

State Notes

TOPICS OF LEGISLATIVE INTEREST

September/October 2008



How the Children's Rights Settlement Will Affect the State of Michigan **By David Fosdick, Fiscal Analyst**

Introduction

In August 2006, the national nonprofit organization Children's Rights filed a class action lawsuit against the State of Michigan in the U.S. District Court for the Eastern District of Michigan. The lawsuit alleged that systemic problems in Michigan's child welfare system had harmed children placed in the State's custody. In October 2008, in an effort to avert a civil trial, the two parties finalized a settlement agreement, which the Court approved. The settlement outlines how the State must modify the structure of foster care in Michigan. This article provides a summary of the Children's Rights lawsuit and settlement and begins to explore some of the factors that will influence the implementation of the settlement agreement in years to come.

Summary of the Lawsuit

The class action lawsuit *Dwayne B v. Granholm* filed by Children's Rights alleged that foster children in Michigan were mistreated while in foster placements, did not have access to sufficient physical and mental health services, remained in State custody for an excessive amount of time, and were forced to move frequently among multiple placements. The lawsuit attributed these outcomes to a shortage of available foster placements, high caseload-to-worker ratios, improper monitoring of child safety in placements, ineffective processes for planning for the movement of children out of foster care, and low payment rates for foster care services.

During the lawsuit process, Children's Rights contracted with several outside organizations to complete a systemic review of children's services in Michigan. A management review identified deficiencies in staffing levels and management structure for children's services administered by the Department of Human Services (DHS). An analysis of a sample of cases administered through the DHS suggested that a significant proportion of cases administered through the State did not meet Federal and State guidelines designed to ensure placement stability and safety.

In October 2008, before the scheduled trial started, the State of Michigan reached a settlement with Children's Rights. The settlement agreement identifies a number of changes that Michigan must make in the next few years in the provision of foster care services. The outside reviews conducted during the lawsuit process inspired a number of the requirements included in the settlement. The court appointed a monitor to ensure that Michigan complies with this agreement.

Summary of the Settlement Agreement

The settlement agreement reached between Children's Rights and the State of Michigan covers a wide range of issues in the child welfare system in the State. The agreement includes a number of requirements and targets that the State will be required to reach over the next few years. The summary provided below is not a comprehensive list of all the requirements the State must meet; it instead covers the major terms of the settlement that will require significant structural change in the provision of child welfare services or are likely to have a significant fiscal impact on the State.



Changes in Organizational Structure

The agreement mandates a reorganization of the structure of the DHS. The Department is required to establish a separate Children's Services Administration. The Children's Services Administration will consolidate all policy development, child welfare improvement, field operations in the largest counties, data collection, and training functions under one director. The settlement provides guidance on the job descriptions for the senior staff at the new Children's Services Administration.

Additionally, the Department is required to establish distinct offices to provide children's services in Genesee, Kent, Macomb, Oakland, and Wayne Counties. Currently, children's services are provided through the same offices that provide assistance programs. The required changes in Department structure must be complete by March 2009.

Investigation of Allegations of Abuse or Neglect

The Department is required to replace phone lines used for the reporting of suspected abuse or neglect of children that are currently operated at the county level, with a State-centralized abuse reporting hotline by October 2010. The settlement further requires the State to establish separate units for the investigation of allegations of abuse and neglect of children in foster care custody of the Department. These units must be available statewide by April 2010.

Staff Training

The agreement requires all newly hired caseworkers working in children's services to possess, at minimum, a bachelor's degree in social work. Newly hired caseworkers will be required to complete eight weeks of training and pass a written examination before beginning casework. By 2012, all caseworkers will be required to complete at least 40 hours of training annually.

The agreement further requires all workers promoted to supervisory positions to possess a master's degree in social work. All supervisors will be required to complete a 40-hour training program and pass a written examination before assuming their new tasks. With a few exceptions, all current employees promoted to supervisory positions within the previous 18 months must earn a master's in social work within four years.

Caseload Requirements

The agreement includes a number of targets in caseload-to-worker ratios that must be met over the next few years. These target ratios must be reached for caseworkers employed through the DHS and those employed by private agencies. Michigan is required to meet interim reductions in caseload-to-worker ratios between 2008 and 2011. Provided below is a brief summary of the final ratios that must be met by worker type by 2011.

- 95% of supervisors are required to oversee five or fewer caseworkers.
- 95% of foster care caseworkers are required to have 15 or fewer cases.
- 95% of adoption caseworkers are required to have 15 or fewer cases.
- 95% of child protection service caseworkers are required to have 17 or fewer cases.
- 95% of licensing workers are required to have 30 or fewer cases.



Reaching these targets will require aggressive hiring of additional staff. Currently, caseload ratios have been reported (with variance between type of worker and location) between 25:1 and 40:1.

Permanency Planning

The agreement includes a number of requirements related to how each case is administered by the Department. Specifically, new standards are set forth for how the DHS makes decisions about child placements and the goals that are established for each child.

The Department is required to use team decision making when making major case decisions. This process uses input from family, foster parents, the DHS, and other relevant parties when major decisions are made.

The settlement requires additional policy changes designed to expedite the movement of children from foster placements to more permanent arrangements. These changes discourage the establishment of permanency goals more than one year in the future, require concurrent planning for children (establishing a groundwork for another placement if reunification becomes unworkable), and set new standards to accelerate the transition from reunification planning to adoption.

