

State Notes

TOPICS OF LEGISLATIVE INTEREST

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Michigan's Child Care Fund: History and Details of a Decentralized Juvenile Justice and Child Welfare System

By John Maxwell, Fiscal Analyst

Introduction and Preliminary Discussion of Child Welfare Funding

During the debate preceding the passage and enactment of the "Raise the Age" (RTA) package of bills,¹ a discussion of the Child Care Fund (CCF) came to the forefront. As voiced by stakeholders during the RTA process, the mechanics of funding of the child welfare system, specifically for juvenile justice services, are fairly complex. The system operates on three main types of funding sources: Federal Title IV-E funding, State Ward Board and Care Fund (SWBC), and the Child Care Fund.

The majority of this article is a discussion of the CCF, but the first part of the paper describes the main Federal funding source for child welfare. Generally, a Federal fund source is the first option for child welfare services, as there is a favorable "match rate" for State expenditures meaning that State funds leverage a greater share of Federal funds. Children who are not eligible for Federal funding are generally funded through the CCF or SWBC. The CCF is a secondary source for children deemed ineligible for Federal funding. The discussion of the Child Care Fund includes legislative history, historical spending, legal precedents associated with the CCF, and recent legislative changes.

Title IV-E of the Social Security Act

In the United States, Federal funds provided through Title IV-E of the Social Security Act, 42 USC 470-479B, are the primary source of child welfare funding. Since the CCF provides funding to those children who are ineligible for Title IV-E, an overview of eligibility for Title IV-E is helpful. Title IV-E funding, as described by the Federal Administration for Children and Families, is:

focus[ed] on providing safe and stable out-of-home care for children who are in out-of-home care due to child maltreatment or other circumstances until they are able to achieve permanency in their placement by being safely returned home, placed permanently with adoptive families or placed in other planned arrangements.²

Title IV-E provides funding for several areas within child welfare: foster care, adoption assistance, guardianship assistance, and other child welfare service areas.³ Operationally, states must initially spend 100% of the costs incurred and the Federal government reimburses states based on the Federal Medical Assistance Percentages for direct payments to service providers (64.06% in Michigan for FY 2019-20), 50% for administrative costs, and 75% for training costs.⁴ Before passage of Public Law 115-123, § 50701-50782, the Family First Prevention Services Act (FFPSA), for states to make Title IV-E reimbursement claims to the Federal government for a specific child's case, there were four main Title IV-E eligibility requirements: 1) the child must be in an out-of-home placement, 2) the child must have been removed from a family that is considered "needy" based on measures in place in 1996 under the Aid to Families with Dependent Children (AFDC) program, 3) the child must have entered

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care through a judicial determination or voluntary placement, 4) and placements must be into foster family homes licensed or approved.⁵ After the passage of the FFPSA, these requirements were modified to allow states to receive Title IV-E reimbursements for preventative services that allowed children to remain in their home.

Nationally, in fiscal year (FY) 2015-16 total Title IV-E expenditures were approximately \$6.4 billion with 51% of the expenditures allocated to foster care, 35% to the adoption assistance program, around 1% to guardianship assistance program, and the remainder to other child welfare programs and Title IV-E demonstration waivers.⁶

In Michigan, the FY 2018-19 total Gross expenditures for adoption assistance, CCF, foster care, and guardianship assistance programs were approximately \$680.9 million of which \$282.9 million was Federal funding. The total Title IV-E Federal claim (approved reimbursements from the Federal government to the State) was \$241.2 million, meaning Title IV-E made up 35.4% of child welfare program expenditures. For FY 2019-20, the total appropriated amount for the adoption assistance, CCF, foster care, and guardianship assistance programs is approximately \$685.7 million with \$249.3 million as the projected Title IV-E claim (36.3% of the appropriation).

For those children who are not Title IV-E eligible, including youths whose households have an income above the AFDC threshold and those who are placed in residential facilities such as "detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent",⁷ services provided are generally funded through the CCF.

Child Care Fund Overview and History

Specific to Michigan, the Child Care Fund is a part of "a decentralized juvenile justice system" in which counties and participating Native American tribal entities make treatment service decisions for youths in care.⁸ For most of the CCF's history, the county or tribal entity makes the initial expenditures for treatment and then is reimbursed by the State. Recently, there has been a slight modification to which entity bears the initial costs, which will be discussed in a later section of this paper.

