Ohio Legislative Service Commission

Justin Pinsker

Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 279 of the 129th G.A. **Date**: December 12, 2012

Status: As Passed by the Senate **Sponsor**: Rep. Grossman

Local Impact Statement Procedure Required: No

Contents: Expands the class of persons who may execute a caretaker authorization affidavit or be designated as attorney in fact under a power of attorney for the purpose of exercising authority over the care, custody, and control of a child and to enhance Ohio's policies regarding kinship caregivers

State Fiscal Highlights

- Increase in costs for Ohio Department of Job and Family Services to conduct a feasibility study of current trends in the use of relative caregivers for the placement of children by public children services agencies.

Local Fiscal Highlights

- Expansion of the class of individuals who may be designated as the attorney in fact under a power of attorney or execute a caretaker authorization affidavit may increase administrative costs for several local governmental entities involved in the process, including courts of common pleas, municipal courts, public children services agencies, and school districts; however, any increase in costs is likely to be minimal.

Detailed Fiscal Analysis

The bill expands the class of persons who may be designated as attorney in fact under a power of attorney or execute a caretaker authorization affidavit for the purpose of exercising authority over the care, custody, and control of a child. The bill also makes changes to the Kinship Permanency Incentive Program, conforms Ohio law to the federal statute regarding notification of relatives of a child's removal from parental custody, and requires a study of kinship care and adoption of rules for use of the Federal Parent Locator Service. In addition, the bill makes changes to the Autism Scholarship Program. The changes to the Autism Scholarship Program are effective immediately. The remaining provisions shall take effect 90 days after the bill's effective date.

Power of attorney and caretaker authorization affidavit

Current law permits the execution of a power of attorney or a caretaker authorization affidavit that grants the grandparent with whom a child resides the rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, obtain from the school district educational and behavioral information, consent to school-related matters, as well as medical, psychological, and dental treatment. A parent, guardian, or custodian of a child may execute a power of attorney and a grandparent, in situations in which a child's parent, guardian, or custodian cannot be located, may execute a caretaker authorization affidavit. The bill expands the class of individuals who may be designated as the attorney in fact under a power of attorney to include *any person* with whom the child resides and expands the class of individuals who may execute a caretaker authorization affidavit to include *any qualified relative* who has made a reasonable attempt to locate the child's parent, guardian, or custodian, but has been unable to do so.[1]

Sub. H.B. 130 of the 125th General Assembly established the current law regarding powers of attorney and caretaker authorization affidavits as they relate to grandparents. The most recent census data at that time showed that about 86,000 grandparents in Ohio reported that they were currently responsible for the most basic needs of the grandchildren living in the home and, according to a study of Ohio's Grandparents Raising Grandchildren Task Force, most were doing so informally. Since

[1] The bill defines a "qualified relative" as any person over 18 years of age who is related to a child by blood, marriage, or marriage that has been legally terminated, except for (1) a parent who has committed an act resulting in the child having been adjudicated an abused or neglected child, (2) the residential parent and legal custodian of the child in cases where the parents are divorced or the marriage has been dissolved or annulled, (3) the child's guardian, or (4) the child's custodian.

enactment of H.B. 130, the courts generally have not experienced a significant influx of filings of powers of attorney and caretaker authorization affidavits.[2]

According to the American Community Survey (2006-2008),[3] of the 2.8 million children in Ohio, about 90,000 (3.2%) were living with neither parent and were either a relative of a householder (i.e., niece, nephew, etc.) or other nonrelative of the householder (i.e., friend, neighbor, etc.) but not a grandchild of the householder or a foster child. While these children could potentially become subject of a power of attorney or caretaker authorization affidavit under this bill, similar to situations in which grandparents are raising their grandchildren, it is likely that many of them are in situations where an informal arrangement is in place and the parties involved would not pursue a power of attorney or caretaker authorization affidavit. Expansion of the class of individuals who may be designated as the attorney in fact under a power of attorney or execute a caretaker authorization affidavit may increase administrative costs for several governmental entities involved in the process; however, any increase in costs is likely to be minimal. The potential cost to each entity, while minimal, is described below.

Courts

The courts of common pleas may experience an increase in administrative costs to receive initial and subsequent filings, review the filings, respond to requests for verification of the filing and, when necessary, provide notice of hearing to the parties, conduct hearings, take action that is in the best interest of the child, review its orders, and refer any concerns to the county's public children services agency (PCSA). The Ohio Association of Juvenile Judges estimates that each filing will cost the court $40 to $50 to process. Continuing law waives the fee imposed for filing a power of attorney or caretaker authorization affidavit; therefore, the court does not receive any revenue to offset costs.

Additionally, under current law, it is a first degree misdemeanor if a person creates a power of attorney or caretaker authorization affidavit for the purpose of enrolling a child in a school or school district so that the child may participate in academic or interscholastic athletic programs. First degree misdemeanors are heard by municipal or county courts. Any case brought against a person would create costs for the local court to prosecute. Fine revenues from convicted misdemeanors are deposited into the GRF, the Indigent Defense Support Fund (Fund 5DY0) used by the Ohio Public Defender Commission, and the Victims of Crime/Reparations Fund (Fund 4020) used by the Attorney General.

---

[2] Information provided by the Ohio Association of Juvenile Judges. The actual number of filings is unknown, as courts do not track them.

[3] Compiled by the Ohio Department of Development's Office of Policy Research and Strategic Planning.

