LEGISLATIVE BILL 820

Approved by the Governor April 11, 2012

Introduced by Health and Human Services Committee: Campbell, 25, Chairperson; Bloomfield, 17; Cook, 13; Gloor, 35; Howard, 9; Krist, 10; Lambert, 2; McGill, 26; Nordquist, 7.

FOR AN ACT relating to child welfare services; to amend section 71-1902, Revised Statutes Supplement, 2011; to create committees; to provide powers and duties; to require an implementation plan, a demonstration project, and an application for a waiver of federal requirements; to require reports; to provide for a statewide level of care assessment system and a foster care reimbursement rate structure; to provide for a temporary stipend for foster parents; to change requirements for licensure to furnish foster care; to redefine a term; to provide operative dates; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. (1)(a) The Title IV-E Demonstration Project Committee is created. The members of the committee shall be appointed by the Director of Children and Family Services or his or her designee and shall include representatives of the Department of Health and Human Services and representatives of child welfare stakeholder entities, including one advocacy organization which deals with legal and policy issues that include child welfare, one advocacy organization the singular focus of which is issues impacting children, two child welfare service agencies that provide a wide range of child welfare services, and one entity which is a lead agency as of March 1, 2012. Members of the committee shall have experience or knowledge in the area of child welfare that involves Title IV-E eligibility criteria and activities. In addition, there shall be at least one ex officio member of the committee, appointed by the State Court Administrator. The ex officio member or members shall not be involved in decisionmaking, implementation plans, or reporting but may attend committee meetings, provide information to the committee about the processes and programs of the court system involving children and juveniles, and inform the State Court Administrator of the committee's activities. The committee shall be convened by the director within thirty days after the operative date of this section.

(b) The committee shall review, report, and provide recommendations regarding the application of the Department of Health and Human Services for a demonstration project pursuant to 42 U.S.C. 1320a-9 to obtain a waiver as provided in 42 U.S.C. 1320a-9(b), as such section existed on January 1, 2012. The committee may engage a consultant with expertise in Title IV-E demonstration project applications and requirements.

(c) The committee shall (i) review Nebraska's current status of Title IV-E participation and penetration rates, (ii) review strategies and solutions for raising Nebraska's participation rate and reimbursement for Title IV-E in child placement, case management, replacement, training, adoption, court findings, and proceedings, and (iii) recommend specific actions for addressing barriers to participation and reimbursement.

(d) The committee shall provide an implementation plan and a timeline for making application for a Title IV-E waiver. The implementation plan shall support and align with the goals of the statewide strategic plan required pursuant to Legislative Bill 821, One Hundred Second Legislature, Second Session, 2012, including, but not limited to, maximizing federal funding to be able to utilize state and federal funding for a broad array of services for children, including prevention, intervention, and community-based, in-home, and out-of-home services to attain positive outcomes for the safety and well-being of and to expedite permanency for children. The committee shall report on its activities to the Health and Human Services Committee of the Legislature on or before July 1, 2012, September 1, 2012, and November 1, 2012, and shall provide a final written report to the department, the Health and Human Services Committee of the Legislature, and the Governor by December 15, 2012.

(e) If the Nebraska Children's Commission is created by the One Hundred Second Legislature, Second Session, 2012, the Title IV-E Demonstration Project Committee shall thereupon come under the commission's jurisdiction. The commission may make changes it deems necessary to comply with this subsection to facilitate the application for such demonstration project.

(2) The committee's implementation plan shall address the demonstration project designed to meet the requirements of 42 U.S.C. 1320a-9,

including, but not limited to, the following:

(a) Increasing permanency for children by reducing the time in foster care placements when possible and promoting a successful transition to adulthood for older youth;

(b) Increasing positive outcomes for children and families in their homes and communities, including tribal communities, and improving the safety and well-being of children;

(c) Preventing child abuse and neglect and the reentry of children into foster care; and

(d) Considering the options of developing a program to (i) permit foster care maintenance payments to be made under Title IV-E of the federal Social Security Act, as such act existed on January 1, 2012, to a long-term therapeutic family treatment center on behalf of children residing in such a center or (ii) identify and address domestic violence that endangers children and results in the placement of children in foster care.

