



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 50

131st General Assembly  
(As Re-reported by H. Finance)

**Reps.** Pelanda and Grossman, Sears, Driehaus, Stinziano, Rogers, Fedor, Rezabek, Blessing, Maag, Lepore-Hagan, LaTourette, Amstutz, Boyd, Kuhns

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## BILL SUMMARY

- Requires the Director of Job and Family services to submit amendments to the state's plan for child welfare services to expand foster care and adoption assistance for persons up to age 21.
- Establishes qualification standards and various other procedures and requirements for receiving payments under the foster care and adoption assistance expansion.
- Requires the Department of Job and Family Services to adopt rules to implement the foster care and adoption assistance expansion, including a rule to create an advisory council to evaluate and make recommendations regarding the bill's statewide implementation and rules establishing the scope of practice and training for foster care workers and their supervisors.
- Makes an appropriation to provide for the planning for, and the expansion of, the foster care and adoption assistance payments.
- Establishes the "bill of rights of a ward."
- Requires the probate court to furnish appointed guardians with a guardianship guide that includes the "bill of rights of a ward," if such a guide has been made available by the Attorney General or Ohio Judicial Conference.
- Adds minimum age limits for children determined to be abused, neglected, or dependent to be placed in planned permanent living arrangements.
- Makes changes regarding the provision of independent living services by a public children services agency or private child placing agency.

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## CONTENT AND OPERATION

### Extension of foster care and adoption assistance payments up to age 21

The bill requires the Director of Job and Family Services, by May 1, 2016, to submit two amendments to the state's plan for child welfare services to the United States Secretary of Health and Human Services. The first amendment is to expand federal Title IV-E foster care payments. The second amendment is to expand adoption assistance. With the first amendment (Title IV-E payments), the plan would permit payments directly to, or on behalf of, persons up to age 21. The second amendment (adoption assistance payments) would permit payments to the adoptive parents with respect to an adopted person up to age 21. All payments are to be made in accordance with federal law, as generally proposed to be adopted as Ohio law by the bill (described below).<sup>1</sup> The Department of Job and Family Services (ODJFS) is required to pay the full nonfederal share of the payments required under the bill. No public children services agency (PCSA) is to be responsible for those costs.<sup>2</sup>

#### Qualifications for foster care payments

To qualify for the foster care payments as provided in the bill, a person must:

- (1) Have reached age 18, but not yet reached age 21;
- (2) Sign a voluntary participation agreement;
- (3) Have been in the custody of a PCSA upon reaching age 18;<sup>3</sup> and
- (4) Meet at least one of the following criteria:
  - (a) Is completing secondary education or a program leading to an equivalent credential;
  - (b) Is enrolled in an institution that provides post-secondary or vocational education;
  - (c) Is participating in a program or activity designed to promote, or remove barriers to, employment;

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<sup>1</sup> R.C. 5101.141 and 5101.1411.

<sup>2</sup> R.C. 5101.1413.

<sup>3</sup> R.C. 5101.1411(A)(1).



(d) Is employed for at least 80 hours per month; or

(e) Is incapable of doing any of the activities described in (a) to (d) above because of a medical condition, which incapability is supported by regularly updated information in the case plan of the child.<sup>4</sup>

### **Qualifications for adoption assistance payments**

To qualify for the adoption assistance payments as provided in the bill, an adoptive parent must meet all the following requirements:

(1) Have adopted a person while the adopted person was 16 or 17 years old and the adopted person had been in the custody of a PCSA or the parent enters into an adoption assistance agreement under the federal Adoption and Guardianship Assistance Program;

(2) The adopted person reached age 18, but not yet reached age 21;

(3) The parent maintains parental responsibility to that adopted person;<sup>5</sup>

(4) The adopted person meets at least one of the following criteria:

(a) Is completing secondary education or a program leading to an equivalent credential;

(b) Is enrolled in an institution that provides post-secondary or vocational education;

(c) Is participating in a program or activity designed to promote, or remove barriers to, employment;

(d) Is employed for at least 80 hours per month; or

(e) Is incapable of doing any of the activities described in (a) to (d) above because of a medical condition, which incapability is supported by regularly updated information in the case plan of the child.<sup>6</sup>

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<sup>4</sup> R.C. 5101.1411(A)(1) and (C); 42 U.S.C. 675(8)(B)(iv).