The Child Care Fund is not designated as an actual "fund", as actual funds are administered by the Michigan Department of Treasury, with deposits and withdrawals, and with accounting for Comprehensive Annual Financial Report purposes. The CCF simply is a statutorily created accounting mechanism to ensure that county treasurers create and maintain an account for child welfare services that is separate from other county funds. The separation is necessary to allow for the reimbursement of allowable costs associated with child welfare incurred by counties and tribal entities in the provision of child welfare services.

The two-tiered system of State and local participation in child welfare was part of a package of bills passed in 1955 (known as "the Foster Care Bills") that sought to improve the welfare of children by allowing for State participation in the cost of care. The origins of the Child Care Fund can be traced to Public Act 113 of 1955, which (for the first time) reimbursed counties and tribal entities for funds spent on the probate court services for children adjudicated in the

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State court system as court wards.⁹ The amount of CCF funding spent by the State and counties/tribal entities is divided equally, except as otherwise specified by law.

Under rules promulgated for the CCF, the Michigan Department of Health and Human Services (DHHS) requires each county/tribal entity to submit an annual plan and budget (APB) that must be approved to receive reimbursements from the State. The APB details the in-home and out-of-home programs and services that the county/tribal entity offers to youth committed to its care. As described by the Child Care Fund administrative rules,

to be eligible for state child care [fund] reimbursement, a county or tribal entity shall annually submit a plan and budget...that conform to the requirements established...Each annual plan and budget shall be certified by the presiding judge or the court, director of the county [DHHS] department, and chairperson of the county board of commissioners or county or tribal executive.¹⁰

The initial APB is due annually by August 15th and the Department has 30 calendar days to approve it once any corrections (if offered) have been incorporated. This ensures that all counties/tribal entities have an approved spending plan to receive CCF reimbursements by October 15th. Certain counties (currently 55) with populations of less than 75,000 may receive an annual "basic grant", i.e., no reimbursement request is required to supplement added juvenile justice service costs.¹¹ This is currently \$15,000 per county.

In addition to statute and promulgated rules, which provide the legal guidance and direction for the operation of the CCF, the DHHS periodically publishes a "Child Care Fund Handbook", which provides a description of services that are eligible to be reimbursed by the State. The administrative rules define the CCF Handbook as part of "published policies and business procedures" to which counties and tribal entities must conform in order to meet reimbursement requirements.¹² In effect, the CCF Handbook is the guide as to whether or not an expenditure is reimbursable.

From the State's side of the CCF, Table 1 shows the historical expenditures which includes some additional non-50% cost share items, referred to here as earmarks. This includes such things as basic grants and expenditures for items that hold counties and tribal entities "harmless" from a cost increase such as administrative rates paid for foster care cases. Reimbursement is based on actual county spending on eligible expenditures as opposed to a fixed grant or payment based on the number of children adjudicated by the courts.

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Table 1

State of Michigan Child Care Fund Expenditures	
Fiscal Year	50% State Share + CCF Earmarks
1999-2000	\$87,614,900
2000-2001	122,920,700
2001-2002	146,786,400
2002-2003	148,546,700
2003-2004	169,165,900
2004-2005	172,797,400
2005-2006	192,649,900
2006-2007	210,090,400
2007-2008	209,931,600
2008-2009	213,850,800
2009-2010	203,357,600
2010-2011	193,322,500
2011-2012	190,447,500
2012-2013	184,302,300
2013-2014	175,666,800
2014-2015	184,850,100
2015-2016	180,436,000
2016-2017	201,953,000
2017-2018	204,428,101
2018-2019	216,697,748
2019-2020*	71,834,805
*YTD Expenditures	
Source: MAIN, SIGMA	

The funding source determination for the treatment and care of the child is dependent on the reason for entry into jurisdiction of the court, whether through delinquency or abuse/neglect. From the DHHS policy manual,

For delinquency cases, the court may retain responsibility for the child, or may make the child the responsibility of MDHHS through either a placement and care order or a state ward commitment order. For abuse/neglect cases, the court makes the child the responsibility of MDHHS through either a placement and care order or a state ward commitment order.¹³

Complexity occurs when determining which type of funding source applies to each child and can be more easily understood through a "flowchart". The flowchart is shown in the appendix, and explains the nuances of the type of case and the funding source. As shown in the appendix, there are two main supervision categories that children are placed into for care: court wards and State wards.

