MEMORANDUM

JOINT BUDGET COMMITTEE

To	Members of the Joint Budget Committee
From	Robin J. Smart, JBC Staff (303-866-4955)
Date	March 15, 2017
Subject	LLS No. 17-0974, Concerning child welfare licensed out-of-home placement provider rates

This memorandum provides information about bill draft LLS No. 17-0974, Concerning child welfare licensed out-of-home placement provider rates:

Rate Setting Methodology

- This bill concerns the development of a rate-setting methodology for licensed out of home placement providers.
- Title IV-E of the Social Security Act requires the state to have a rate setting methodology.
- Section 26-5-104 (6) (d), C.R.S., currently requires that the Department of Human Services to convene a group of stakeholders to review the methodology by which counties negotiate rates, services, and outcomes with providers by July 1 of each even-numbered year.
- According to the Department and other stakeholders, since 2010 a rate setting methodology has not been developed, and while JBC staff believes that some methodology might be used, JBC staff has been unable to determine what it is and there is no specific description of a methodology in rule.
- Because the group identified in the statute has yet to develop a methodology, JBC staff asked the drafter to change the bill draft to read that the Department will hire a third party vendor to gather the necessary information and develop the rate setting methodology. This results in the need for an appropriation of $300,000 General Fund.

Funding for Contracted Licensed Out of Home Placement Providers

- The bill defines "licensed out-of-home placement providers" as "a licensed residential child care facility, a child placement agency, or a secure residential treatment center, as defined in Section 26-6-102, C.R.S."
- Although some counties would prefer to refer to these organizations a "vendors," the legal term for them has always been "providers." JBC staff will continue to refer to them as "providers."
- Provider organizations are typically non-public organizations that have the opportunity to fund-raise to make up the shortfall resulting from county rates. While JBC staff does not believe that county rates should cover the full cost of operating one of these organizations, JBC staff and stakeholders agree that some contracted rates with providers may not be at the level they should be (see the report required by S.B. 16-201).
- Based on information from Child Placement Agencies and Residential Child Care Facilities for FY 2014-15, JBC staff estimates that county contracts reimbursed less than 89.0 percent of services provided (excluding treatment costs paid by Medicaid and school districts). In FY 2015-16, total out of home care expenses were $85,463,584. If the reimbursement remained at 89.0 percent, reimbursement from counties was approximately $75,874,570, leaving $9,589,014 to be covered by the provider.
- In the past years, five licensed providers have closed their doors. The importance of the above information is simply that if providers are unable to continue to operate, the $9.6 million that is

currently covered by the providers themselves will have to be covered by counties or the state. JBC staff is concerned that the actual cost to the counties and/or state will be higher, however, because providers report that their salaries are lower than those paid by counties or the state.

ADMINISTRATIVE COSTS

- Administrative costs associated with child welfare services have increased by 18.1 percent in the past five years; whereas services have decreased by 13.2 percent. These costs only reflect the allocations made to counties through the Child Welfare Block allocation. It does not include appropriations for new county level staff. If these administrative costs are factored in, the increase is over 20.0 percent. The table below reflects actual expenditures as reported in the County Financial Management System.

CATEGORY	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Administration	$170,366,034.71	$173,572,498.85	$174,379,339.84	$186,843,242.96	$201,198,708.12
Services	154,515,376.72	146,997,835.22	137,271,666.47	134,015,887.74	134,112,955.44
Total	$324,881,411.43	$320,570,334.07	$311,651,006.31	$320,859,130.70	$ 335,311,663.56

*Services include Children's Habilitation Residential Program, Residential Mental Health, Case Services, Out of Home, Child Welfare Related Child Care, Subadopt, and Relative Guardianship

COUNTY ALLOCATIONS

- The Long Bill contains three line items that fund county block allocations:

