
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1351 Session of
2009

INTRODUCED BY D. EVANS, APRIL 28, 2009

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES, APRIL 28,
2009

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," further providing for lifetime limit, for payments to counties for services to children, for departmental administration of county child welfare services, for needs-based budgeting process, for review of county submissions and for limits on reimbursements to counties; further defining "exempt hospital"; further providing for administration; providing for managed care organization assessments; further providing for other prohibited acts, criminal penalties and civil remedies and for repayment from probate estates; providing for limit on claim reduction and for false claims; and providing for necessary action to qualify the Commonwealth for additional

Medical Assistance funds under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, 123 Stat. 115).

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 441.4 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, added July 7, 2005 (P.L.177, No.42), is amended to read:

Section 441.4. [Lifetime Limit] Reasonable Limits on Allowable Income Deductions for Medical Expenses When Determining Payment Toward the Cost of Long-Term Care Services.--(a) [Necessary medical or remedial care expenses

recognized under Federal or State law but not paid for by the medical assistance program are allowable income deductions when determining a recipient's payment toward the cost of long-term care services. An allowable income deduction for unpaid medical expenses incurred prior to the authorization of medical assistance eligibility and those medical expenses incurred for long-term care services after medical assistance is authorized shall be subject to a lifetime maximum of ten thousand dollars (\$10,000) unless application of the limit would result in undue hardship.] When determining a recipient's payment toward the cost of long-term care services, long-term care medical expenses incurred six months or more prior to application for medical assistance shall be disallowed as a deduction, and medical and

remedial expenses that were incurred as a result of a transfer of assets penalty shall be limited to zero unless application of these limits would result in undue hardship.

(b) As used in this section, the term "undue hardship" shall mean that either:

(1) denial of medical assistance would deprive the individual of medical care and endanger the individual's health or life; or

(2) the individual or a financially dependent family member would be deprived of food, shelter or the necessities of life.

Section 2. Section 704.1 of the act, amended or added July 9, 1976 (P.L.846, No.148) and August 5, 1991 (P.L.315, No.30), is amended to read:

Section 704.1. Payments to Counties for Services to Children.--(a) The department shall reimburse county institution districts or their successors for expenditures incurred by them in the performance of their obligation pursuant

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to this act and the former act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," in the following percentages:

(1) [Eighty percent of] For the cost of an adoption subsidy paid pursuant to subdivision (e) of Article VII of this act[.]:

(i) Eighty percent.

(ii) Beginning July 1, 2010, and ending before July 1, 2011, eighty-two percent.

(iii) Beginning July 1, 2011, and ending before July 1, 2012, eighty-five percent.

(iv) Beginning July 1, 2012, and each year thereafter, ninety percent.

(2) No less than seventy-five percent and no more than ninety percent of the reasonable cost including staff costs of child welfare services[, informal adjustment services provided pursuant to section 8 of the act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," and such services approved by the department, including but not limited to, foster home care, group home care, shelter care, community residential care, youth service bureaus, day treatment centers and service to children in their own home and any other alternative treatment programs approved by the department] which the department may approve and define by regulation.

(3) [Sixty percent of] For the reasonable administrative and staff costs approved by the department except for those staff costs [included in clause (2) of this section] documented as necessary for the provision of child welfare services[.]
included in paragraphs (2), (6), (7) and (8):

(i) Sixty percent.

(ii) Beginning July 1, 2010, and ending before July 1, 2011,

fifty-eight percent.

(iii) Beginning July 1, 2011, and ending before July 1, 2012, fifty-five percent.

(iv) Beginning July 1, 2012, and each year thereafter, fifty percent.

(4) Fifty percent of the actual cost of care and support of a child placed by a county child welfare agency or a child committed by a court pursuant to the former act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," to the legal custody of a public or private agency approved or operated by the department other than those services described in clause (2). The Auditor General shall ascertain the actual expense [for fiscal year 1974-1975 and each year thereafter by the Department of Public Welfare] each year by the department for each of the several counties and each city of the first class whose children [resident] reside within the county or city of the first class directly received the benefit of the Commonwealth's expenditure. The Auditor General shall also ascertain for each Commonwealth institution or facility rendering services to delinquent or deprived children the actual average daily cost of providing said services. The Auditor General shall certify to each county and city of the first class the allocated Commonwealth expenditures incurred on behalf of its children and notify the [Secretary of Public Welfare] secretary and each county and city

of the first class of same.