Foster Care "Backlog" Actions

The agreement outlines a number of steps the Department must take to deal with "backlogged" children: those who have been available for adoption or in foster care for more than one year. The DHS is required to hire a planning coordinator to develop plans to place these children. During fiscal year (FY) 2007-08 and FY 2008-09, the Department is required to hire 200.0 full-time equated employees (FTEs) for permanency planning activities. The agreement requires that 50% of the backlogged children be placed in permanent arrangements by the end of FY 2008-09, 85% be placed by the end of FY 2009-10, and 100% be placed by the end of FY 2010-11.

Services to Placed Children

The settlement agreement requires the Department to ensure that all placed children have access to all needed medical, dental, and mental health care. The Department must provide an additional \$3.0 million to fund mental health services for foster children. Additionally, the DHS is required to provide additional supports for children making the transition out of foster care into adulthood and to ensure that necessary educational services are provided as well.

Foster Care and Adoption Homes

The settlement requires the Department to make changes in the number and types of placements available to foster care children. Language in the agreement requires the DHS to ensure that sufficient placements are available, take over recruitment of sufficient foster home beds, and by 2010, ensure that there are 200 treatment foster home beds (for children with higher levels of need). Additional language requires the Department take steps to ensure that payments to parents and contracted private agencies are adequate.



Further, the settlement requires the Department to ensure that all placements (with relatives and nonrelatives) are to be in licensed homes.

Needs Assessment

Under the settlement, the Department is required to provide to the court-appointed monitor an assessment of additional needs for services and placements for foster children by 2009. The DHS must complete a second analysis of the same issues in 2011. The Department is required to allocate \$4.0 million to address the needs identified in the assessment. These funds likely will be used for family preservation, mental health, and reunification services.

Quality Assurance

The Department is required to develop a statewide quality assurance system. The system will be administered by a quality assurance office in the Department's central office. The unit will provide analysis of the current caseload to ensure compliance with best practice. The unit must provide a report on foster care outcome measures every six months.

Impact of the Settlement

Full implementation of the settlement agreement will significantly alter the way that children's services are administered, structured, financed, and measured in Michigan. The agreement reached between Children's Rights and the State of Michigan was finalized in early October and translation of the elements contained in the settlement to policy and practice will be an ongoing process. Because of the uncertainty over exactly how the agreement will be implemented, it is difficult to make confident statements about its impact on the State of Michigan. The focus of this section is to identify elements of the settlement that would represent the most drastic change from current policy and provide some basic discussion of the possible magnitude of the impact associated with these changes.

Central Office Changes

Establishment of the Children's Services Administration in the DHS will represent a fairly significant change from the current DHS administrative structure. Review of the current organizational chart suggests that many of the functions related to children's services that will be pulled into the new Children's Services Administration, such as policy development, child welfare improvement, and field operations, are scattered across several divisions within the DHS.

Additional central office changes in organizational structure that must be completed include creation and staffing of a new quality assurance unit, creation and use of a data management unit, creation and staffing of a new statewide abuse and neglect hotline, and creation of new offices to investigate allegations of abuse and neglect of foster children. Creation of these new units likely will lead to an increase in salary and wage costs for central office staff. The extent of this increase in cost will be largely driven by the ratio of current employees who can be used to meet these requirements to the need for additional staff required to comply with the settlement.



Local Office Changes

The agreement also requires changes in the administration of Children's Services at the county level. Currently, county offices are dually responsible for the provision of assistance services and children's services. Administrators at the local level are responsible for overseeing these two distinct program types. The agreement mandates separate local offices for children's services in the five most populous counties in the State (Wayne, Oakland, Macomb, Kent, and Genesee). This likely will result in an increase in administrative expenditure, but also lead to greater focus and expertise in the administration of children's services in these counties.

Local office changes include a drastic change in the number of FTEs allocated for children's services. As previously noted, caseload-to-worker ratios have been reported as high as 25:1 and 40:1. The agreement will put these caseloads for many workers as low as 15:1. This will drive additional salary and wage costs at local offices. At this time, there is not a firm estimate of how many additional employees will be necessary to reach the case-to-worker ratios mandated in the settlement. Each additional FTE for front line services increases expenditure by about \$75,000 Gross/\$45,000 General Fund/General Purpose.

Placement Changes

Additionally, the agreement requires that all children placed in foster care be placed in licensed facilities. Currently, the Department makes great use of relative placements for children in State care. In many instances relatives are unwilling or unable to achieve licensure. Requirements in the agreement largely limiting unlicensed placements mean the Department is going to have to become more aggressive in licensing relatives interested in taking in foster children and identifying more options for children without access to a licensed relative placement.

This requirement will have an impact on the financing of foster care services. One of the requirements for Federal Title IV-E funding is that the child is placed in a licensed home. Increasing the number of licensed placements and perhaps increased licensure of relative placements would increase cases eligible for Title IV-E reimbursement. This would lead to a positive fiscal impact on local government, which would no longer have responsibility for half of the cost of the placement, and State government, which would see a reduction in its share of the cost of a placement from 50% to about 38%.

Conclusion

It is likely that the settlement agreement between the Governor and Children's Rights will drive nearly all major policy decisions related to children's services in the near future. The mandated changes in Department organization and focus on children's services outlined above likely will increase State expenditures for children's services by tens of millions of dollars over the next three to four years. During a period of consistent revenue weakness, it is likely that the impact of the Children's Rights lawsuit will consume a great deal of legislative time and attention.