

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 3659

Seventy-Sixth Oregon Legislative Assembly – 2011 Regular Session
Legislative Fiscal Office

Prepared by: Kim To
Reviewed by: Sheila Baker, Laurie Byerly, Linda Ames
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Measure Description:

Prohibits the Department of Human Services from adopting rules that impose undue burden and expense on persons, entities and facilities regulated by the department; and rules that affect board membership of entities regulated by department unless rules are related to child safety and welfare. Requires the department, Oregon Health Authority and Oregon Youth Authority to conduct a study of regulation and oversight of children's programs and report to an interim legislative committee related to human services. Requires the department, Oregon Health Authority and Oregon Youth Authority to adopt rules and to accept and consider proposals for improving administrative efficiency and reducing administrative burden from programs serving children.

Government Unit(s) Affected:

Department of Human Services (DHS), Oregon Youth Authority (OYA), Oregon Health Authority (OHA)

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

House Bill 3659 adds provisions to statutes relating to child welfare services. The bill:

1. Prohibits the Department of Human Services (DHS) from adopting rules that affect board membership of entities regulated, certified, directed, licensed and contracting with the department.
2. Instructs DHS, the Oregon Health Authority (OHA) and the Oregon Youth Authority (OYA) to conduct a study of the regulation and oversight of programs serving children that is licensed by DHS, OHA or OYA to determine if these programs are subject to regulation or oversight by multiple public bodies, and if so, what measures can be taken to reduce duplication in order to improve efficiency and cost savings.
3. Directs DHS, OHA and OYA to prepare a report of the findings of the above study including proposals for administrative changes to reduce duplication improve efficiency and increase cost savings. This report is to be submitted to an appropriate legislative committee no later than December 1, 2011.

In addition, the bill requires DHS, OHA and OYA to:

1. Develop a standard for child safety; the agencies may only adopt rules applicable to children's programs that relate directly to the standard.
2. Adopt rules allowing DHS, OHA and OYA to accept electronic copies of documents required to be filed by children's programs. For each rule adopted, DHS, OHA and OYA are required to identify whether the rule is required by law.
3. Establish a methodology for determining the fiscal impact of rules adopted by the DHS, OHA and OYA that affect children's programs.
4. Adopt rules allowing a children's program that has demonstrated three years of satisfactory compliance with reviews and audits to be exempted from DHS oversight for the following two years.

The bill authorizes children's programs providers to submit proposals to DHS, OHA and OYA to simplify or streamline audits, reviews, reports or licensing requirements imposed by DHS, OHA and OYA that overlap or impose undue administrative burdens on children's programs. DHS, OHA and OYA are

required to approve or deny these proposals within 60 days of receiving the proposals. DHS, OHA and OYA determination of approval or denial are not final and are subject to administrative or judicial review.

Department of Human Services (DHS) and Oregon Health Authority (OHA)

Section 2 of HB 3659 prohibits DHS from adopting rules that would impose undue burden and expense on persons, entities, and facilities regulated by DHS. The bill does not specify what constitutes "undue burden and expense" on persons, entities and facilities regulated by DHS. If this bill passes, DHS would require legal review and assistance from the Attorney General's office to interpret whether or not current statute, policy or regulations would cause undue burden on a provider. At this time, the exact amount of legal services required by the Department of Justice cannot be quantified. However, as a point of reference, the 2011-13 rate for Assistant Attorney General services is listed at \$154 per hour. Assuming the agency would require approximately 1,000 hours of legal review and assistance, passage of this bill could result in a \$154,000 increase in attorney general costs for DHS.

HB 3659 requires DHS, OHA and OYA to conduct a study of regulation and oversight of children's programs and report to an interim legislative committee on human services. The bill also requires DHS, OHA and OYA to establish a methodology for determining the fiscal impact of rules adopted by DHS, OHA and OYA that affect children's programs. DHS, OHA and OYA are also mandated to adopt rules allowing a children's program that has demonstrated three years of satisfactory compliance with reviews and audits to be exempted from oversight for the following two years. The bill authorizes children's programs providers to submit proposals to DHS and OHA and OYA to simplify or streamline audits, reviews, reports or licensing requirements imposed by DHS, OHA and OYA that overlap or impose undue administrative burdens on children's programs. DHS, OHA and OYA are required to approve or deny these proposals within 60 days of receiving the proposals. To carry out these provisions of the bill, DHS anticipates hiring two full time permanent Compliance Specialist 3 positions. One position would be dedicated to Children, Adults and Family (CAF) and one to Seniors and People with Disabilities (SPD). The department estimates the staffing costs to be 2.00 FTEs and \$381,014 total funds (\$229,102 General Fund and \$151,912 Federal Funds) per biennium.

In addition, DHS reports that HB 3659 could potentially conflict with current statutes. For example, House Bill 2990 (2009) authorized DHS to charge certain fees for licensing and to impose certain penalties on persons, entities and facilities regulated by DHS. To date, the department has not collected these fees and penalties. However, if the fees and penalties authorized by this statute are determined to fall under the category of "undue burden or expenses" on a provider, passage of this bill could result in a loss of these potential revenues.

Oregon Youth Authority (OYA)

HB 3659 requires DHS, OHA and OYA to conduct a study of regulation and oversight of children's programs and report to interim legislative committee on human resources. The bill also requires DHS, OHA and OYA to establish a methodology for determining the fiscal impact of rules adopted by DHS, OHA and OYA that affect children's programs. DHS, OHA and OYA are also mandated to adopt rules allowing a children's program that has demonstrated three years of satisfactory compliance with reviews and audits to be exempted from oversight for the following two years. The bill authorizes children's programs providers to submit proposals to DHS and OHA and OYA to simplify or streamline audits, reviews, reports or licensing requirements imposed by DHS, OHA and OYA that overlap or impose undue administrative burdens on children's programs. DHS, OHA and OYA are required to approve or deny these proposals within 60 days of receiving the proposals. To carry out these provisions of the bill, OYA anticipates establishing a Program Analyst 3 – Community Resources Liaison position. The agency estimates the staffing costs to be 1.00 FTE and \$198,078 total funds (\$166,542 General Fund and \$31,536 Federal Funds) per biennium.

The Legislative Fiscal Office notes that DHS, OHA and OYA determination of approval or denial of proposals to streamline processes are not final and are subject to administrative or judicial review. Passage of this bill could therefore result in increased costs for administrative hearings and judicial reviews in addition to the staffing costs detailed above.