<sup>5</sup> R.C. 5101.1411(B)(1).

<sup>6</sup> R.C. 5101.1411(C).

## **Application, termination, and resumption of payments**

The bill provides that any person who qualifies may apply for foster care payments under the bill and may make the appropriate application at any time. An adoptive parent applying for adoption assistance payments may request an extension of adoption assistance payments at any time before the adopted person reaches age 21. Any person receiving foster care payments, or on whose behalf such foster care payments are received, or any adoptive parent receiving adoption assistance payments, under the bill may refuse them at any time, but must reapply if the person or adoptive parent seeks to receive the payments again at a later date. The bill also provides that if ODJFS terminates foster care and adoption assistance payments, that determination is subject to adjudication under the Administrative Procedure Act (R.C. Chapter 119.).<sup>7</sup>

## **Other services**

The bill provides that a person who is directly receiving foster care payments, or on whose behalf such foster care payments are received, or an adoptive parent receiving adoption assistance payments and the adopted person, as provided in the bill, are eligible for services set forth in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351, 122 Stat. 3949).<sup>8</sup>

Additionally, the bill provides that a person who is receiving foster care payments, or on whose behalf such foster care payments are received, may be eligible to reside in a supervised independent living setting, including apartment living, room and board arrangements, college or university dormitories, host homes, and shared roommate settings.<sup>9</sup>

## **Voluntary participation agreements**

The bill provides that a child who receives foster care payments, or on whose behalf payments are received, may enter into a voluntary participation agreement with ODJFS or its designee for the child's care and placement. A voluntary participation agreement expires after 180 days and may not be renewed without court approval. ODJFS or its designee must seek approval from the court to extend the care and placement with ODJFS or its designee prior to the agreement's expiration if the extension is in the child's best interest.<sup>10</sup> The bill provides that the court retains

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<sup>7</sup> R.C. 5101.1411(A)(2), (B)(2), (D), and (F).

<sup>8</sup> R.C. 5101.1411(E)(1).

<sup>9</sup> R.C. 5101.1411(E)(2).

<sup>10</sup> R.C. 5101.1412.

jurisdiction over a person who is qualified for foster care payments and who is subject to a voluntary participation agreement that is in effect.<sup>11</sup>

## **Rules**

The bill requires ODJFS to adopt rules necessary to carry out the provisions of the bill, including rules that do the following:

- Allow a person who is directly receiving foster care payments, or on whose behalf such foster care payments are received, or a person whose adoptive parents are receiving adoption assistance payments, to maintain eligibility while transitioning between qualified employment or educational activities;
- Require a 30-day notice to a person determined to be ineligible before termination of payments under the bill.<sup>12</sup>

## **Advisory council**

In addition to the rules described above, the bill requires ODJFS to create an advisory council to evaluate and make recommendations for statewide implementation of the bill's provisions.<sup>13</sup>

## **Foster care worker and supervisor training and oversight**

ODJFS rules must also establish the scope of practice and training necessary for foster care workers and their supervisors who care for persons receiving foster care payments, or on whose behalf such payments are received.<sup>14</sup> The training required by rule must be provided by the Ohio Child Welfare Training Program.<sup>15</sup>

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<sup>11</sup> R.C. 2151.353(F)(1).

<sup>12</sup> R.C. 5101.1414(A) and (B).

<sup>13</sup> R.C. 5101.1414(C).

<sup>14</sup> R.C. 5101.1414(D).

<sup>15</sup> R.C. 5103.30(F).