Court wards are children whose supervision is under the jurisdiction of the local or tribal court with jurisdiction over juvenile matters.¹⁴ The care of these children is overseen by the court though their placement and care decisions may be referred to the DHHS, but the care of these children is retained by the court.

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Court wards are further refined into several subcategories:

- Delinquent Court Ward. The child has come into the jurisdiction of the court from a violation of the delinquency section of the Juvenile Code (MCL 712A.1 et seq.). These children may have the responsibility of their care and placement referred to the DHHS with the court retaining judicial review of the child.
- Permanent Court Ward (Abuse/Neglect). The child has come into the jurisdiction of the court following the termination of parental rights. These children are referred to the DHHS for their care and placement but not committed to the Michigan Children's Institute (MCI) and the court retains the responsibility and legal authority for the child.¹
- Temporary Court Ward (Abuse/Neglect). The child has come into the jurisdiction of the court because of the parent's inability or unwillingness to care for the child without a termination of parental rights. The court retains the responsibility of judicial review and issues an order for care responsibility by the DHHS.
- Transition Statuses. Temporary court ward (in-home placement) in which the child has returned home with parents following a period of out-of-home placement with the case reverting to a Child Protective Services (CPS) case. The other is court ward - supervised adoption, in which the child has been placed for adoption, but the adoption is not finalized.

State wards are those children who have had parental separation or rights termination requiring the State to become the custodian of their supervision. The care of these children is committed to the DHHS as opposed to Court Wards whose care may be referred to the DHHS.

State wards are refined into subcategories:

- State Ward (Abuse/Neglect): The child has been committed to the DHHS following the termination of parental rights by the court. There are two main statutory avenues that a child becomes a ward of the DHHS.
 - The first avenue is the Michigan Children's Institute, Public Act 220 of 1935 (MCL 400.203) which upon termination of parental rights, the superintendent of the Michigan Children's Institute shall represent the state as guardian of each child committed.¹⁵
 - The second avenue is through Public Act 296 of 1974 in which parents voluntarily terminate their parental rights. Children whom become wards of the State through under this Act are treated in the same manner as children committed to MCI.
- State Ward (Delinquent). The child has been committed to the DHHS through the Youth Rehabilitation Services Act, Public Act 150 of 1974 (MCL 803.301-309) as a result of a violation of delinquency. The children committed under this Act must be at least 12 years of age and the offense for which they are being committed occurred before the child's 17th birthday (until October 1, 2021, when it will be before the 18th birthday).

¹ The Michigan Children's Institute was created to become the guardian of children who have been removed from their homes and experienced the termination of parental rights. Effectively, the MCI superintendent is the person who represents the State as the legal authority of the child's supervision. The supervision is to assure the appropriate authority for children needing care from the State. The care of the child begins with the date of the commitment until the age of 19. The MCI superintendent is permitted to provide consent for children for adoption, juvenile guardianship, medical procedures, marriage, or emancipation.

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- State Ward (Temporary Observation). The child, who could be a temporary or permanent court ward has been temporarily (up to 90 days), is committed to the care of the DHHS. The 90-day period may be extended upon the request of the DHHS and agreement of the court.
- Additional miscellaneous placement reasons. There are children who are under the supervision of the DHHS for other reasons who may or may not be receiving services but are classified as being under the "supervision" of the DHHS. Some of these classifications include:
 - Child under jurisdiction of another state for delinquency, abuse/neglect, or adoption reasons but is residing in Michigan.
 - Nonward with delinquent petition, meaning a youth that has been convicted of a criminal offense by being waived to adult proceeding.
 - Young-adult voluntary foster care or youth-in-transition.
 - Dual wards (delinquency and abuse/neglect).