(5) Fifty percent of the reasonable cost of medical and other examinations and treatment of a child ordered by the court pursuant to the former act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," for which no other public or private payor is responsible, and the expenses of the

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appointment of a guardian pendente lite, summons, warrants, notices, subpoenas, travel expenses of witnesses, transportation of the child, and other like expenses incurred in proceedings under the former act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act."

(6) [Effective July 1, 1991, the department shall reimburse county institution districts or their successors one] One hundred percent of the reasonable costs of providing adoption services.

(7) [Effective July 1, 1993, the department shall reimburse county institution districts or their successors eighty percent of the reasonable costs of providing foster home care, community residential care, supervised independent living and community-based alternative treatment programs.] For the reasonable cost of services for dependent and delinquent children, other than detention services, residing in their own homes and other alternative treatment approved by the department:

(i) Counseling services as follows:

(A) Eighty percent.

(B) Beginning July 1, 2010, and ending before July 1, 2011, eighty-one percent.

(C) Beginning July 1, 2011, and ending before July 1, 2012, eighty-three percent.

(D) Beginning July 1, 2012, and each year thereafter, eighty-five percent.

(ii) Day care services as follows:

(A) Eighty percent.

(B) Beginning July 1, 2010, and ending before July 1, 2011, eighty-one percent.

(C) Beginning July 1, 2011, and ending before July 1, 2012,

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eighty-three percent.

(D) Beginning July 1, 2012, and each year thereafter, eighty-five percent.

(iii) Day treatment services as follows:

(A) Eighty percent.

(B) Beginning effective July 1, 2010, and ending before July 1, 2011, eighty-one percent.

(C) Beginning July 1, 2011, and ending before July 1, 2012, eighty-three percent.

(D) Beginning July 1, 2012, and each year thereafter,

eighty-five percent.

(iv) Life-skills services as follows:

(A) Eighty percent.

(B) Beginning July 1, 2010, and ending before July 1, 2011,

eighty-one percent.

(C) Beginning July 1, 2011, and ending before July 1, 2012,

eighty-three percent.

(D) Beginning July 1, 2012, and each year thereafter,

eighty-five percent.

(v) Homemaker services as follows:

(A) Eighty percent.

(B) Beginning July 1, 2010, and ending before July 1, 2011,

eighty-one percent.

(C) Beginning July 1, 2011, and ending before July 1, 2012,

eighty-three percent.

(D) Beginning July 1, 2012, and each year thereafter,

eighty-five percent.

(vi) Intake and referral services, eighty percent.

(vii) Protective services, eighty percent.

(viii) Service planning, eighty percent.

(8) [The department shall reimburse county institution districts or their successors for the reasonable costs of institutional services for dependent and delinquent children

other than detention services for delinquents in accordance with the following schedule:

(i) Effective July 1, 1992, fifty-five percent.

(ii) Effective July 1, 1993, sixty percent.]

(i) For the reasonable costs of services for dependent and delinquent children, other than detention services, residing outside their homes:

(A) Foster home care as follows:

(I) Eighty percent.

(II) Beginning July 1, 2010, and ending before July 1, 2011, eighty-two percent.

(III) Beginning July 1, 2011, and ending before July 1, 2012, eighty-five percent.

(IV) Beginning July 1, 2012, and each year thereafter, ninety percent.

(B) Supervised independent living as follows:

(I) Eighty percent.

(II) Beginning July 1, 2010, and ending before July 1, 2011, eighty-one percent.

(III) Beginning July 1, 2011, and ending before July 1, 2012, eighty-three percent.

(IV) Beginning July 1, 2012, and each year thereafter, eighty-five percent.

(C) The first thirty days of an eligible child emergency

shelter services, as defined in 55 Pa. Code § 3130.37 (relating to emergency and planned temporary placement services), as follows:

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(I) Ninety percent.

(II) Beginning July 1, 2010, and ending before July 1, 2011, eighty-nine percent.

(III) Beginning July 1, 2011, and ending before July 1, 2012, eighty-seven percent.

(IV) Beginning July 1, 2012, and each year thereafter, eighty-five percent.

(D) Community-based alternative treatment programs as follows:

(I) Eighty percent.

(II) Beginning July 1, 2010, and ending before July 1, 2011, seventy-nine percent.

(III) Beginning July 1, 2011, and ending before July 1, 2012, seventy-seven percent.

(IV) Beginning July 1, 2012, and each year thereafter, seventy-five percent.

(E) Community residential care as follows:

(I) Eighty percent.

(II) Beginning July 1, 2010, and ending before July 1, 2011, seventy-nine percent.

(III) Beginning July 1, 2011, and ending before July 1, 2012, seventy-eight percent.