## Oversight of ODJFS duties under amended state plan

The bill permits ODJFS to contract with another person to carry out the bill's new duties under the amended plan for foster care and adoption assistance, to the extent permitted by federal law.<sup>16</sup>

### Appropriation

The bill contains an appropriation to implement the planning for, and the actual expansion of, services to age 21.<sup>17</sup>

### Background

Generally, foster care maintenance and adoption assistance payments for a child terminate at age 18 because funding is unavailable after the end of the month of the child's 18th birthday. In Ohio, foster care and adoption assistance funding is a combination of state and federal funds. To be eligible for federal funds, Ohio must have a state plan in place that complies with the requirements and conditions of Title IV-E of the Social Security Act. One requirement is that any child under age 18 be eligible for foster care maintenance or adoption assistance payments.<sup>18</sup>

### Federal Fostering Connections to Success and Increasing Adoptions Act

While eligibility until age 18 continues to be a requirement under federal law, Congress enacted the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351, 122 Stat. 3949) which gives states the option to extend foster care maintenance and adoption assistance payment eligibility for a child who has not yet attained 19, 20, or 21 years of age and who meets the criteria described in (4)(a) to (e) above under "**Qualifications for foster care payments**" and "**Qualifications for adoption assistance payments.**"

### Guardianship guide

The bill requires the clerk of the probate court to furnish to a guardian a guardianship guide, created either by the Attorney General or the Ohio Judicial Conference. Either guide created must include the "bill of rights of a ward," which are enumerated in the bill and listed below under "**Bill of rights of a ward.**"<sup>19</sup> For purposes

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<sup>16</sup> R.C. 5101.141(B)(2).

<sup>17</sup> Sections 3 and 4.

<sup>18</sup> 42 U.S.C. 671, 672(a)(1)(B) and (a)(3), 673, and 674; 45 C.F.R. 233.90(b); R.C. 5101.141; and O.A.C. 5101:2-47-12(E), 5101:2-49-02, and 5101:2-49-04.

<sup>19</sup> R.C. 2111.011(A) and (B).



of the bill, a "guardian" is, generally, a person or entity appointed by a probate court to care and manage the person, estate, or both of an incompetent or minor. A "ward" is a person for whom a guardian or the probate court is acting as provided in Ohio's guardianship law.<sup>20</sup>

A guide must be furnished upon the appointment of the guardian or, if the guardian was appointed prior to the bill's effective date, upon the first filing by the guardian with the probate court of either of the following:

- A guardian's account, other than a final account, that is generally required to be filed biennially under current law;
- A report of a guardian of an incompetent person that is generally required to be filed biennially under current law.

The probate court must fulfill the requirements imposed by the bill, as described above. But those requirements can only be fulfilled if the Attorney General or the Ohio Judicial Conference prepares a guardianship guide.<sup>21</sup>

The bill does not directly authorize or require that the Attorney General create a guardianship guide. The current Attorney General, however, has created a guide that meets the requirements of the bill.<sup>22</sup> If a guide has been made available by the Attorney General, the clerk of the probate court must furnish the most recent version of the guide to a guardian upon the guardian's appointment after the most recent version of the guide is prepared or, if the guardian was appointed prior to the date of the most recent version of the guide, upon the first filing by the guardian with the probate court of the guardian's account or report described above after that date.<sup>23</sup>

Alternatively, the bill permits the Ohio Judicial Conference, by July 1, 2015, to create an alternative to the Attorney General's guardianship guide, at the Conference's own cost. The alternative guide is to be distributed in the same manner as the Attorney General's guide is to be distributed. An alternative guide created by the Conference must include the Ward's Bill of Rights created by the bill.

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<sup>20</sup> R.C. 2111.01(A) and (B), not in the bill.

<sup>21</sup> R.C. 2111.011(A).

<sup>22</sup> See, [http://www.ohioattorneygeneral.gov/Files/Publications/Publications-for-Consumers/Ohio-Guardianship-Guide-\(1\)](http://www.ohioattorneygeneral.gov/Files/Publications/Publications-for-Consumers/Ohio-Guardianship-Guide-(1)) (last visited May 4, 2015).

<sup>23</sup> R.C. 2111.011(B)(1).