(3) The implementation plan for the demonstration project shall include information showing:

(a) The ability and capacity of the department to effectively use the authority to conduct a demonstration project under this section by identifying changes the department has made or plans to make in policies, procedures, or other elements of the state's child welfare program that will enable the state to successfully achieve the goal or goals of the project; and

(b) That the department has implemented, or plans to implement within three years after the date of submission of its application under this section or within two years after the date on which the United States Secretary of Health and Human Services approves such application, whichever is later, at least two of the child welfare program improvement policies described in 42 U.S.C. 1320a-9(a)(7), as such section existed on January 1, 2012.

(4) At least one of the child welfare program improvement policies to be implemented by the Department of Health and Human Services under the demonstration project shall be a policy that the state has not previously implemented as of the date of submission of its application under this section.

(5) For purposes of this section, long-term therapeutic family treatment center has the definition found in 42 U.S.C. 1320a-9(a)(8), as such section existed on January 1, 2012.

Sec. 2. The Department of Health and Human Services shall report to the Health and Human Services Committee of the Legislature by September 15, 2012, on the status of the application for the demonstration project under section 1 of this act.

Sec. 3. On or before September 30, 2013, the Department of Health and Human Services shall apply to the United States Secretary of Health and Human Services for approval of a demonstration project pursuant to 42 U.S.C. 1320a-9 to obtain a waiver as provided in 42 U.S.C. 1320a-9(b), as such section existed on January 1, 2012.

Sec. 4. The Legislature finds that:

(1) Surveys of foster parents demonstrate that the safety net provided by foster families is fragile and damaged;

(2) Increased focus on recruiting and retaining high quality, trained, and experienced foster parents should be a priority under reform of the child welfare system in Nebraska;

(3) A 2007 study entitled Foster Care Minimum Adequate Rates for Children completed by Children's Rights, the National Foster Parent Association, and the University of Maryland School of Social Work analyzed foster care maintenance payments under Title IV-E of the federal Social Security Act, as amended, which are defined as the cost of providing food, clothing, shelter, daily supervision, school supplies, personal incidentals, insurance, and travel for visitation with the biological family;

(4) The study set a basic foster care payment rate, calculated by (a) analyzing consumer expenditure data reflecting the costs of caring for a child, (b) identifying and accounting for additional costs specific to children in foster care, and (c) applying a geographic cost-of-living adjustment in order to develop rates for each of the fifty states and the District of Columbia. The rate includes adequate funds to meet a foster child's basic physical needs and the cost of activities such as athletic and artistic programs which are important for children who have been traumatized or isolated by abuse, neglect, and placement in foster care;

(5) The study found that Nebraska's foster care payment rates were the lowest in the country, with an average payment of two hundred twenty-six dollars per month for a child two years of age. The next lowest foster care payment rate was Missouri, paying two hundred seventy-one dollars per month;

and

(6) Foster care placements with relatives are more stable and more likely to result in legal guardianship with a relative of the child. Children in relative placements are less likely to reenter the child welfare system after reunification with their parents and report that they feel more loved and less stigmatized when living with family.

Sec. 5. (1) The Department of Health and Human Services shall convene a Foster Care Reimbursement Rate Committee to develop a standard statewide foster care reimbursement rate structure for children in foster care in Nebraska. Such structure shall include a statewide standardized level of care assessment and shall tie performance with payments to achieve permanency outcomes for children and families.

(2) The committee shall include (a) the chief executive officer of the department or his or her designee, (b) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system, (c) representatives from a child welfare agency that contracts directly with foster parents, from each of such service areas, (d) a representative from an advocacy organization which deals with legal and policy issues that include child welfare, (e) a representative from an advocacy organization the singular focus of which is issues impacting children, (f) a representative from a foster and adoptive parent association, (g) a representative from a lead agency, (h) a representative from a child advocacy organization that supports young adults who were in foster care as children, (i) a foster parent who contracts directly with the department, and (j) a foster parent who contracts with a child welfare agency. The members described in subdivisions (b) through (j) of this subsection shall be appointed by the chief executive officer of the department. The committee shall meet and organize as soon as possible after the operative date of this section.

(3) The committee shall use the study described in subdivision (3) of section 4 of this act as a beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(4) The committee shall develop a statewide standardized level of care assessment containing standardized criteria to determine a foster child's placement needs and to appropriately identify the foster care reimbursement rate. The committee shall review other states' assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure. The statewide standardized level of care assessment shall be research-based, supported by evidence-based practices, and reflect the commitment to systems of care and a trauma-informed, child-centered, family-involved, coordinated process. The committee shall develop the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure in a manner that provides incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received.

