

BILL ANALYSIS

C.S.H.B. 3691
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In recent years the state's foster care system has been shifting to a community-based care model since the enactment of S.B. 11 in 2017 which directed the Department of Family and Protective Services (DFPS) to implement a regional approach to administering foster or substitute care services. Interested parties have suggested that the transition to this new model of substitute care services has been hampered by inefficiencies. In a recent evaluation of the state's transition to the community-based care model, Texas Tech University provided new recommendations on ways DFPS can improve its implementation. By revising the initial statutes providing for the transition to community-based care and incorporating certain of the recommendations from that evaluation, C.S.H.B. 3691 seeks to increase the efficiency and flexibility of the state's foster care system by providing for the statewide implementation of community-based foster care and family preservation services.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 7 of this bill.

ANALYSIS

C.S.H.B. 3691 amends the Family Code to provide for the statewide implementation of community-based foster care by the Department of Family and Protective Services (DFPS). The bill redefines "community-based care" as the provision of child welfare services in accordance with state and federal child welfare goals by a community-based nonprofit or a local governmental entity under a contract that includes direct case management to prevent entry into foster care, reunify and preserve families, ensure child safety, permanency, and well-being, and reduce future referrals of children or parents to DFPS. The bill defines "child who is a candidate for foster care" as a child who is at imminent risk of being removed from the child's home and placed into the conservatorship of the department because of a continuing danger to the child's physical health or safety caused by an act or failure to act of a person entitled to possession of the child but for whom a court of competent jurisdiction has issued an order allowing the child to remain safely in the child's home or in a kinship placement with the provision of family preservation services.

C.S.H.B. 3691 revises legislative intent provisions to clarify that the services provided under the community-based care model include direct case management with the intent, in part, to prevent entry into substitute care and reunify and preserve families. The bill includes the

following among the measurable goals with respect to the provisions of community-based care for children:

- the reduction of the time a child is in the conservatorship of the department and placed in substitute care; and
- the preservation of families to avoid placing children in foster care.

The bill specifies that the goal relating to the placement of children with siblings is to be achieved when possible.

C.S.H.B. 3691 revises provisions requiring DFPS to develop and maintain a plan for implementing community-based care. Among other changes, the bill expands the plan's required components to do as follows:

- define the DFPS statewide strategic plan for implementing community-based care and the method DFPS uses to determine the cost of such implementation, including DFPS resources used to provide community-based care;
- include a timeline for the specific order and rationale for implementing community-based care in the catchment areas in Texas where community-based care will expand;
- delineate and define the method for determining the state-level and catchment-level resources to be transferred to a contractor by DFPS;
- include a detailed plan regarding contract monitoring and evaluation by DFPS;
- include an evaluation of each contractor's processes and fiscal and qualitative outcomes concerning the children and families in its care conducted by an entity based in Texas that is independent of DFPS and has demonstrated expertise in statistical, financial, actuarial, logistical, and operational analysis;
- require DFPS to transmit immediately on receipt all required reports and evaluations relating to the plan immediately to the relevant standing committees of the legislature and the office of the governor; and
- include a specific implementation plan for each catchment area identified for expansion of community-based care that includes a timeline for the transfer of community-based care services developed after consulting with local stakeholders, as appropriate, including certain stakeholders and other stakeholders identified as significant in a particular catchment area.

The bill requires DFPS, not later than August 31 each year, to provide a copy of the plan to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the legislature with jurisdiction over matters involving DFPS.

C.S.H.B. 3691, with respect to provisions relating to the qualifications and selection of a single source continuum contractor, does the following:

- specifies that in order to enter into a contract with DFPS to serve as a single source continuum contractor to provide community-based care service delivery an entity must be a nonprofit entity with a majority of its board members residing in Texas; and
- requires DFPS to request certain local stakeholders in the catchment area to provide any necessary information about the catchment area that will assist DFPS in preparing its request for bids, proposals, or other applicable expressions of interest and selecting a single source continuum contractor to provide community-based care in the catchment area.

C.S.H.B. 3691 expands the provisions required to be in a contract with a single source continuum contractor to provide community-based care services in a catchment area to include the following:

- establishing a timeline for implementing area family preservation services, defined by the bill as a time-limited, family-focused service, including a service subject to the federal Family First Prevention Services Act provided to the family of a child who is a candidate for foster care to prevent or eliminate the need to remove the child and to allow the child to remain safely in the child's family or who is a pregnant or parenting foster youth;

- identifying the employees and other resources to be transferred to the contractor for the purpose of providing necessary implementation, case management, operational, and administrative functions, and outlining the methodology for determining the transfers;
- creating a risk-sharing funding model that strategically and explicitly balances financial risk between the state and the contractor and mitigates the financial effects of significant unforeseen changes in the contractor's duties and responsibilities or its contract population; and
- requiring the annual review and adjustment of the funding based on updated cost and finance methodologies, including changes in policy, foster care rates, and regional service usage.