The bill prohibits courts and other entities from creating or distributing a substitute to either the Attorney General's or Conference's guardianship guide.<sup>24</sup>

### **Form acknowledging receipt of guardianship guide**

The bill requires the probate court to establish a form for a guardian to sign acknowledging that the guardian received the following:<sup>25</sup>

- The Ohio guardianship guide;
- The bill of rights of a ward.

The guardian must sign the form upon receiving the Ohio guardianship guide with a ward's bill of rights.<sup>26</sup>

### **Bill of rights of a ward**

The bill states that a ward is entitled to certain rights that the guardian cannot change and continues to have these rights after a guardianship is established. These rights are as follows:<sup>27</sup>

- (1) To be treated with dignity and respect;
- (2) To exercise control over all aspects of life that the court has not delegated to the guardian;
- (3) To appropriate services suited to the ward's needs and conditions, including mental health services and excluding abortion services;
- (4) To have the guardian consider the ward's personal desires, preferences, and opinions;
- (5) To safe, sanitary, and humane living conditions within the least restrictive environment that meets the ward's needs;
- (6) To marry, if legally able;
- (7) To have explanations of any medical procedures or treatment;

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<sup>24</sup> R.C. 2111.011(B)(2).

<sup>25</sup> R.C. 2111.011(C).

<sup>26</sup> R.C. 2111.011(D).

<sup>27</sup> R.C. 2111.011(E).



- (8) To have personal information kept confidential;
- (9) To review personal records, including medical, financial, and treatment records;
- (10) To speak privately with an attorney, ombudsman, or other advocate;
- (11) To an attorney and independent expert evaluator, and to have these professionals paid by the court if the ward is indigent;
- (12) To petition the court to modify or terminate the guardianship;
- (13) To bring a grievance against the guardian, request the court to review the guardian's actions, request removal and replacement of the guardian, or request that the court restore the ward's rights if it can be shown that the ward has regained the capacity to make some or all decisions;
- (14) To request a hearing to review the continued need for the guardianship at least once a year;
- (15) To drive, if legally able.

### **Planned permanent living arrangements**

The bill requires that a child who has been adjudicated to be an abused, neglected, or dependent child must be at least 16 years old before being placed in a planned permanent living arrangement if the child (1) is unable to function in a family-like setting due to physical, mental, or psychological problems or needs and (2) must remain in residential or institutional care.<sup>28</sup>

Similarly, with respect to a child in temporary custody, if a planned permanent living arrangement dispositional order is requested on termination of temporary custody, the child must be at least 16 years old before being placed in such an arrangement if either of the following apply:

- (1) The child is (a) unable to function in a family-like setting due to physical, mental, or psychological problems or needs and (b) must remain in residential or institutional care;

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<sup>28</sup> R.C. 2151.353(A)(5).

(2) All of the following apply: (a) the child's parents have significant physical, mental, or psychological problems, (b) adoption is not in the child's best interest, and (c) the child retains a significant and positive relationship with a parent or relative.<sup>29</sup>

Under current law, the requirement that the child be at least 16 years old is not applicable to the situations described above for which a planned permanent living arrangement disposition can be requested.<sup>30</sup>

### **Independent living services**

The bill requires a PCSA or private child placing agency that has temporary or permanent custody of, or is providing care in a planned permanent living arrangement to, a child who is at least 14 years old, to provide independent living services to the child. If housing is provided as part of the independent living services and the child is 16 or 17 years old, the housing must be supervised or semi-supervised by an adult (see **COMMENT**).<sup>31</sup>

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### **COMMENT**

The provision requiring some level of adult supervision regarding housing as provided under independent living services applies, under the bill, only to 16 and 17 year olds receiving housing. It is not clear whether adult supervision is required, under the bill, if independent-living-services housing is provided to 14 and 15 year olds.

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### **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-10-15
Reported, H. Community & Family Advancement	04-29-15
Re-referred by H. Rules & Reference	05-05-15
Re-reported, H. Finance	05-06-15

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<sup>29</sup> R.C. 2151.415(C)(1).

<sup>30</sup> R.C. 2151.353(A)(5) and (C)(1).

<sup>31</sup> R.C. 2151.82.

