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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House File 590 (formerly HF 415)
Committee: Human Resources
Date: March 25, 2013
Floor Manager: Rep. Fry
Staff: Carrie Kobrinetz (5-2063)

Differential Response for Child Abuse Reporting

- The bill changes the process for child abuse reporting, assessment, and placement on and removal from the central registry for child abuse information.
- The bill creates a multipath assessment process. The 2 assessments include: (1) a child abuse assessment and (2) a family assessment. Currently, when DHS receives a report of child abuse, they immediately determine whether the report constitutes an allegation of child abuse which leads to an assessment. The bill creates an entire new assessment process: the family assessment.
- When DHS gets a child abuse report, they will determine whether it should go down the child abuse assessment path or the family assessment path. The assessment will be conducted as a child abuse assessment if the child abuse report alleges imminent danger or impacts the child's safety. This child abuse assessment results in a disposition, and DHS makes a determination of whether the alleged child abuse meets the definition of child abuse and makes a determination of whether the case meets the criteria for placement on the child abuse registry. The child abuse assessment is to commence within 24 hours of the report. This is the current procedure for all child abuse cases.
- The bill adds a family assessment as another type of assessment process. The family assessment is to be conducted if the child abuse report does not allege imminent danger and does not impact a child's safety. DHS will not make a determination of whether the abuse meets the definition of child abuse. DHS also will not make a determination of whether the case meets the criteria for placement on the registry. However, if during a family assessment, the child is determined unsafe, the well-being of a child is endangered, the family may flee, or the child may disappear, DHS will immediately start a child abuse assessment and not continue with the family assessment. The family assessment is to commence within 72 hours of the receipt of the report.
- Upon completion of a written report for child abuse or family assessment, DHS must consult with the child's family to offer services to the family.
- The bill removes language that requires DHS to notify the county attorney of the receipt of the report.
- DHS must provide the juvenile court and county attorney with the portion of the written child abuse assessment pertaining to the child abuse report. DHS only needs to provide the written assessment in cases in which DHS is requesting a child in need of assistance petition. DHS can request court action following either a family assessment or child abuse assessment.

- Requirements in the bill relating to the child abuse registry only apply to the child abuse assessment, not the family assessment.

Summary of Action

The House Human Resources Committee PASSED HF 590/ HF 415 on March 6, 2013 by a vote of 14-7.

Section by Section Analysis

Section 1 – Definitions of Child Abuse Reporting, Assessment, and Rehabilitation

Differential response – means an assessment system in which there are two discrete pathways to respond to accepted reports of child abuse, a child abuse assessment, and a family assessment. The child abuse assessment requires a determination of abuse and a determination of whether criteria for placement on the central abuse registry are met.

Assessment – means the process by which the department responds to reports of child abuse. An assessment addresses child safety, family functioning, culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed.

Child abuse assessment – means an assessment process by which the department responds to all accepted reports of child abuse which allege imminent danger or impact child safety. A child abuse assessment results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

Family assessment – means an assessment process by which the department responds to all accepted reports of child abuse which do not allege imminent danger or impact child safety. A family assessment does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the registry are met.

Section 2 – Reporting Procedure

Immediately upon receipt of a report of child abuse, the department must make a determination whether the report constitutes an allegation of child abuse. DHS no longer has to notify the county attorney of the receipt of the child abuse report.

Section 3 – Duties of DHS Upon Receipt of a Report

Commencement of Assessment – If DHS determines a report constitutes a child abuse allegation, they need to begin either a child abuse assessment or a family assessment. The child abuse assessment has to be within 24 hours of receiving the report and the family assessment has to be within 72 hours of receiving the report. When DHS accepts a child abuse report, they need to complete a child abuse assessment when the report alleges imminent danger to the child. DHS needs to complete a family assessment when the report does not allege imminent danger or impact child safety. The primary purpose of both assessments is the protection of the child. The secondary purpose is to engage the family in services to enhance family strengths and address needs.