LINE ITEMS THAT FUND COUNTY BLOCK GRANTS FY 2017-18 RECOMMENDED APPROPRIATION					
LINE ITEM	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROP. FUNDS	FEDERAL FUNDS
Child Welfare Services	$350,945,409	$185,114,591	$65,171,137	$15,197,702	$85,461,979
County Level Child Welfare Staffing	$15,073,709	$13,522,566	$1,525,636	$0	$25,507
Family and Children's Programs	$54,003,032	$45,449,550	$5,645,945	$0	$2,907,537
TOTAL APPROPRIATION TO 3 LINE ITEMS	**$420,022,150**	**$244,086,707**	**$72,342,718**	**$15,197,702**	**$88,395,023**

- When a provider rate adjustment is approved by the General Assembly, it is applied to the full amount appropriated in all three line items, regardless of its use (i.e. county staffing costs, direct services and associated contracts, adoption costs, other administrative or support functions that support child welfare services, etc.). **For example, a 1.0 percent provider rate increase results in an increased appropriation of $4,200,221 total funds, including $2,440,867 General Fund, in line items that fund block allocations to counties.**
- Counties that use the "base anchor rate" identified in Trails automatically pass a provider rate adjustment through to providers. Counties that do not use the "base anchor rate" may or may not pass the provider rate adjustment through to providers, because currently the entire contract rate is negotiated. During stakeholders meetings concerning this bill draft, some counties admitted using the provider rate increases to balance the budget.
- A county may approve salary increases for county employees in years in which the General Assembly has not approved a provider rate increase. In addition, a county allocation may be reduced in a year in which the General Assembly does approve an increase, and even if the county employee salaries remain stable, the pot of money used for provider contracts may also be smaller than the previous year. This has the effect of reducing the pot of money available for

contracts with providers. However, JBC staff believes that this should be addressed in the allocation formula.

- Counties are not specifically identified as providers in statute, however appropriations that fund county staff receive provider rate adjustments.

STAKEHOLDER CONCERNS

- JBC staff held two large stakeholder meetings totaling approximately five hours, and also had several small meetings with the Department, providers, and counties.
- Based on the meetings, JBC staff is aware that no stakeholder group will be entirely satisfied with this bill draft. However, JBC staff believes that the bill draft in its current form attempts to address some of the bigger issues affecting the child welfare system as a whole.
- The Department has not yet taken a position on the bill draft.

SUGGESTED CHANGES NOT REFLECTED IN THE BILL DRAFT

- Include language specifying that a supplemental will be submitted by the Department to address increased costs for Child Welfare Services that result from the new methodology.
- Use the phrase "EVALUATE AND NEGOTIATE" as opposed to just "negotiate"
    - Page 2, line 2 of summary, after "counties" insert "EVALUATE AND"
    - Page 3, line 11, after "may" insert "EVALUATE AND"
    - Page 3, line 20, after "counties" insert "EVALUATE AND"
    - Page 4, line 8, after "counties" insert "EVALUATE AND"
- Add language that connects the daily rate with the methodology, for example:

  Page 6, line 9, after "determined." add "THE METHODOLOGY MUST UTILIZE THE DAILY RATE."

- Page , line 11 strike "June" and replace with "JULY"

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

DRAFT
3.13.17

DRAFT

LLS NO. 17-0974.01 Jane Ritter x4342 **COMMITTEE BILL**

Joint Budget Committee

BILL TOPIC: "Child Welfare Provider Rates"

A BILL FOR AN ACT

CONCERNING CHILD WELFARE LICENSED OUT-OF-HOME PLACEMENT PROVIDER RATES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)

Joint Budget Committee. The bill sets forth guidelines for the establishment of provider rates for licensed out-of-home placement providers (providers). Rules adopted by the department of human services (department) concerning provider rates shall include cost-of-living adjustments and provider rate increases approved by the general

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

assembly.