(IV) Beginning July 1, 2012, and each year thereafter, seventy-seven percent.

(ii) Beginning July 1, 2010, and each year thereafter, the department shall use a minimum occupancy rate of eighty-five percent for each facility in determining the reasonable cost of community-based alternative treatment programs and community residential care under this paragraph.

(9) (i) For the reasonable costs of institutional services

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for dependent and delinquent children other than detention services for delinquents:

(A) Sixty percent.

(B) Beginning July 1, 2010, and ending before July 1, 2011, fifty-eight percent.

(C) Beginning July 1, 2011, and ending before July 1, 2012, fifty-five percent.

(D) Beginning July 1, 2012, and each year thereafter, fifty percent.

(ii) Beginning July 1, 2010, and each year thereafter, the department shall use a minimum occupancy rate of eighty-five percent for each facility in determining the reasonable cost of services under this paragraph.

(a.1) (1) The department shall limit reimbursement to county institution districts or their successors for the costs of services that are not directly attributable to a particular facility or agency site purchased from a private agency to:

(i) Beginning July 1, 2010, and ending before July 1, 2011, fifteen percent of the costs to operate the facility or agency site.

(ii) Beginning July 1, 2011, and ending before July 1, 2012, fourteen percent of the costs to operate the facility or agency site.

(iii) Beginning July 1, 2012, and each year thereafter, thirteen percent of the costs to operate the facility or agency site.

(2) The department shall limit reimbursement to county institution districts or their successors to three percent of the gross retained revenue or gross profit of the agency.

(3) The department shall promulgate regulations to limit

reimbursement to county institution districts or their successors for the costs of compensation for chief executive officers for services purchased from a private agency up to the combined salaries and benefits approved for these positions. Until the regulations become effective, the department shall determine maximum allowable costs of compensation for chief

executive officers pursuant to this paragraph according to the regulations applicable to private agencies providing mental health and mental retardation services under county mental health and mental retardation agencies.

(4) The department shall not reimburse county institution districts or their successors for any services purchased from a private agency for which the department has not received sufficient information to determine compliance with this subsection.

(b) The department shall make additional grants to any county institution district or its successor to assist in establishing new services to children in accordance with a plan approved by the department for up to the first three years of operation of those services. [In order to provide necessary information to the General Assembly relative to the grants provided under this subsection, a report will be developed by the Legislative Budget and Finance Committee and provided to the members of the General Assembly no later than July 1, 1980, concerning all grants made and expenditures accomplished under the provisions of this subsection for the period up to and including December 31, 1979. This report shall include information on the amount of moneys that went to individual counties and a description of activities and services financed with these moneys including the number and types of clients

served under each of the grant programs and any other information necessary in order to fully inform the General Assembly on such programs. All officials of the Department of Public Welfare, grant recipient county organizations, and other agencies which receive State moneys under the provisions of this subsection shall cooperate with the committee and its staff in carrying out this reporting requirement, including making available all necessary fiscal and programmatic data.]

(c) No payment pursuant to [subsection (a)(2), (3) or (4) or of subsection (b)] this section shall be made for any period in which the county institution district or its successor fails to substantially comply with the regulations of the department promulgated pursuant to section 703 including but not limited to those regulations relating to minimum child welfare services, minimum standards of child welfare services and minimum standards of child welfare administration on [a] the merit basis.

(d) Amounts due from county institution districts or their successors for children committed to facilities operated by the department shall be paid by the counties to the Department of Revenue by orders to be drawn by the duly authorized agent of the Department of Revenue at each youth development center or forestry camp on the treasurers of such counties, who shall accept and pay the same to the Department of Revenue. Promptly

after the last calendar day of each month the agent of the Department of Revenue shall mail accounts to the commissioners of such counties as may have become liable to the Commonwealth during the month under the provisions of this section. These accounts shall be duly sworn or affirmed to, and it shall be the duty of said commissioners, immediately upon receipt of such

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accounts, to notify the treasurers of their respective counties of the amounts of said accounts, with instructions to pay promptly to the Department of Revenue the amounts of said orders when presented. It shall then be the duty of such county treasurers to make such payments as instructed by their respective county commissioners. In lieu of payments by the county to the Commonwealth, the department may deduct the amount due the Commonwealth from the reimbursement payments by the department to the county institution districts or their successors.

(e) If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection (a), the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the

court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county, to the appropriate officer of the county.

(g) The department shall, within forty-five days of each calendar quarter, pay fifty percent of the department's share of the county institution district's or its successor's estimated expenditures for that quarter.