Law Enforcement – DHS shall work jointly with law enforcement to perform either assessment in which a criminal act harming a child is alleged. If a child abuse report is determined by DHS not to constitute a child

abuse allegation or if the child abuse report is accepted by assessed under the family assessment, but a criminal act harming a child is alleged, DHS has to refer the matter to law enforcement.

Assessment process – Both child abuse and family assessments are subject to a safety and risk assessment and an evaluation of the home environment. If at any time during a family assessment, a child is determined unsafe, the department shall immediately commence a child abuse assessment.

Written assessment – The DHS report of the child abuse assessment has to be completed within 20 business days. The child abuse assessment has to include a description of the child’s condition, identification of the injury, the circumstances, and the identity of the person alleged responsible. The family assessment report must be completed within 10 business days of the receipt of the report. Following the family assessment, DHS must notify the parent of each child listed in the report. For family assessment cases, a person named responsible for the child abuse shall not have the opportunity for a contested case hearing.

County attorney and juvenile court – DHS shall provide the juvenile court and the county attorney with the written child abuse assessment and the written family assessment that pertains to the child abuse report.

Section 4

The use of corporal punishment by a person responsible for the child’s care which does not result in physical injury shall not be considered child abuse. DHS shall adopt rules regarding the new intake process, assessment process, contact with the juvenile court or the county attorney, and involvement with law enforcement.

Section 5 – Court Action Following Child Abuse Assessment – Guardian Ad Litem

This section changes the title from “child abuse assessment” to “assessment.”

Section 6 – Founded Child Abuse – Central Registry

Technical change.

Section 7– Founded Child Abuse – Central Registry

If any of the following circumstances apply, the names of the child and the perpetrator of the child abuse shall be placed in the central registry as a case of founded child abuse: DHS determines if the acts or omissions of the alleged perpetrator meets the definition of child abuse and DHS has previously determined within the 5 year period preceding the issuance of the report that the acts of the perpetrator met the definition of child abuse.

Section 8

The confidentiality of the following shall be maintained: information pertaining to a child abuse report for which there was an assessment performed but no determination was made as to whether the definition of child abuse was met.

Section 9

This is a technical change. The section changes the name from “child abuse assessment” to “an assessment” to encompass both the child abuse assessment and the family assessment.

Section 10 – Expenses

If a child is given physical or mental examinations or treatment relating to an assessment with the consent of the child’s parent, the costs shall be paid by the state.

Section 11

This is a technical change that changes the name from “child abuse assessment” to “an assessment” to encompass both the child abuse assessment and the family assessment in the section in the code about child abuse information registry.

Section 12 – Creation and Maintenance of a Central Registry

Technical change.

Section 13 – Authorized Access – Procedures Involving Other States

If a person who is the subject of a child abuse report or another party involved in an assessment releases confidential information on a child abuse case to the media, the Director of DHS may respond with information concerning the child abuse case.

Section 14 – Stealing and Expungement of Founded Child Abuse Information

A person named in the child abuse registry as having abused a child shall have their name removed from the registry after 10 years if the person has not had a subsequent case of abuse. A person named in the registry as having abused a child shall have their name removed from the registry after 5 years if DHS determined in the report that the child abuse was the following: (1) denial of critical care, (2) failure to provide adequate supervision, (3) an illegal drug is present in the child’s body, (4) The person has manufactured a dangerous substance in the presence of a child. The person that committed the child abuse shall have their name remain on the registry if DHS determined in the initial report as having committed child abuse that resulted in the child’s death or serious injury.

Section 15

DHS has to provide notice to a person named in a child abuse report as having abused the child of their right to a contested case hearing.

Section 16

A subject of the child abuse report can file within 90 days a written statement saying the report is wrong.

Section 17

This section makes a technical change to the code. The section changes the language from “child abuse report” to “child abuse assessment.”

