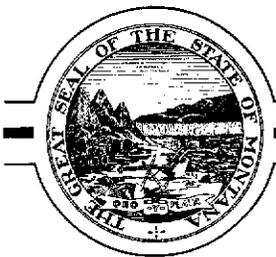


DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES ¹
3-17-05
HB 420



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To: Sen. Mike Wheat, Chair
Senate Judiciary Committee

From: Shirley K. Brown, M.A., J.D. *Shirley K Brown*
Administrator, Child and Family Services Division

Re: HB 420

Date: March 15, 2005

On March 14, 2005, I discussed Rep. Wagman's proposed amendments to HB 420 with Rep. Wagman. After our discussion, Rep. Wagman concurred with my concerns and indicated that he would be sending a note to you withdrawing the amendments. I believe Rep. Wagman found the following reasons compelling in his decision to withdraw the amendments:

1. Placement with extended family members is currently adequately addressed in Title 41, chapter 3. Placement with extended family members is addressed in the following provisions:
 - a. Mont. Code Ann. § 41-3-101(3) – it is the public policy of the State of Montana to place a child with extended family members when it is in the best interests of the child;
 - b. Mont. Code Ann. § 41-3-427(2)(b) – under a petition for immediate protection and emergency protective services the department has the right to place the child with, among others, a kinship family;
 - c. Mont. Code Ann. § 41-3-427(2)(f) – under a petition for immediate protection and emergency protective services, the court may require that the parent provide the social worker with the names and addresses of extended family members who may be considered as placement options for the child;
 - d. Mont. Code Ann. § 41-3-437(7)(b)(iii) – at the adjudication of the child, the court may order the social worker to evaluate relatives as possible caretakers;
 - e. Mont. Code Ann. § 41-3-438(3)(d)(iii) – one dispositional option is that the court may transfer temporary legal custody of the child to a relative recommended by the social worker and who the court finds to be qualified to care for the child;

- f. Mont. Code Ann. § 41-3-438(4) – criteria which must be met if the court awards temporary legal custody of a child adjudicated on the basis of abandonment to an extended family member;
- g. Mont. Code Ann. § 41-3-439 – placement priority to extended family member if a child is adjudicated on the basis of abandonment;
- h. Mont. Code Ann. § 41-3-445(6)(d)(e) – one permanency option for a child is that the child remain in the long-term custody of the department if the child is placed with a “fit and willing relative”; and
- i. Indian Child Welfare Act which provides placement preferences which must be complied with if the child is Indian – the first of these is placement with extended family.

2. Currently when a worker has identified one extended family member for placement and the child is doing well, the worker may not offer other family members the opportunity to be considered. In many cases there are “dueling grandparents/extended family members” where one set of grandparents does not agree that the other set of grandparents may be the better placement for the child. This is particularly difficult when the child is an Indian as defined by the Indian Child Welfare Act, one set of grandparents is Indian, the other is not, and the child’s Indian tribe is involved in the decision-making. The amendments may be interpreted as requiring additional investigation into other extended family members even though the child is doing well in the child’s current kinship placement.

3. The probability of the extended family member disagreeing with the reasons for not placing with that family is great. Because of this, the amendments may increase conflict between the extended family, the child’s parents, and the social worker. Reasons the social worker does not place with extended family members who request placement include, but are not limited to:

- a. There may be conflict between the parents and grandparents which may lead to an undermining of the work of the parents;
- b. Extended family members may not agree with the plan to reunify the parent with the child and sabotage the reunification plan;
- c. The extended family member may not live in the same community and not accept the fact that the social worker cannot facilitate visitation between communities;
- d. If the extended family member lives out-of-state and the plan is reunification;
- e. The issues which led to the placement of the child are trans-generational but the extended family member does not accept that;
- f. The extended family members deny the reasons for protective services involvement and don’t believe the mistreatment actually occurred;

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- g. The goal for the child is reunification and the extended family member constantly denigrates the parents in the presence of the child;
- h. The child's parents do not want the child placed with the extended family member but don't want the social worker to tell them.

4. Increased workload – because the amendments establish a placement priority for all children adjudicated a youth in need of care, the number of formal investigations/home studies of extended family members may increase. At the current time social workers frequently verbally inform family members of the reasons for not placing the child with them—these amendments would require a letter each time the social worker did not place with the extended family member(s). This would be onerous given that social workers currently do not have enough time to accomplish much of the required paperwork.

As I indicated above, Rep. Wagman will be communicating with you on his intent to withdraw the amendments. However, I thought the Committee members may be interested in the reasons Rep. Wagman decided to withdraw them. If the Committee would like any additional information regarding this matter, please let me know.

Xc: Rep. Pat Wagman