(5) The committee shall provide written reports to the Health and Human Services Committee of the Legislature on July 1, 2012, and September 15, 2012, and a final report to the committee and the Governor, with recommendations for the statewide level of care assessment system and the foster care reimbursement rate structure, on December 15, 2012.

(6) If the Nebraska Children's Commission is created by the One Hundred Second Legislature, Second Session, 2012, the Foster Care Reimbursement Rate Committee shall immediately come under the commission's jurisdiction. The commission may make any changes necessary to comply with sections 4 to 6 of this act.

Sec. 6. In recognition of Nebraska foster parents' essential contribution to the safety and well being of Nebraska's foster children and the need for additional compensation for the services provided by

Nebraska foster parents while the Foster Care Reimbursement Rate Committee completes its duties under section 5 of this act, beginning July 1, 2012, through June 30, 2013, all foster parents providing foster care in Nebraska, including traditional, agency-based, licensed, approved, relative placement, and child-specific foster care, shall receive an additional stipend of three dollars and ten cents per day per child. The stipend shall be in addition to the current foster care reimbursement rates for relatives and foster parents contracting with the Department of Health and Human Services and in addition to the relative and tiered rate paid to a contractor for agency-based foster parents. The additional stipend shall be paid monthly through the agency that is contracting with the foster parent or, in the case of a foster parent contracting with the department, directly from the department. The contracting agency shall receive an administrative fee of twenty-five cents per child per day for processing the payments for the benefit of the foster parents and the state, which administrative fee shall be paid monthly by the state. The administrative fee shall not reduce the stipend of three dollars and ten cents provided by this section.

Sec. 7. Section 71-1902, Revised Statutes Supplement, 2011, is amended to read:

71-1902 (1) Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for ~~two~~ one or more children ~~from different families~~ not related to such person by blood, marriage, or adoption without having in full force and effect a written license issued by the department upon such terms and conditions as may be prescribed by general rules and regulations adopted and promulgated by the department. The department may issue a time-limited, nonrenewable provisional license to an applicant who is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the time period stated in the license. The department may issue a time-limited, nonrenewable probationary license to a licensee who agrees to establish compliance with rules and regulations that, when violated, do not present an unreasonable risk to the health, safety, or well-being of the foster children in the care of the applicant. No license shall be issued pursuant to this section unless the applicant has completed the required hours of training in foster care as prescribed by the department.

(2) All nonprovisional and nonprobationary licenses issued under sections 71-1901 to 71-1906.01 shall expire two years from the date of issuance and shall be subject to renewal under the same terms and conditions as the original license, except that if a licensee submits a completed renewal application thirty days or more before the license's expiration date, the license shall remain in effect until the department either renews the license or denies the renewal application. No license issued pursuant to this section shall be renewed unless the licensee has completed the required hours of training in foster care in the preceding twelve months as prescribed by the department. For the issuance or renewal of each nonprovisional and nonprobationary license, the department shall charge a fee of fifty dollars for a group home, fifty dollars for a child-caring agency, and fifty dollars for a child-placing agency. For the issuance of each provisional license and each probationary license, the department shall charge a fee of twenty-five dollars for a group home, twenty-five dollars for a child-caring agency, and twenty-five dollars for a child-placing agency. A license may be revoked for cause, after notice and hearing, in accordance with rules and regulations adopted and promulgated by the department.

(3) For purposes of this section:

~~(1)~~ (a) Foster family home means any home which provides twenty-four-hour care to children who are not related to the foster parent by blood, marriage, or adoption;

~~(2)~~ (b) Group home means a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home and which is designed to provide twenty-four-hour care for children and youth in a residential setting;

~~(3)~~ (c) Child-caring agency means an organization which is organized as a corporation or a limited liability company for the purpose of providing care for children in buildings maintained by the organization for that purpose; and

~~(4)~~ (d) Child-placing agency means an organization which is authorized by its articles of incorporation and by its license to place children in foster family homes.

Sec. 8. Sections 7 and 9 of this act become operative on July 1, 2012. The other sections of this act become operative on their effective date.

Sec. 9. Original section 71-1902, Revised Statutes Supplement, 2011, is repealed.

Sec. 10. Since an emergency exists, this act takes effect when passed and approved according to law.