The department is directed to continue completing an annual review of the methodology by which counties negotiate provider rates and outcomes and submit a report to the joint budget committee. As part of the continuing review, the department shall contract with an independent vendor to:

- Perform a salary survey and study related to the delivery of child welfare services. The study must include salary surveys for providers; child protection employees; residential child care facility employees; and state and county employees involved with the provision of child welfare services.
- Perform an actuarial analysis of actual vendor costs to do business in the context of current service demands; and
- Develop a rate-setting methodology for provider compensation using the salary survey and actuarial analysis. In developing the rate-setting methodology, the independent vendor shall solicit input from representatives of the state department, counties, the provider community, and the department of health care policy and financing. The rate-setting methodology must clearly include a process by which the full amount of any provider rate adjustments to the base rate or previously contracted rate approved by the general assembly are included as part of any final contract with a provider.

The department shall provide the joint budget committee with a report defining the new rate-setting methodology on or before April 2, 2018.

The new rate-setting methodology must be implemented on or before June 1, 2018, except for those rates that must be approved by the federal centers for medicare and medicaid services.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 26-5-104, **amend** (6); and **add** (7) and (8) as follows:

26-5-104. Funding of child welfare services - rules - report -provider contracts - funding mechanism review - definitions. (6) **County negotiations with providers.** (a) Subject to rules promulgated by the state department pursuant to ~~paragraph (b) of this~~

~~subsection (6)~~ SUBSECTION (6)(b) OF THIS SECTION, a county ~~shall be~~ IS authorized to negotiate rates, services, and outcomes with LICENSED OUT-OF-HOME PLACEMENT providers if the county has a request for proposal process in effect for soliciting bids from LICENSED OUT-OF-HOME PLACEMENT providers or another mechanism for evaluating the rates, services, and outcomes that it is negotiating with such LICENSED OUT-OF-HOME PLACEMENT providers that is acceptable to the state department.

(b) ~~No later than~~ ON OR BEFORE January 1, 2008, AND AS NECESSARY THEREAFTER, the state department shall promulgate rules governing the methodology by which counties may negotiate rates, services, and outcomes with licensed OUT-OF-HOME PLACEMENT providers.

(c) ~~A county that negotiates or renegotiates rates, services, and outcomes pursuant to paragraph (a) of this subsection (6) shall include as part of such negotiations or renegotiations cost of living adjustments and provider rate increases approved by the general assembly.~~

(d) By July 1, 2008, and by July 1 of each even-numbered year thereafter, the state department shall complete a review of the methodology by which counties negotiate rates, services, and outcomes with licensed OUT-OF-HOME PLACEMENT providers. The methodology used is governed by rules promulgated by the state department pursuant to ~~paragraph (b) of this subsection (6)~~ SUBSECTION (6)(b) OF THIS SECTION. In preparing for and conducting the review, the state department shall convene a group of persons representing the directors of county departments of human or social services and the LICENSED OUT-OF-HOME PLACEMENT provider community. ON OR BEFORE SEPTEMBER 1 OF EACH

FISCAL YEAR, THE GROUP SHALL SUBMIT A REPORT TO THE JOINT BUDGET COMMITTEE DETAILING ANY CHANGES TO THE RATE-SETTING METHODOLOGY THAT RESULTS FROM THE REVIEW CONDUCTED PURSUANT TO THIS SUBSECTION (6)(d).

(e) On or before ~~August 1, 2016~~ SEPTEMBER 29, 2017, as a continuation of the review conducted pursuant to ~~paragraph (d) of this subsection (6)~~ SUBSECTION (6)(d) OF THIS SECTION of the methodology by which counties negotiate rates, services, and outcomes with licensed OUT-OF-HOME PLACEMENT providers, the state department shall ~~convene a group of representatives from the state department, counties, the provider community, and the joint budget committee to review the rate-setting process for provider compensation. On or before December 15, 2016, the group shall provide the joint budget committee and the child welfare allocations committee with a report that recommends whether any changes to the rate-setting process for provider compensation are advisable and, if so, the recommended process or methodology. The group is not required to recommend changes to the current rate-setting process if it determines that the current rate-setting process is the preferable option.~~ CONTRACT WITH AN INDEPENDENT VENDOR TO:

(I) PERFORM A SALARY SURVEY RELATED TO THE DELIVERY OF CHILD WELFARE SERVICES. WHEN POSSIBLE, THE ENTITY MUST NOT DUPLICATE EXISTING EFFORTS THAT COLLECT PUBLIC EMPLOYEE SALARY INFORMATION BUT MUST INSTEAD INCORPORATE EXISTING INFORMATION INTO THE OVERALL ANALYSIS. THE SURVEY MUST INFORM THE DEVELOPMENT OF THE RATE-SETTING METHODOLOGY PURSUANT TO SUBSECTION (6)(e)(III) OF THIS SECTION AND MUST ACCOUNT FOR THE FUNCTIONS, RESPONSIBILITIES, QUALIFICATIONS, AND OTHER RELEVANT

INFORMATION FOR EACH POSITION. THE STUDY MUST ALSO GUARANTEE THAT AVAILABLE INFORMATION IS GATHERED FROM A DIVERSE RANGE OF GEOGRAPHICAL LOCATIONS THROUGHOUT COLORADO, INCLUDING URBAN, SUBURBAN, RURAL, AND MOUNTAIN RESORT COMMUNITIES. THE STUDY MUST INCLUDE SALARY SURVEYS FOR:

(A) LICENSED OUT-OF-HOME PLACEMENT PROVIDERS WHO HAVE A CONTRACT WITH THE STATE DEPARTMENT OR A COUNTY;

(B) CHILD PROTECTION AGENCY EMPLOYEES;

(C) RESIDENTIAL CHILD CARE FACILITY EMPLOYEES;

(D) STATE EMPLOYEES INVOLVED WITH THE PROVISION OF CHILD WELFARE SERVICES; AND

(E) COUNTY EMPLOYEES INVOLVED WITH THE PROVISION OF CHILD WELFARE SERVICES.

(II) PERFORM AN ACTUARIAL ANALYSIS OF ACTUAL VENDOR COSTS TO DO BUSINESS IN THE CONTEXT OF CURRENT SERVICE DEMANDS, INCLUDING SALARY COMPARISONS BETWEEN LICENSED OUT-OF-HOME PLACEMENT PROVIDER CATEGORIES AND OVERHEAD AND ADMINISTRATIVE COSTS. THE ANALYSIS MUST INFORM THE DEVELOPMENT OF THE RATE-SETTING METHODOLOGY PURSUANT TO SUBSECTION (6)(e)(III) OF THIS SECTION AND MUST ALSO GUARANTEE THAT AVAILABLE INFORMATION IS GATHERED FROM A DIVERSE RANGE OF GEOGRAPHICAL LOCATIONS THROUGHOUT COLORADO, INCLUDING URBAN, SUBURBAN, RURAL, AND MOUNTAIN RESORT COMMUNITIES.

(III) DEVELOP THE RATE-SETTING METHODOLOGY FOR LICENSED OUT-OF-HOME PLACEMENT PROVIDER COMPENSATION. THE INDEPENDENT VENDOR SHALL SOLICIT INPUT FROM REPRESENTATIVES FROM THE STATE DEPARTMENT, COUNTIES, THE LICENSED OUT-OF-HOME PLACEMENT

PROVIDER COMMUNITY, AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. THE METHODOLOGY MUST BE BASED ON EQUAL REPRESENTATION BY COUNTIES AND LICENSED OUT-OF HOME PLACEMENT PROVIDERS.

(f) ON OR BEFORE APRIL 2, 2018, THE STATE DEPARTMENT SHALL PROVIDE THE JOINT BUDGET COMMITTEE WITH A REPORT DEFINING THE RATE-SETTING METHODOLOGY DEVELOPED PURSUANT TO SUBSECTION (6)(e)(III) OF THIS SECTION, INCLUDING THE PROCESS THROUGH WHICH THE DAILY RATE WAS DETERMINED.

