an agency’s projected average of unreimbursed costs for the next fiscal year (determined by an agency’s estimate of the total unreimbursed costs it will incur for eligible activities during the next fiscal year divided by the number of completed adoptions eligible for PAARP reimbursement); an agency’s provisional reimbursement rate, therefore, can change from year to year. Expenses related to foster care, inter-country adoption, or activities funded by grants or contracts are ineligible to be reimbursed through PAARP.

In 2007, SB 84 (Committee on Budget and Fiscal Review), Chapter 177, Statutes of 2007, provided a 5% increase to the AAP, and increased the maximum amount for which an adoption agency may claim for reimbursement to \$10,000. SB 84 also established that the maximum allowable reimbursement that may be claimed for an adoption of an AAP-eligible child is dependent on the date the home study of the prospective adoptive parent was approved. Reimbursement claims for an AAP eligible child may be made in one of two ways:

- 1) A two-part process wherein the agency claims reimbursement for \$5,000 or half the provisional rate (whichever is less) after the adoptive placement is made, and \$5,000 or half the provisional rate (whichever is less) after the finalization of the adoption; or,
- 2) A single process wherein the agency claims reimbursement for up to \$10,000 or the provisional rate (whichever is less) after the adoption is finalized.

PAARP fund overages: In November 2017, CDSS released County Fiscal Letter (CFL) 17/18-19 stating that beginning in FY 2014-15, county PAARP claims began exceeding the \$15.6 million set aside in the Contract Special Account. The CFL states,

“CDSS does not have the authority to increase the PAARP budgeted amount and is unable to pay any amount above the \$15.6 million from the 59th County funds. However, CDSS will pay up front any PAARP costs in excess of the \$15.6 million based on the commitment that counties will repay their share of the overage if this continues in future years. The CWDA, CDSS, and counties will conduct ongoing discussions to determine potential remedies for the PAARP overage issues as well as any methodology changes to bill for PAARP overages.”

In fiscal year 2016-17, PAARP claims exceeded the \$15.6 million included in the 59th County Contract for PAARP by \$6.9 million. CDSS predicts that estimated PAARP overages total \$1.5 million in 2018-19, and \$1.5 million in 2019-20.

Continuum of Care Reform: Over the past four years, California has enacted legislation, known as the Continuum of Care Reform (CCR), to improve placement and treatment options for youth in foster care. AB 403 (Stone), Chapter 773, Statutes of 2015, sponsored by CDSS, sought to improve outcomes for children and youth served by the CWS system by working to ensure that

foster youth have their day-to-day physical, mental, and emotional needs met, that they have the opportunity to grow up in permanent and supportive homes, and have the opportunities necessary to become self-sufficient and successful adults. CCR also sought to reduce the use of congregate care as a frequently used placement option for youth, as data have demonstrated that youth placed in congregate care settings experience poorer outcomes than youth placed in family settings. Subsequent legislation to further facilitate implementation of CCR efforts include AB 1997 (Stone), Chapter 612, Statutes of 2016, AB 404 (Stone), Chapter 732, Statutes of 2017, AB 1930 (Stone), Chapter 910, Statutes of 2018, and AB 819 (Stone), which is scheduled to be heard in the Assembly Human Services Committee on April 23, 2019.

Resource Family Approval (RFA): RFA was first authorized by AB 340 (Hancock), Chapter 464, Statutes of 2007, as a pilot project in five counties: Santa Barbara, San Francisco, San Luis Obispo, Kings, and Santa Clara. The pilot was conducted from November 2013 to August 2014. Between January and July of 2016, an additional 9 counties volunteered to implement RFA, and on January 1, 2017, pursuant to SB 1013 (Committee on Budget), Chapter 35, Statutes of 2012, implemented RFA statewide.