[(h) At the end of each of calendar years 1978 and 1979, every county shall compare the amount received in child welfare reimbursements for calendar year 1976 pursuant to section 704 of this act and section 36 of the act of December 6, 1972

(P.L.1464, No.333), known as the "Juvenile Act" with child welfare reimbursements received for each of calendar years 1978

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and 1979 pursuant to this section. The resulting difference in reimbursements for child welfare services received between calendar year 1976 and each of calendar years 1978 and 1979 shall then be compared with the amount the county paid in each of calendar years 1978 and 1979 for youth development center or forestry camp commitments pursuant to subsection (a)(4). If there is an increase in reimbursements for child welfare services and that increase is less in either or both of calendar years 1978 and 1979 than the amount expended by the county for its share of the cost of youth development center and forestry

camp commitments, then any such county shall be entitled to receive additional block grants as provided in subsection (b) equal to the amount of such difference.]

Section 3. Section 708 of the act, amended July 9, 1976 (P.L.846, No.148), is amended to read:

Section 708. Departmental Administration of County Child Welfare Services.--[On and after January 1, 1968, the] The department shall provide, maintain, administer, manage and operate a program of child welfare services in a county institution district or its successor when the department determines, after hearing, that such county institution district or its successor is not complying with the regulations prescribing minimum child welfare services or minimum standards of performance of child welfare services or minimum standards of child welfare personnel administration on a merit basis, and that, as a result, the needs of children and youth are not being adequately served.

When, in pursuance of this section, the department takes charge of, and directs the operation of the child welfare services of a county institution district or its successor, the

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county shall be charged and shall pay the cost of such services, including reasonable expenditures incident to the administration thereof incurred by the department. The amount so charged and to

be paid by the county shall be reduced by the amount of the payments that would have been made pursuant to section 704.1 if the county institution district or its successor had maintained a child welfare program in compliance with the regulations of the department.

The amount due the Commonwealth may be deducted from any Commonwealth funds otherwise payable to the county. All sums collected from the county under this section, in whatever manner such collections are made, shall be paid into the State treasury and shall be credited to the current appropriation to the department for child welfare.

The department shall relinquish the administration of the child welfare program of the county institution district or its successor when the department is assured that the regulations of the department will be complied with thereafter and that the needs of children and youth will be adequately served.

Section 4. Sections 709.1, 709.2 and 709.3 of the act, added August 5, 1991 (P.L.315, No.30), are amended to read:

Section 709.1. Needs-Based Budgeting Process.--(a) Prior to [September 15, 1991, and] August 15 each year [thereafter], counties shall submit to the department a needs-based budget in a form prescribed by the department containing their annual client and budget estimates and a description of proposed changes in their annual plan for the fiscal year beginning the

following July 1. Each county submission under this subsection shall provide sufficient information regarding the private agencies from which the county purchases services for the

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department to determine compliance with section 704.1(a.1).

(b) Representatives of the department shall meet with representatives of each of the counties to discuss the needs-based budgets and proposed changes in annual plans and shall make a thorough review of county submissions. County submissions shall clearly distinguish funding supported by section 704.1(a) from grants authorized by section 704.1(b). On the basis of the discussions and review, the department shall make its determination of each of the counties total costs and reimbursable costs and the amount allowed each of the counties in accordance with section 704.1(a).

(c) The total of the amounts allowed for each county pursuant to section 704.1(a) as determined by the department shall be the aggregate child welfare needs-based budget. The determination of the aggregate child welfare needs-based budget and the child welfare needs of each county along with supporting documentation shall be submitted to the Governor by [November 15, 1991, and] November 1 each year [thereafter].

(d) Contemporaneously with the submission of the General Fund budget, the Governor shall submit the aggregate child

welfare needs-based budget and the child welfare needs of each county along with supporting documentation to the Majority Chairman and the Minority Chairman of the Appropriations Committee of the Senate and the Majority Chairman and the Minority Chairman of the Appropriations Committee of the House of Representatives. The department may modify the calculation of the aggregate child welfare needs-based budget any time prior to May 1 of each year, provided that such revision is based on receipt of actual data or adopted regulatory changes which, when compared to previously calculated projected data or regulation,

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requires the revision.

Section 709.2. Review of County Submissions.--(a) The department shall promulgate guidelines for reviewing and determining county submitted needs-based budgets. [The guidelines for the 1992-1993 fiscal year shall be published as a bulletin. Guidelines for approving 1993-1994 fiscal year needs-based budgets shall be adopted by regulation no later than July 1, 1992, but shall not be adopted as emergency regulations pursuant to section 6(b) of the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."]