Generally speaking, if a child is an abuse/neglect case and is eligible, the funding source will be Title IV-E. If the child is delinquent, the funding source will be CCF or SWBC, since the Federal funds generally cannot be used for juvenile justice services. As shown in Appendix 1, the Child Care Fund only reimburses counties and tribal entities for expenditures for Court Wards, not for State Wards. Funding State Wards is a cost sharing between the State and counties/tribal entities, if the child is not Title IV-E eligible, known as the State Ward Board and Care fund. SWBC reimbursements come from the counties and tribal entities to the State in an opposite flow of CCF payments. The SWBC is not a separate line-item in the annual budget and if counties or tribal entities must reimburse the State under SWBC, the State reduces the amount of the CCF reimbursement to a county or tribal entity by the corresponding amount.

Child Care Fund - Funding Procedures

Before the enactment of "State Pays First" legislation in 2018 (discussed in a later section), the CCF process was counties or tribal entities would bear the initial cost of the treatment and would then issue a report to seek reimbursement from the State. Children are reimbursed based on entry into the child welfare system (abuse/neglect or delinquency), so reimbursement documentation differs based on the classification of the child. The DHHS-207 report accounts for court ward expenditures for children who are in the care of the court because of delinquency proceedings and is signed by the judge of the family division of the circuit court. The DHHS 206B report accounts for Court Ward expenditures for children who are in the care of the court as a result of abuse/neglect proceedings and is signed by the DHHS county office director to be approved by the DHHS central office staff. After the enactment of "State Pays First" legislation, services covered under the 206B form were paid initially by the State and counties reimburse the State.

Table 2 displays the total amount of CCF reimbursements requested on county and tribal entity billings reports from FY 2011-12 through FY 2018-19. Over the data period, the 206B percentage of billings averaged around 16.3%, meaning the majority of the Child Care Fund reimbursement claims were for juvenile justice/delinquency treatment services.

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Table 2

Child Care Fund - Funding Classification Distribution					
Fiscal Year	CCF Billing Totals	206B Abuse/Neglect Amount	206B Percentage	207 Juvenile Justice	207 Juvenile Justice Percentage
2011-2012	\$386,817,497	\$61,597,478	15.9%	325,220,019	84.1%
2012-2013	369,559,748	60,964,851	16.5%	308,594,897	83.5%
2013-2014*	357,145,218	57,292,900	16.0%	299,852,318	84.0%
2014-2015*	355,291,219	49,914,253	14.0%	305,376,966	86.0%
2015-2016	350,438,707	50,835,748	14.5%	299,602,959	85.5%
2016-2017	346,875,140	57,406,917	16.5%	289,468,223	83.5%
2017-2018	318,524,252	51,384,385	16.1%	267,139,867	83.9%
2018-2019	340,423,181	71,260,829	20.9%	269,787,769	79.1%

*FY2013-14 & FY2014-15 are imputed for the percentages based on other data; the data provided for the other years was more accurate relative to total billings within the abuse/neglect or juvenile justice billings

Data Source: SWISS/JJOLT reports; Department provided billings summaries, Sec. 520 Boilerplate Report

By statute, the county treasurer is the custodian of any and all money provided by the State for the use of the county department, family division of the circuit court, and the agency designated by the county to provide juvenile justice services.¹⁶ Funds that are "deposited" into the CCF include county or tribal entity funds necessary for foster care services for children who are and who are not under the jurisdiction of the family division of the circuit court (either for juvenile justice or abuse/neglect reasons) and funds the State makes available for the care of children in foster care.¹⁷

One historical view of the CCF was treatment and programming decision-making for children would be made locally with local contracts, local staff and local purchasing. The local entity would make the initial payments and then seek reimbursement from the State. The State's role was to review the local expenditures for compliance with the CCF Handbook and reimburse counties or tribal entities for 50% of the total CCF expenditures.¹⁸

Michigan Court Precedents

The Child Care Fund has been entangled in legal disputes where counties have sued the State. On two occasions, court decisions have resulted in lasting ramifications for the CCF.

Oakland County v. State of Michigan

In 1997, 25 counties sued the State of Michigan for violating the Headlee Amendment of the Michigan's Constitution.² The suit was in response to Public Act 328 of 1980, which limited the

² As stated in Article IX, Section 29 of the Michigan Constitution: The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.

