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## Ways & Means Committee

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### SSB 5935

**Brief Description:** Addressing adoption support payments for hard to place children.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senator Hargrove).

#### Brief Summary of Substitute Bill

- Disqualifies adoptive parents from receiving a cash payment through the adoption support program if they had been receiving, or would have received, the basic foster care maintenance payment to care for the adoptive child while the child was in foster care.

**Hearing Date:** 5/17/11

**Staff:** Megan Palchak (786-7120) and Melissa Palmer (786-7388).

#### **Background:**

##### Foster Care Payment—Basic vs. Special Rate.

The Department of Social and Health Services, Children's Administration (DSHS/CA) uses a standardized assessment tool to determine the rate that will be paid to maintain a foster child in out-of-home care. The foster care rate assessment tool considers the "average number of hours, beyond those expected for a typically developing child of the same age" spent by a foster parent. While a foster parent will always receive at least the basic rate, or level 1, for the child's age category, the adoptive child/family may be assessed at a higher level as the child's needs change or the circumstances of the foster parents change. The rate is set according to the foster parent's extra time and effort spent to meet a child's extraordinary need, rather than a child's diagnosis or condition. Additional rates are paid for foster parents' tasks, and are not a reflection of the child's behaviors or diagnoses.

##### Adoption Support Program.

Under Washington law, it is the policy of the state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and

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security of permanent homes. It is also the policy of the state to try, by means of the adoption support program, to reduce the total cost to the state of foster home and institutional care.

The adoption support program offsets some of the costs related to adopting foster children who, because of their special conditions or needs, face barriers to adoption, by providing one or more of the following benefits:

- reimbursement for nonrecurring adoption finalization costs—limited to \$1,500 per child;
- cash payments (adoption subsidy);
- payment for counseling services as preauthorized; or
- medical services through the Medicaid program

The adoption support program is governed by state and federal law and policy. Washington's adoption support statutes were adopted in 1971, almost 10 years before the federal law was passed. Washington law authorizes support for "hard to place" children without defining the term while the federal law uses and defines the term "special needs child." Because the federal adoption support law is part of Title IV-E of the Social Security Act, it requires any state having an approved Title IV-E plan to enter into adoption assistance (support) agreements with the adoptive parents of special needs children.

Federal law requires that three criteria be met for a child to qualify as a "special needs child":

1. the child cannot be returned home;
2. the child has a specific factor or condition that makes it reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance or Medicaid; and
3. the state must determine that in each case, a reasonable but unsuccessful effort to place the child with appropriate parents without providing adoption assistance has been made.

Under the second criteria above, the state has the authority to determine what constitutes a special factor or condition. Washington Administrative Code provides that in order for a child to be considered a child with special needs, the child must have one of the following special factors or conditions:

- a child of a minority ethnic background;
- a child who is six years of age or older at the time of the application for adoption support;
- a child who is a member of a sibling group of three or more or of a sibling group in which one or more siblings meets the definition of special needs;
- a child who is diagnosed with a physical, mental, developmental, cognitive, or emotional disability; or
- a child who is at risk for a diagnosis of a physical, mental, developmental, cognitive, or emotional disability due to prenatal exposure to toxins, a history of serious abuse or neglect, or genetic history.

Adoption support agreements are entered into between adoptive parents and the state, and are contracts that describe benefits the adoptive child and family will receive. Under federal law, these agreements must be individually negotiated and the amount of the subsidy cannot exceed the amount of the foster care maintenance payment the child would receive if the child were in foster care. Adoption supports agreements are renegotiated on a regular basis.

Under state law, adoption support agreements regarding "hard to place" children are reviewed by the superior court when deciding whether to grant a petition for adoption. If the court finds the provision made in an agreement is inadequate, it may make any recommendation it deems warranted with respect to the agreement, to the DSHS.

#### Review of the Adoption Support Program.

In 2001 the Washington State Institute for Public Policy (WSIPP) reported on its review of the adoption support program. The WSIPP was directed to "examine adoption support program criteria, service level decisions, and funding methodologies." Key findings from the resulting study are described below:

- Children being adopted from Washington's foster care population are the same children entering the state's Adoption Support Program.
- Dramatic growth in foster care adoption is driving the dramatic growth in the Adoption Support caseload.
- Federal and state laws require the program to individually tailor a child's needs with the adopting family's so the match works for the family.
- Unlike foster care, Adoption Support Program eligibility is long-term, continuing for 15 or more years for approximately half of the children.
- Over time, many adoptive families are likely to need more services and financial support, not less.
- The majority of families who adopt children from foster care had been enrolling in the Adoption Support Program, thus explaining program growth.

Program criteria and payments may be adjusted within certain parameters. The WSIPP reported stated that in setting adoption support policy, the significant advantages of securing permanent homes for these children needs to be considered.

#### **Summary of Bill:**

An adoptive parent who adopts a child from the foster care system after providing foster care services to that child, does not qualify for the adoption support subsidy if the adoptive parent received the basic foster care rate for the child while the child was in care, and did not spend in excess of the hours one would normally spend meeting the needs of a typically developing child. The adoptive parent and child would qualify for all other adoption support services, including medical care.

An adoptive parent who was a relative or other unpaid caregiver for the child during the time the child was in the dependency system and who subsequently adopts that child does not qualify for the adoption subsidy if, had the caregiver been a licensed foster parent, the adoptive parent would have received the basic foster care rate for the child while the child was in care, and did not spend in excess of the hours one would normally spend meeting the needs of a typically developing child. The adoptive parent and the child continue to qualify for all other adoption support services, including medical care.

Nothing about this act prohibits an adoptive parent from seeking assistance after the finalization of an adoption.

References to "difficult to place children" are changed to "hard to place children" with regard to: 1) disbursement of available funds from the General Fund for adoption support, and 2) the Secretary of the Department of Social and Health Service's authority to pay for nonrecurring adoption expenses incurred by a prospective parent.

Three provisions apply to adoption support agreements entered into on or after July 1, 2011.

Any provision of this act that is interpreted to conflict with federal requirements is inoperative.

**Appropriation:** None.

**Fiscal Note:** Requested on May 11, 2011.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2011.