RFA is a unified, family-friendly, and child-centered process that combines elements of foster parent licensing, relative approval, and adoption/guardianship approval processes. RFA includes a psychosocial assessment, home environment check, and training for all resource families, including relatives, in order to ensure that caregivers are equipped to best meet the needs of youth in foster care. RFA is also a route to direct permanency for caregivers who wish to adopt or be guardians of youth in care, as the RFA process includes elements required by both the adoption and guardianship processes. Specifically, RFA eliminated the requirement that resource families (formerly referred to as foster families) complete a separate and additional home study when transitioning to be adoptive families. In short, the statewide adoption of RFA required a number of tasks associated with the adoption and guardianship processes to be completed at the outset of an applicant's approval process in order to allow for a seamless transition to permanency should a resource family choose to adopt. To provide further clarification, CDSS issued All County Letter (ACL) 18-142, in December 2018, which states:

“Prior to RFA, there was a different application, assessment, and approval process for relatives, NREFMs, licensed and certified foster families, guardianship homes, and adoptive homes. This multi-faceted approach resulted in some duplication of assessments, paperwork and potential delays to permanency for children and families... Per California law, RFA means that the applicant or resource family successfully meets the home environment assessment and permanency assessment standards. This approval is in lieu of a foster family home license, relative or NREFM approval, guardianship approval, and the adoption home study approval.”

The ACL also specifies that, while the application, training, and assessment are completed through RFA, there are additional steps that must be completed in order for an approved resource family to move forward with adoption, including the provision of any divorce decrees or marriage certificates, if applicable, references (if not already obtained during the RFA process), a tuberculosis test of all adults in the home, and other adoption specific information and services, as outlined in the ACL.

Need for this bill: The provisions of this bill seek to revise certain components of 2011 Realignment as it pertains to the operation of PAARP by allowing counties greater local control

over the use of funds. Specifically, the bill requires, as of July 1, 2020, county child welfare agencies to compensate private adoption agencies for the unreimbursed costs of supporting families through the process of adopting children or nonminor dependents eligible for AAP benefits, and allows counties to utilize unspent funds for additional activities related to permanency, such as pre- and post-permanency support regarding adoptions and guardianships for foster children.

According to the author, “The PAARP program was created in 1974, and funding for the program was realigned in 2011. At that time, the state retained administration of the program, with counties providing funding through a constitutional provision that enabled this structure, transferring \$15.6 million annually into an account held by a single county (generally referred to as the ‘59th county account’). However, the arrangement whereby the state administers the program with county funding was intended to be revisited at a future date to determine the best path forward for the program. The arrangement needs to be revisited because it is not working for counties from either a fiscal or programmatic perspective.

“From a fiscal perspective, due to the nature of PAARP claiming by agencies and the way in which the state administers the program, counties have been receiving bills from the state since fiscal year 2014-15 for overspending in the program that counties had no way of anticipating or controlling. In 2016-17, for example, counties received bills for nearly \$7 million in expenditures above the \$15.6 million set aside for PAARP in the 59th county account. This is not a tenable structure for the program’s funding and is not in keeping with the concept of Realignment of both program responsibility and funding to counties for these programs.

“From a programmatic perspective, the way in which private adoption agencies are engaged in providing permanency for children in foster care has changed significantly since 1974, in particular with the recent implementation of the Continuum of Care Reform (CCR) and the Resource Family Approval (RFA) process that is now required statewide. The RFA process, by design, moves forward into the upfront approval process conducted by counties a number of adoption-related activities. This includes the implementation of an in-depth family assessment that takes the place of the adoption home studies that have historically been conducted by private agencies and reimbursed through PAARP for a portion of those children adopted from foster care (PAARP adoptions accounted for about 30% of all adoptions from foster care in 2017-18, the most recent year for which data are available). With the new RFA process, it is expected that PAARP expenditures should decline over time, although this decline has not yet been experienced and current year spending trends indicate that the funds will again be overspent in 2019-20. To the extent that the spending declines in future years, it would alleviate concerns about the overspending issue raised above, but would then create questions about the use of the remaining funds, which currently can only be spend within PAARP.”

According to the County Welfare Directors Association of California (CWDA), the sponsor of this bill:

“Prior to 2011 Realignment, PAARP claims were fully reimbursed by the state General Fund, upon appropriation by the Legislature. After the 2011 Realignment, PAARP funding...was technically realigned to counties, but these funds were placed into a special account available only to CDSS to reimburse claims it receives directly from adoption agencies. Statutorily, counties have little to no control over PAARP expenditures, yet private agency adoption-related claims have exceeded the amount

provided by counties to the state, in several recent years, resulting in unexpected county costs as CDSS has billed counties to recoup these expenditures.

“As currently structured, PAARP also is inconsistent with the changes implemented under CCR. CCR resulted in a new approval process for families that streamlines the prior licensing, adoption, and relative approval processes into a single, unified process with an emphasis on up-front permanency for foster youth. If counties were given more control over the funding and operation of PAARP, they could determine the best way to meet these requirements within their funding limitations.