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50% reimbursement of CCF costs to counties. The Act stated that CCF expenditures that exceeded the amount of a budget approved under statutory guidelines may not be reimbursed. The change meant that any cost for the care of a child that exceeded the appropriated CCF amount would not be reimbursed. The statute effectively set a cap on Child Care Fund and any actual expenditures above the enacted budgeted amount would not be reimbursed. The counties argued that this change in law was a violation of the Headlee Amendment that requires that the State fund the mandated activity at a certain proportion of necessary costs in the base year of 1978-79.¹⁹

In the *Oakland County* decision, the Michigan Supreme Court ruled that the State cannot reduce funding for CCF below the levels of the base year of 1978-79 even if actual costs exceed those included in the enacted appropriations. This ruling removed the "CCF cap" effective for FY 1997-98. After this decision, the FY 1997-98 enacted appropriation for the Child Care Fund was approximately \$35 million short as the decision was issued after the annual budget took effect.²⁰ Since the *Oakland County* decision, the DHHS and its predecessor agencies have been cautious in attempts to reduce the amount of funding that qualifies for reimbursement under MCL 400.117a.

Ottawa County v. Family Independence Agency

The other case that has had a direct bearing on the CCF is the *Ottawa County v. Family Independence Agency* decision from 2005. At issue was whether the counties and tribal entities could be reimbursed for 50% of costs that were "...incurred in building, equipping, and improving juvenile detention facilities."²¹ After the *Oakland County* decision, counties/tribal entities were of the opinion that the State was required to reimburse 50% for any expenditure made from the CCF that pertained to providing care for children in foster care or juvenile justice programs. Essentially, the argument made by 11 counties was that the State could not establish any conditions for CCF reimbursement. The issue in the suit was that counties were seeking reimbursement for capital expenditures, such as for the construction of a juvenile justice detention facility. The Court of Appeals agreed with the State and the Family Independence Agency's (now the DHHS's) argument. The statute states that "reimbursement...shall be made only on submission of billings based on care given to a specific, individual child."²² The court found that capital expenditures could not meet the requirements of delivering "direct services" to an individual child. This decision put restrictions on reimbursements recognized in the *Oakland County* decision as stated by the Court:

The issue in this case is whether the law requires defendant [DHHS] to reimburse a county for half the money the county decides to spend out of its special child care fund to construct, equip, and improve the buildings the county uses to board juveniles. We hold that it does not. Our Constitution only requires the state to reimburse counties for mandated programs, and the counties are not required to build facilities...Therefore, defendant's [DHHS] refusal to reimburse each county's child care fund for construction and other capital costs does not violate the Constitution.... defendant [DHHS] is not required to reimburse counties for their capital expenditures...²³

The DHHS has continued to limit CCF reimbursements to services that are individualized in nature and has generally taken a strong opposition to any reimbursement of costs that are

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viewed (by the DHHS) as capital or part of general court operations. Part of this tension could relate partly to a topic broached in a footnote included in the *Ottawa County* decision:

"Published policies and procedures" means those policies and procedures contained in the... "The Child Care Fund Handbook".... Regrettably, defendant [DHHS] failed to adopt the Child Care Fund Handbook as a properly promulgated rule under the Administrative Procedures Act, MCL 24.201 *et seq.*,... its failure to adopt the self-proclaimed "policy" as a "rule" limits our ability to apply it [the Administrative Procedures Act].²⁴

From a review of the CCF administrative rules, it does not appear the DHHS has followed the suggestion included in the *Ottawa County* decision to properly promulgate the CCF Handbook as a rule through the rule-making process. Outside of specific reimbursement requirements outlined in statute, any change to "published policies and business procedures" could change much more easily than a particular rule, thus creating an "air of uncertainty" as to what types of expenditures are reimbursable by the State. The seeming ambiguity of reimbursability has created distrust between the State and counties/tribal entities.

Child Care Fund - Recent Developments

In the past few years, the Child Care Fund has come up for review in a Michigan Office of Auditor General (OAG) audit and has been the subject of two legislative bill packages that have modified its operation.