Section 18 – DHS Review – Discretion for Early Removal from Registry

DHS, in conjunction with DIA and the office of the Attorney General shall review and make recommendations regarding a process for the removal of the name of a person named in the initial data placed in the registry. This is at the discretion of DHS. The review and recommendations will include specific criteria DHS shall consider in making a determination of whether to remove a person from the registry. Criteria will include: the appeal process, due process, and cost projections. This report shall be submitted to the General Assembly by December 1, 2013.

Section 19 – Rules

DHS shall adopt rules to implement the bill.

Section 20 – Effective Upon Enactment

The section of the bill requiring DHS to adopt rules shall be effective upon enactment.

Section 21 – Effective Date and Implementation

The provisions take effect January 1, 2014.

Section 22 – Applicability

This section deals with the changes to the child abuse registry. First, under the bill the registry would allow for someone who had previously had a founded case of child abuse within the past 5 years, rather than the past 18 months, to go on the registry upon a subsequent case of child abuse. The applicability makes sure this is applied prospectively so the 1st case of child abuse would have to occur on or after January 1, 2014.

The second part of the section concerns the change from the 10-year placement on the registry to the 5-year placement. Again, this applicability section ensures this is only applied prospectively. Only persons who are placed on the registry on or after January 1, 2014, will be able to have that 5-year placement applied to them. Neither of the child abuse registry sections affect people that are currently on the registry or have a founded case of child abuse. It will only apply to future cases.

Amendment Analysis

H-1195 by Fry

- The amendment changes the definition and applicability of the pathways. The normal assessment route (child abuse assessment) will include all allegations except denial of critical care cases that do not allege imminent danger, death, or injury to a child. The new family assessment route will only be used in cases of denial of critical care when no allegation of imminent danger, death, or injury to the child exists. (Operations 1, 2, 4, 5).
- The amendment changes the information the county attorneys' office receives on the front end of a report of suspected child abuse and goes back to how it is currently being handled. Just as is currently done, DHS will make a determination as to whether a report of suspected child abuse constitutes an allegation of child abuse under the definition in section 232.68 and will notify the county attorney of the receipt of the report of suspected child abuse. The county attorneys' offices will continue to receive all reports of suspected child abuse on the front end even if DHS determines the report allegations do not constitute a case of child abuse under section 232.68 and before DHS starts the assessment if DHS determines the report does allege child abuse. (Operation 3)
- The amendment adds that a family assessment will be moved to a child abuse assessment if the child is determined to be in imminent danger; the bill already states that a family assessment will be changed to a child abuse assessment if the child is determined to be unsafe. (Operation 6)
- The amendment eliminates language regarding the person named in the report of suspected child abuse as having abused a child as it relates to the family assessment. (Operation 7)
- The amendment changes some language from "child abuse report" to "report of suspected child abuse." (Operation 7, 9, 13, 14).
- The amendment states that a written assessment report is not required if a child protection worker determines, after completing either a family assessment or child abuse assessment, that a report was spurious and protective concerns were not present. The bill currently only allows the child protection worker to forgo the written assessment report after completion of a child abuse assessment. (Operation 8).
- The amendment adds language stating that DHS may arrange for services for children and families at the conclusion of family assessments. (Operation 10).
- The amendment states that, if the county attorneys' offices receive a copy of the written assessment report, the county attorneys would receive the whole written assessment report rather than a portion of the written assessment report. These are the reports done by DHS after completing either a family assessment or child abuse assessment. However, the amendment left the original bill language that stated that the county attorneys' offices would receive all the written child abuse assessment reports,

but will only receive a written family assessment report if DHS requests a child in need of assistance petition. (Operation 11).

- The amendment changes the language concerning DHS's adoption of rules to state that DHS shall develop rules regarding "assessment reports" rather than "assessment summaries." (Operation 12).
- The amendment changes what is included in the report data from a recording of an interview conducted in association with either of the assessments to just interviews conducted during child abuse assessments. (Operation 15, 17).
- The amendment eliminates the section requiring DHS to work with DIA and the AG's office to review options regarding the removal of persons from the registry upon DHS's discretion prior to 10 years, or the 5-year length of time as enacted in the bill. (Operation 16).