“As amended [this bill] will provide needed county oversight and also allow for funding to be used more flexibly for services outside of the specified PAARP activities. This bill would allocate funding to the counties, to continue providing reimbursement to adoption agencies for PAARP services authorized via the counties’ placement agreements with the agencies. Funds not spent on these activities would be available for other pre- and post-permanency services for children in foster care...It is essential to streamline and modernize PAARP, enabling counties to manage the funds and to use leftover funds for other permanency services that are increasingly needed by children and families.”

Stakeholder concerns: The California Alliance, in a letter addressed to the committee citing its concerns, states:

“Since the inception of PAARP, there has been a growing number of foster family agencies stepping up to provide adoption services for youth and children in our state’s care. PAARP is the only public funding stream for private agency adoptions from foster care to cover the otherwise unreimbursed costs that are incurred by nonprofit adoption agencies. It is also the *only* performance-based outcome program in our state’s child welfare system whereby the payment to the nonprofit Adoption Agency for their unreimbursed costs only comes after an Adoption Placement Agreement is signed and then after finalization of the adoption.

“In short, the proposed date of July 1, 2020, to have PAARP become inoperative only allows the department six months from implementation of the law on January 1, 2020, to gather input from counties and private agencies and construct a new payment and reimbursement system to be ready for July 1, 2020. Additionally, the current and continuing process for accumulating expenses for a successful adoption runs over a period of more than 12 months. There will need to be ample time for private agencies to plan and adjust for a new reimbursement system. We would like to discuss moving this date to July 1, 2021.

“Secondly, the role of a dually licensed FFA/Adoption Agency is to move children towards permanency. Children and families benefit from the continuum of care that naturally occurs when a family and child is working with an agency that supports them through the transition from a foster care placement to adoption to post-adoption. Language in the bill should reflect this continuity by ensuring that dually-licensed FFA/Adoption Agencies placing children in resource families they have recruited, trained, and approved are able to automatically claim PAARP when a child placed with their resource family subsequently moves to adoption.

“We wish to be thoughtful in how PAARP is reconfigured in order to continue to best meet the needs of the thousands of children and families served across the state.”

RELATED AND PRIOR LEGISLATION:

AB 819 (Stone) of 2019 furthers CCR efforts as it relates to flexibility for resource families, exclusion from resource family homes, and the provision of intensive services foster care. AB 819 is scheduled to be heard in the Assembly Human Services Committee on April 23, 2019.

AB 1930 (Stone), Chapter 910, Statutes of 2018, furthered CCR efforts made by AB 403, AB 1997, and AB 404.

AB 404 (Stone), Chapter 732, Statutes of 2017, furthered CCR efforts made by AB 403 and AB 1997.

AB 1006 (Maienschein), Chapter 714, Statutes of 2017, required the provision of information about mental health treatment information to a prospective adoptive family or the guardian or guardians of foster youth, and required specialized permanency services be provided to certain youth.

AB 1997 (Stone), Chapter 612, Statutes of 2016, furthered CCR efforts made by AB 403.

AB 403 (Stone), Chapter 773, Statutes of 2015, implemented CCR recommendations to better serve children and youth in California’s child welfare services system.

SB 1020 (Committee on Budget and Fiscal Review), Chapter 40, Statutes of 2012, created the “Contract Special Account” and authorized up to \$32,721,000 be allocated to the account to be used to contract directly with CDSS for certain programs, including PAARP.

AB 118 (Committee on Budget), Chapter 40, Statutes of 2011, established the “Local Revenue Fund 2011” and established the fund account structure for public safety realignment, which includes foster care, child welfare services, and adoptions.

SB 84 (Committee on Budget and Fiscal Review), Chapter 177, Statutes of 2007, provided a 5% rate increase, effective January 1, 2008, to the AAP, and made the reimbursement rate for a claim dependent on when a home study of a prospective adoptive family was approved.

AB 636 (Steinberg), Chapter, Statutes of 2001 created an outcomes and accountability system for California’s county child welfare agencies with measures related to the safety, permanency, and well-being of children in and out of care.

REGISTERED SUPPORT / OPPOSITION:

Support

County Welfare Directors Association of California (Sponsor)

Opposition

None on file

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