Child Care Fund Audit

In 2016, there was an OAG performance audit conducted on the Child Care Fund. The OAG found three material conditions (viewed as a matter that could impair the ability to operate the program) and three reportable conditions (viewed as less serious than a material condition, but a matter that is in need of improvement). The material conditions concerned the evaluation of both the in-home and out-of-home programs.

The OAG challenged the way in which the DHHS "did not establish performance measures and did not analyze reported performance indicators". The OAG requested that the DHHS evaluate in-home and out-of-home care programs for performance and effectiveness. The DHHS responded that as a result of the *Oakland County* decision, the Department believes that that decision shifted the "requirements for reimbursement from a legislatively established allocation to an entitlement of 50% reimbursement for all eligible costs, regardless of the State allocated amount".²⁵ This interpretation has meant any reimbursement request that is deemed eligible through the APB process must be fulfilled. The DHHS would not deny reimbursements for in-home or out-of-home care for any reason other than APB approval such as performance or impact evaluations.

Dispute has remained over what types of costs should be eligible with the counties arguing certain expenses that are required to deliver care that specific to a given child and the DHHS claiming that some of these types of expenses (specifically technology charges) are capital in nature. The CCF handbook regulations prohibit capital costs that exceed \$500 annually. The

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OAG's recommendation was that the DHHS get an attorney general's interpretation of the *Oakland County v. State of Michigan* decision to allow the DHHS to effectively evaluate CCF program performance.

Table 3 shows the distribution of CCF expenditures for out-of-home care service types and total in-home care expenditures. The DHHS states that the figures provided in the table have the caveat that the information is "reliant on accurate data being entered into the system and there may be some data entry errors made by the counties or tribal entities." Since this is the sole source for this type of data, it is included here to provide some context for CCF out-of-home and in-home expenditures.

Table 3

Child Care Fund - Distribution of Services						
Fiscal Year	Family Foster Care	Court Operated Detention Facilities	Private Institution	Other Institution	Independent Living	In-Home Care
2009-2010	\$38,314,711	\$109,553,455	\$55,806,081	\$103,895,814	\$0	\$108,594,397
2010-2011	33,365,956	108,711,405	50,933,684	82,102,486	0	112,118,292
2011-2012	30,074,199	106,187,851	57,417,633	69,248,243	0	115,574,909
2012-2013	30,393,953	112,215,506	103,103,412	5,719,973	0	110,397,055
2013-2014*	29,941,327	110,290,963	89,568,829	11,731,781	3,782,023	111,830,295
2014-2015*	19,705,982	110,290,963	95,909,433	5,420,103	3,472,877	118,377,829
2015-2016	16,670,983	108,474,612	95,809,769	9,024,868	4,480,692	115,977,783
2016-2017	15,177,082	106,550,016	96,469,336	5,752,916	6,369,794	116,555,996
2017-2018	13,109,843	95,051,175	83,741,327	12,477,592	6,594,978	107,549,338
2018-2019	25,903,388	96,210,730	81,064,440	14,738,578	18,069,377	104,436,668

Additionally, the OAG stated that the DHHS needed to improve the monthly review and approval process of CCF expenditure reports and needed to improve its annual on-site fiscal review procedures. The audit did find some unallowable reimbursements to the counties/tribal entities especially for items such as for telephone, cellular phone, copier charges, maintenance and repair costs, equipment and vehicle rentals, and office equipment exceeding \$500.²⁶ As a result of this audit, the DHHS merged the previous State reimbursement approval entity, the Child Care Fund Monitoring Unit, with the DHHS Bureau of Audit and Quality Assurance (BARQA).

"State Pays First" Legislation

A two-bill package known as "State Pays First", includes Public Acts 21 and 22 of 2018, made several changes to the way in which the CCF operates. The purpose behind naming the changes "State Pays First" was to recognize the fact that for abuse/neglect cases, the State holds the master contracts with nonprofit, private child-placing agencies that provide the care for these children on a statewide basis. Since the State holds the contracts, but CCF mechanisms required counties to expend funds initially, payments for services to abuse/neglect providers were often delayed. The "State Pays First" concept was developed to help reduce payment delays.