(g) THE METHODOLOGY MUST BE IMPLEMENTED ON OR BEFORE JUNE 1, 2018, EXCEPT FOR THOSE RATES THAT MUST BE APPROVED BY CMS. RATES THAT MUST BE APPROVED BY CMS MUST BE IMPLEMENTED UPON APPROVAL. IN THE EVENT THAT THE REPRESENTATIVES IDENTIFIED IN SUBSECTION (6)(e) OF THIS SECTION DO NOT AGREE ON THE RATE-SETTING METHODOLOGY ON OR BEFORE FEBRUARY 1, 2018, THE STATE DEPARTMENT, THE COUNTY REPRESENTATIVES, AND THE LICENSED OUT-OF-HOME PLACEMENT PROVIDERS SHALL SUBMIT ALTERNATIVES TO THE JOINT BUDGET COMMITTEE. THE JOINT BUDGET COMMITTEE SHALL THEN SELECT A METHODOLOGY PRIOR TO THE START OF THE SUCCEEDING STATE FISCAL YEAR.

(h) THE RATE-SETTING METHODOLOGY DEVELOPED PURSUANT TO SUBSECTION (6)(e)(III) OF THIS SECTION MUST CLEARLY INCLUDE A PROCESS THROUGH WHICH PROVIDER RATE ADJUSTMENTS, INCLUDING ANY COST OF LIVING ADJUSTMENT, THAT ARE APPROVED BY THE GENERAL ASSEMBLY MUST BE FACTORED INTO ESTABLISHING THE DAILY RATE AND A PROCESS THROUGH WHICH OUTCOMES RELATED TO THE STABILITY AND WELL-BEING OF THE CHILD ARE FACTORED INTO ESTABLISHING THE DAILY

RATE CONTRACT WITH A LICENSED OUT-OF-HOME PLACEMENT PROVIDER.

(7) ON OR BEFORE SEPTEMBER 1, 2018, AND ON OR BEFORE SEPTEMBER 1 OF EACH FISCAL YEAR THEREAFTER, THE STATE DEPARTMENT, WITH INPUT FROM COUNTIES, SHALL SUBMIT TO THE JOINT BUDGET COMMITTEE A REPORT INCLUDING INFORMATION ON WORKLOAD INCREASES OR DECREASES FOR THE PRECEDING CALENDAR YEAR AND THE COSTS ASSOCIATED WITH SUCH CHANGES. THE STATE DEPARTMENT IS ENCOURAGED TO INCLUDE IN THE REPORT DATA ON THE COST OF SERVING CHILDREN PLACED IN THE CARE OF LICENSED OUT-OF-HOME PLACEMENT PROVIDERS BASED ON CASE ACUITY.

(8) FOR THE PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ACUITY" MEANS THE LEVEL OF SERVICE NEEDED BY THE CHILD OR FAMILY.

(b) "CMS" MEANS THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(c) "LICENSED OUT-OF-HOME PLACEMENT PROVIDER" MEANS A LICENSED RESIDENTIAL CHILD CARE FACILITY, A CHILD PLACEMENT AGENCY, OR A SECURE RESIDENTIAL TREATMENT CENTER, AS DEFINED IN SECTION 26-6-102.

(d) "WORKLOAD" MEANS THE NUMBER OF CHILD WELFARE CHILD ABUSE AND NEGLECT HOTLINE CALLS, REFERRALS, ASSESSMENTS, OPEN CASES, OUT-OF-HOME PLACEMENTS, NEW ADOPTIONS, AND ADOPTION SUBSIDIES BEING HANDLED BY A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES.

Section 2. Appropriation. For the 2017-18 state fiscal year,

$300,000 is appropriated to the department of human services for use by the division of child welfare. This appropriation is from the general fund. To implement this act, the division may use this appropriation for the development of the child welfare rate-setting methodology.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.