(b) The department determination shall consider whether the county's budget is reasonable in relation to past costs, projected cost increases, number of children in the county and

the number of children served, service level trends, the county's prior actual and projected outcomes for the delivery of services and projections of other sources of revenue. The needs-based budget shall not include funding for any services purchased from private agencies for which the department has not received information sufficient to determine compliance with section 704.1(a.1).

(c) To the extent that county staffing patterns are less than that required to meet department staffing regulations, the department determinations shall permit a requesting county to hire sufficient staff to meet the minimum staffing regulations. A determination may disallow expenditures for additional staff if the functions for which the staff is to be hired already meets the minimum required by department regulations.

(d) No determination by the department may be based on payment standards that have not been adopted as of the time of the review in accordance with the "Regulatory Review Act."

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Section 709.3. Limits on Reimbursements to Counties.--(a) Reimbursement for child welfare services made pursuant to section 704.1 shall not exceed the funds appropriated each fiscal year.

(b) The allocation for each county pursuant to section 704.1(a) shall be calculated by multiplying the sum of the

Social Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.)

Title IV-B funds and State funds appropriated to reimburse counties pursuant to section 704.1(a) by a fraction, the numerator of which is the amount determined for that county's child welfare needs-based budget and the denominator is the aggregate child welfare needs-based budget.

(b.1) The department shall divide each county's total allocation under section 704.1(a) into separate allocations for each of four major service categories. The four major service categories and the activities and services that comprise them shall include:

(1) In-home and intake services, which shall include child protective services for child abuse, child protective services in general, counseling and intervention service, day care service, day treatment service, homemaker and caretaker service, information and referral service, life skills education, service planning, adoption service and adoption assistance.

(2) (i) Community-based placement services, which shall include foster family service.

(ii) Community residential service, including group home service.

(iii) Supervised independent living services.

(iv) Emergency shelter service.

(3) Institutional placement services, which shall include

residential service, juvenile detention service and secure residential service.

(4) Administration services required to manage a county children and youth social service agency and to ensure the provision of services and the performance of functions required by law, which shall include planning, budgeting, accounting, recordkeeping, staff development, the operation of a volunteer program and the proportionate costs of planning, research, coordination and evaluation activities performed by a youth service system, a county planning office or other human service planning body.

(b.2) Except as provided in subsection (b.3), the department shall not reimburse a county for costs in a particular major service category in excess of the following amounts:

(1) For counties of the first or second class, three percent more than the allocation for the major service category.

(2) For all other counties, ten percent or one million dollars (\$1,000,000), whichever is less, more than the allocation for the major service category.

(b.3) At any time before the expiration of a fiscal year, a county may submit to the department a written request to transfer funds within its total allocation from one major service category to another for that fiscal year. The department may, in its discretion, approve the request in whole or in part

and reimburse the county accordingly.

(b.4) Except as provided in subsection (b.5), the department shall not reimburse a county for costs of any services provided to a child placed in a residential facility outside this Commonwealth.

(b.5) A county may submit to the department a written

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request for reimbursement for services provided to a child placed in a residential facility outside this Commonwealth without the department's prior consent. The department may, in its discretion, approve the request in whole or in part and reimburse the county accordingly.

(c) If the sum of the amounts appropriated for reimbursement under section 704.1(a) during the fiscal year is not at least equivalent to the aggregate child welfare needs-based budget for that fiscal year:

(1) Each county shall be provided a proportionate share allocation of that appropriation calculated by multiplying the sum of the amounts appropriated for reimbursement under section 704.1(a) by a fraction, the numerator of which is the amount determined for that county's child welfare needs-based budget and the denominator is the aggregate child welfare needs-based budget.

(2) Notwithstanding subsection (a), a county shall be

allowed reimbursement beyond its proportionate share allocation for that fiscal year for expenditures made in accordance with an approved plan and needs-based budget, but not above that amount determined to be its needs-based budget.

(d) For the purpose of this section, an appropriation shall be considered equivalent to the aggregate child welfare needs if it is equivalent to the result obtained by calculating the aggregate child welfare needs minus the county share of Youth Development Center costs and minus the Social Security Act Title IV-B funding[, provided, however, an appropriation shall be deemed equivalent if it is equal to eighty-two percent of the result in 1991-1992, ninety percent of the result in 1992-1993 and ninety-five percent of the result in 1993-1994].

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(e) The department shall, by regulation, define allowable costs for authorized child welfare services, provided that no regulation relating to allowable costs shall be adopted as an emergency regulation pursuant to section 6(b) of the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."