Public children services agencies

Courts may conduct a review of a power of attorney or caretaker authorization affidavit filing, and if there is cause, may refer the information to a PCSA for investigation. Upon receipt of information from a court, a PCSA is required to initiate an investigation in accordance with the procedures set forth in state law regarding allegations of, or the potential threat of, child abuse or neglect. The PCSA is to submit a report of its investigation to the court. Each additional case that the court refers to a PCSA for further investigation under the bill will result in increased costs for investigation and assessment.

Other governmental entities

Under current law, the grandparent is to notify certain entities when a power of attorney or caretaker authorization affidavit terminates. The bill maintains this requirement for any person who is designated as power of attorney or any qualified relative who executes a caretaker authorization affidavit. Those governmental entities most likely to receive notification are the school district where the child attends, the Office of Ohio Health Plans in the Ohio Department of Job and Family Services (ODJFS) if the Children's Health Insurance Program provides health insurance coverage for the child, the court, and possibly a PCSA that has an ongoing relationship with the child. This provision may cause a minimal increase in the administrative costs for those entities that receive notification.

Kinship care

Kinship Permanency Incentive Program

The Kinship Permanency Incentive (KPI) Program provides time-limited incentive payments to kinship caregivers who meet eligibility criteria. Kinship care refers to a temporary or permanent arrangement in which a relative or any nonrelative adult, who has a long-standing relationship or bond with the child or family, has taken over substitute care of a child through either an informal arrangement, legal custody or guardianship order, relative foster care, or adoption. To be eligible for incentive payments, families must have received a court-issued custody or guardianship order on or after July 1, 2005, and have incomes that do not exceed 300% of the federal poverty guidelines ($55,590 for a family of three). Eligibility is determined by PCSAs or private child placing agencies. In FY 2012, families in the program receive an initial payment of $450 per child with additional $250 payments every six months over three years.

The bill extends the period families may receive incentive payments from 36 months to 60 months. R.C. section 5101.802(E)(4), unchanged by the bill, requires the ODJFS Director to establish by rule the amount of incentive payments provided under the program. Funding for the program is $2.5 million in FY 2012 and $3.5 million in FY 2013, appropriated in GRF line item 600541, Kinship Permanency Incentive Program. In addition, the KPI Program is funded with a $1.2 million TANF earmark in each fiscal year. Total funding for KPI is $3.7 million in FY 2012 and $4.7 million in

FY 2013. It is not clear whether ODJFS would maintain current payment levels or reduce either the initial payment or additional semiannual payments. ODJFS maintains the rule-making authority to set the payment amount and may set the payment at an amount that ensures expenditures do not exceed available funding.

Feasibility study

The bill requires ODJFS to conduct a feasibility study of current trends in the use of relative caregivers for the placement of children by PCSAs. It requires that the study (1) focus on a continuum of options, including informal relative placements, judicial transfer of legal custody or guardianship to a relative caregiver and the KPI Program, use of approved relative caregivers, relatives becoming certified foster caregivers, and relatives as adoptive parents and (2) include agency and court practices; child outcomes addressing safety, stability, and permanency; and state and local cost implications of adding a subsidized relative guardianship program. The bill requires that ODJFS complete the study by December 31, 2013, and submit its report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. According to ODJFS, this study would likely be conducted by an outside organization under contract. Costs for comparable studies done under contract for ODJFS programs generally range from $150,000 to $250,000.

Notification to relatives of a child's removal from parental custody

The bill requires that a PCSA that receives temporary custody of a child identify and provide notice to all adult grandparents and other adult relatives of the child within 30 days of the child's removal from the custody of the child's parents, subject to exceptions due to family or domestic violence. The bill conforms Ohio law to the federal statute. States must meet these criteria in order to receive federal funding for foster care and adoption assistance. Currently, PCSAs generally adhere to this policy; therefore, this provision would have no fiscal effect.

Rules for the use of the Federal Parent Locator Service

The bill requires ODJFS to adopt rules governing the use of the Federal Parent Locator Service by ODJFS's Office of Child Support and the dissemination of information contained within the Service to PCSAs, upon receiving further guidance from the United States Department of Health and Human Services regarding the coordination of the use of the Service between states and the federal Office of Child Support Enforcement. ODJFS maintains a staff that works specifically on the formulation and codification of rules. Therefore, any additional administrative costs to develop the rules will be absorbed within ODJFS's existing resources.

Autism Scholarship Program

The bill modifies funding under the Autism Scholarship Program, which provides autistic students in grades kindergarten through 12 who have received an individualized education program (IEP) with scholarships to attend an alternative

public or private provider. For funding purposes, students are first counted in their resident district's average daily membership (ADM). Then, the amount of the scholarship is deducted from the district and transferred to the alternative provider. The scholarship amount is equal to the lesser of (1) the cost of tuition and (2) $20,000. The bill permits the scholarship payments to cover additional services agreed to by a provider and a parent of a participating student that are not included in the child's IEP. This allows more flexibility in the use of scholarship funds, but is not likely to have a significant impact on the cost of the program.

In addition to funding modifications, the bill also establishes additional duties for the Ohio Department of Education (ODE) related to the scholarship program. Under certain conditions, the bill allows ODE to issue an instructional assistant permit to an individual approved by a private alternative provider to provide services to a child under the Autism Scholarship Program. In some cases, the instructor may provide in-home services to a program participant if the instructor has received adequate training and supervision. The State Board of Education must adopt rules relating to how providers will demonstrate the supervision. The bill also requires ODE to notify parents of scholarship students and alternative providers of changes related to the administration of or rules governing the Autism Scholarship Program. ODE may incur minimal administrative costs related to these additional duties.

HB0279SP / th