C.S.H.B. 3691 requires a contract with a single source continuum contractor to be consistent with the requirements of applicable law and may only include terms authorized by state laws or rules. In regions identified for the implementation of community-based care or in regions where community-based care currently operates, a contractor may apply to DFPS for a waiver from statutory and regulatory requirements to increase innovation and flexibility for achieving contractual performance outcomes. The bill requires such contract performance outcomes to be consistent with the purposes of provisions relating to legislative intent with respect to contracting with community-based nonprofit and local governmental entities to provide child welfare services. The contract must do the following:

- allow the contractor operational discretion in meeting performance outcomes; and
- clearly define the manner in which the contractor's performance will be measured and identify the information sources DFPS and, if applicable, the independent evaluator administrator will use to evaluate the performance.

The bill requires DFPS to regularly report on its and each single source continuum contractor's performance in providing services based on the performance outcomes and sets out requirements for the content, accessibility, and scheduled publishing of the report, including publishing the initial report not later than October 1, 2022.

C.S.H.B. 3691 revises provisions relating to the readiness review process for community-based care contractors to do the following:

- replace the requirement for DFPS to develop a formal review process with a requirement for DFPS to develop and apply standard criteria to assess the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering community-based care services; and
- require such a contractor to prepare a report that defines the practice model and process by which it will meet contractual performance outcomes and requirements and the methods by which the contractor will eliminate conflicts of interest regarding certain financial incentives for the contractor.

C.S.H.B. 3691 revises provisions relating to the expansion of community-based care to require DFPS to take the following actions not later than the last day of the fiscal biennium:

- identify catchment areas in Texas where DFPS will implement community-based care and retain an entity based in Texas that is independent of DFPS to conduct an evaluation of the implementation process and single source continuum contractor performance in each catchment area, following the implementation of community-based care services in those catchment areas; and
- accept and evaluate unsolicited proposals from entities based in Texas to provide community-based care services in a geographic service area where DFPS has not expanded community-based care.

The bill sets out requirements for those entities in submitting proposals and requires the Health and Human Services Commission in conjunction with DFPS to create rules to ensure that those proposals comply with state procurement laws and rules. The bill authorizes DFPS, in expanding community-based care, to change the geographic boundaries of catchment areas as necessary to enable satisfactory unsolicited proposals for community-based care services to be accepted and implemented.

C.S.H.B. 3691 revises provisions relating to the transfer of certain services to a single source continuum contractor to provide the following:

- DFPS must transfer foster care services, as defined by the bill, and family preservation services;
- a single source continuum contractor may implement its own procedures to execute DFPS statutory duties the contractor assumes and is not required to follow the DFPS procedures to execute those duties; and
- DFPS must enumerate in its contract with a single source continuum contractor all duties the contractor will assume.

C.S.H.B. 3691, with respect to the data access and standards governance council that develops protocols for the electronic transfer of data from single source continuum contractors to DFPS, provides that such transfer is an interoperable electronic transfer. The bill requires the council to allow the contractors to perform case management functions and additional contracted services by DFPS. The council must, as follows:

- develop protocols for the access, management, and security of data shared with the independent entity retained to conduct the required independent evaluations that ensure the entity has full, unrestricted access to all relevant data necessary for performing a transparent evaluation;
- consist of single source continuum contractors with active contracts and DFPS employees who provide data, legal, information technology, and child protective services; and
- meet at least quarterly with its membership.

C.S.H.B. 3691 revises the definition for "case management" and defines "family preservation service," "family preservation services plan," and "foster care services."

C.S.H.B. 3691 repeals Section 264.156(c), Family Code, relating to a readiness review process for community-based care contractors.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3691 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the bill's expansion of the required components of the community-based care implementation plan care as follows:

- while the original includes a component to define and report the DFPS cost and finance methodologies, the substitute includes a component to define the method DFPS uses to determine the cost of implementing community-based care, including DFPS resources used to provide community-based care;
- changes the committees to which DFPS is to transmit the required reports and evaluations relating to the plan from the relevant oversight committees of the legislature and the office of the governor to the relevant standing committees of those entities; and
- while the original includes a component to create a specific implementation plan for each catchment area identified for expansion of community-based care that includes a timeline for the transfer of community-based care services in coordination with local stakeholders specified by the bill, the substitute includes a component to include that plan for each catchment area developed after consulting with local stakeholders, as

appropriate, including certain stakeholders and other stakeholders identified as significant in a particular catchment area.

The substitute includes a provision not in the original requiring DFPS, not later than August 31 each year, to provide a copy of the plan to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the legislature with jurisdiction over matters involving DFPS.

While the original includes a requirement for DFPS to involve certain local stakeholders, as specified by the bill, in the catchment area in the selection of a single source continuum contractor, the substitute includes a requirement for DFPS to request instead certain local stakeholders in the catchment area to provide any necessary information about the catchment area that will assist DFPS in preparing its request for bids, proposals, or other applicable expressions of interest and selecting such a contractor to provide community-based care in the catchment area.

The substitute makes certain revisions to the requirement for DFPS to transfer foster care services and family preservation services to a single source continuum contractor and to the bill's expansion of the required provisions of a contract with such a contractor to provide community-based care services in a catchment area. The substitute revises the definition of "family preservation service" to include a family-focused service, including a service subject to the Family First Prevention Services Act provided to the family of a child who is a pregnant or parenting foster youth.

The substitute includes a provision not included in the original requiring DFPS to regularly report on its and each single source continuum contractor's performance in providing services based on the performance outcomes and comparing that performance among regions and sets out requirements for the content, accessibility, and scheduled publishing of the report, including publishing the initial report not later than October 1, 2022.