Public Act 21 of 2018 created a formal appeals process for denied reimbursable Child Care Fund expenditures and limited the reimbursements to expenditures made under an approved plan and budget. Public Act 22 of 2018 created a schedule of reimbursable expenditures and

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detailed that whichever party the child was placed with, court or the DHHS, would make the initial payment for services and then seek reimbursement from the other party. Expenditures for children placed in the care of the DHHS are paid first by the Department and reimbursed by the county for all undisputed charges. These expenditures would be for services to children who had been reimbursed through form DHHS-206B. Expenditures for children not placed with the DHHS are paid first by counties and reimbursed by the DHHS for all undisputed charges. These would be for services to children reimbursed on form DHHS-207. Any reimbursement due to counties is reduced by the amount that is owed to the State for children that the State spent on behalf of first.

Public Act 22 of 2018 created a list of in-home and out-of-home expenditures that are eligible for reimbursement. Before this direct listing of services, the reimbursable nature of a given expenditure type was determined based on the CCF handbook. As the handbook is not a promulgated rule, it is not able to be challenged through a formal appeals process. Public Act 21 and 22 of 2018 created an avenue for appeals and created a schedule of the types of expenditures that qualify for reimbursement. The Act also created a concept of "indirect cost allotment" in which the counties/tribes receive a payment in excess of direct billings for in-home and out-of-home expenditures. The idea behind these payments is that, because of changes resulting from the OAG, CCF audit expenditures that had previously been approved by the DHHS were no longer being approved with BARQA oversight nor were these types of charges included in the schedule of approved expenditures in Public Act 22 of 2008, counties should be able to receive a de minimis indirect cost rate. The counties/tribal entities had been receiving reimbursements for these costs, though in the eyes of the DHHS, these were ineligible reimbursements. Since counties/tribal entities had formed their local CCF budget on these costs being reimbursable a strict enforcement of the new reimbursability would have severely constrained local CCF operations. The indirect cost allotment was designed to get around the post-audit CCF interpretations. The indirect payment is equal to 10% of a county's the total monthly gross expenditures thus allowing for a certain percentage of costs to be covered through the allotment rather than through a requested reimbursement. The "State Pays First" legislation put tight limitations on reimbursements for technology and software with the intent that the counties/tribal entities would be able to put the 10% indirect allotment towards these types of expenses or other previously reimbursable expenditures.

"Raise the Age" Legislation

The "Raise the Age" (RTA) package of bills, which generally increased the age to be charged in adult court from 17 to 18, has the potential to cause the largest changes to the CCF. The concept of this package has been around for a number of years. The full package was passed by the Legislature and signed into law by Governor Whitmer on October 31, 2019. The concept of "raising the age" was largely supported by interested parties, but the largest barrier to passage was the cost of shifting the care of 17-year old individuals from the State corrections system to the child welfare system where the individuals would receive treatment from county/tribal juvenile justice providers. In 2017, the Michigan Criminal Justice Policy Commission requested a study to estimate the cost to "Raise the Age". When the report, from the consultant firm Hornby Zeller Associates, was issued in March 2018, the estimated costs for the Child Care Fund was between \$19.2 million and \$53.5 million, split 50%-50% between the State and counties/tribal entities.²⁷

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State Notes

TOPICS OF LEGISLATIVE INTEREST

Summer 2020



The Hornby Zeller report qualified that the cost of incorporating 17-year-olds into the juvenile justice system would vary "based on the type of residential placement in which juveniles are placed (i.e., state vs. private secure care and secure vs. non-secure placement) and their length of stay". The report provided a variability threshold of a cost increase of 5.0% to 14.0%.²⁸ Public Act 114 of 2019 created a new reimbursement percentage rate for children covered under the delinquency portion of the CCF. Beginning with the effective date of October 1, 2021, the State will absorb 100% of the costs for the 17-year-old population. The State will continue to cover 100% of the costs for 17-year-olds until October 1, 2025, at which time the overall CCF cost share percentage will be redetermined based on the actual costs of treating 17-year-olds.

The legislation, specifically Public Act 114 of 2019, has an effective date of October 1, 2021, to allow for preparation and funding for the shift of individuals. In the past, the counties/tribal entities did not oppose taking on the 17-year-old population in the juvenile justice system, but saw the costs as prohibitive, especially in light of the fact that the State, through the *Ottawa County* decision, would not reimburse them for capital costs. The counties and tribal entities have stated that in order to provide care, there may be instances in which juvenile residential or detention facility capacity is exceeded. Public Act 97 of 2019 created the Raise the Age Fund, which was established explicitly to support the cost of raising the age of criminal responsibility for costs not eligible for reimbursement through the CCF, like capital costs. The county or tribal entities must submit a reimbursement request to the department to be able to receive any funds from the Raise the Age Fund. As of FY 2019-20, the Fund has not received any deposits.

Conclusion

The 50%-50% cost share established through the CCF is a unique system that places responsibilities on both counties/tribal entities and the State. This type of collaboration is rare in the United States. The sometimes-adversarial relationship between the State and counties/tribal entities has created a system in which each side puts a good-faith effort into the relationship to avoid further litigation. The "Raise the Age" policy and "State Pays First" demonstrate an effort toward updating the Child Care Fund into the 21st century and maintaining decentralized, locally controlled treatment programs.

State Notes

TOPICS OF LEGISLATIVE INTEREST

Summer 2020



¹ Public Act 97 of 2019 through Public Act 114 of 2019.

² "Title IV-E: Federal Payments for Foster Care and Adoption Assistance", Child and Family Services Reviews, Administration for Children and Families. Retrieved on 5-5-2020.

³ "Title IV-E Spending by Child Welfare Agencies", Child Trends, Retrieved on 5-7-2020.

⁴ "A Primer on Title IV-E Funding for Child Welfare", Child Trends, Retrieved on 5-5-2020.

⁵ *Id.*

⁶ *Id.*

⁷ 42 USC 472

⁸ John Evans, *Juvenile Justice in Michigan*, Bureau of Juvenile Justice - Fiscal and Technical Support Division, Michigan Family Independence Agency.

⁹ John Evans, "Child Care Fund", Bureau of Juvenile Justice - Fiscal and Technical Support Division, Michigan Family Independence Agency.

¹⁰ MI Admin Code R 400.2008

¹¹ MCL 400.117e.

¹² Note 9.

¹³ "Legal Status FOM 901-6, 11-1-2019", Michigan Department of Health and Human Services, Children's Foster Care Manual. Retrieved 6-15-2020.

¹⁴ MCL 712A.2.

¹⁵ "Roles and Responsibilities of Michigan Children's Institute (MCI) ADM 0800, 10-1-2013", Michigan Department of Health and Human Services, Adoption Services Manual. Retrieved 6-17-2020.

¹⁶ MCL 400.117c.

¹⁷ *Id.*

¹⁸ Note 9.

¹⁹ *Oakland County v. State of Mich.*, 566 N.W.2d 616 (1997).

²⁰ "Child Care Fund Lawsuit", Michigan Family Independence Agency - Budget, Analysis, and Financial Management Administration Memorandum, 11-3-1997.

²¹ *Ottawa County v. Family Independence Agency*, 695 N.W.2d 562 (2005).

²² MCL 400.117a(12)

²³ Note 18.

²⁴ Note 18.

²⁵ "Performance Audit Child Care Fund (CCF)", Michigan Office of the Auditor General, June 2016 (Audit No. 431-1400-13), Retrieved on 6-1-2020.

²⁶ *Id.*

²⁷ "The Cost of Raising the Age of Juvenile Justice in Michigan - Final Report", Prepared for Michigan Legislative Council - Criminal Justice Policy Commission by Hornby Zeller Associates, Inc. March 2018, Retrieved on 5-27-2020.

²⁸ *Id.*

Appendix 1

State and Court Ward Funding – Post PA 21 & 22 Implementation

Court

Court Ward

State Ward (P.A. 150, 220, 296)

Court Supervised

DHHS Supervised

DHHS Supervised

Child Care Fund (CCF)

Child Care Fund (CCF)

Title IV-E (Federal)

State Ward Board and Care (SWBC)

Title IV-E (Federal)

County pays bill, State will reimburse county for 50% of approved costs

State pays bill, County will reimburse State for 50% of approved costs

State pays bill, Federal gov't will reimburse State for 50% of approved costs

State pays bill, County will reimburse State for 50% of approved costs

State pays bill, Federal gov't will reimburse State for 50% of approved costs