

BILL ANALYSIS

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S.B. 6
By: Nelson
Health and Human Services
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

S.B. 6 seeks to strengthen the state's ability to protect society's most vulnerable citizens: abused children, the elderly and the frail. The bill responds to the Governor's executive orders calling for the systematic reforms of Child and Adult Protective Services. These orders came in response to numerous cases in which children and elderly were left in states of abuse or neglect, despite agency involvement, resulting in severe harm or even death.

S.B. 6 reforms the child protective service system and Article 2 reforms the adult protective service system. The testimony and input of stakeholders in legislative hearings, investigative reports, and informative meetings guided the drafting process.

Provisions in S.B. 6 1 are intended to reduce caseloads by reducing unnecessary investigations, engage community service providers to prevent the escalation of abuse, make the casework process more efficient, and further utilize contracted providers. The bill also includes provisions that strengthen the protective service system's relationship with law enforcement, ensure the health and safety of foster children, and reform the divisions of Child Care Licensing and Contract Management within the agency.

Provisions in S.B. 6 improve elder abuse and neglect investigations, reform the guardianship system, increase the coordination with and involvement of community organizations, and enhance agency accountability

RULEMAKING AUTHORITY

Rulemaking previously granted to the Department of Protective and Regulatory Services is transferred to the Department of Family and Protective Services and modified in SECTION 1.05 (Section 261.301, Family Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1.18 (Section 264.101, Family Code), SECTION 1.19, SECTION 1.24 (Section 264.116, Family Code), SECTION 1.27 (Section 264.204, Family Code), SECTION 1.39, SECTION 1.41, SECTION 1.43 (Section 42.057, Human Resources Code), SECTION 1.44 (Section 42.061, Human Resources Code), SECTION 1.46 (Section 42.063, Human Resources Code), SECTION 1.47 (Section 42.0705, Human Resources Code), SECTION 2.06 (Section 48.101, Human Resources Code), and SECTION 2.10 (Section 48.2055, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CHILD PROTECTIVE SERVICES

SECTION 1.01 Amends Subchapter A, Chapter 107, Family Code, by adding Section 107.0045, as follows:

Sec. 107.0045. DISCIPLINE OF ATTORNEY AD LITEM. Provides that an attorney ad litem who fails to perform the duties required by Sections 107.003 (Powers and Duties of Attorney ad Litem For Child and Amicus Attorney) and 107.004 (Additional Duties of Attorney ad Litem for Child) is subject to disciplinary action under Subchapter E, Chapter 81, Government Code (Discipline).

SECTION 1.02. Amends Section 261.001, Family Code, by amending Subdivision (2) and adding Subdivision (9), to redefine "department" and to define "residential child-care facility."

SECTION 1.03. Amends Section 261.002, Family Code, by adding Subsection (c), to require the Department of Family and Protective Services (DFPS) to enter into agreements with other states to allow for the exchange of reports of child abuse and neglect in other states' central registry systems. Requires DFPS to use information obtained under this subsection in performing the background checks required under Section 42.056 (Required Background and Criminal History Checks), Human Resources Code. Requires DFPS to cooperate with federal agencies and to provide child abuse and neglect information and reports to the appropriate federal agency that maintains the national registry for child abuse and neglect, if a national registry exists.

SECTION 1.04. Amends Section 261.107(a), Family Code, to redesignate an offense committed under this section as a state jail felony, rather than a Class A misdemeanor, unless it is shown on the trial of the offense that the individual has been previously convicted under this section, in which case the offense is redesignated as a felony of the third degree, rather than a state jail felony. Makes application of this section prospective.

SECTION 1.05. (a) Amends Sections 261.301(a), (d), (f), (g), and (h), Family Code, as follows:

Sec. 261.301 (a) Requires DFPS or designated agency, with assistance from the appropriate state or local law enforcement agency, as provided by this section, to make a prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare.

(d) Requires, rather than authorizes, DFPS, by rule, to assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. Requires the rules to require DFPS to immediately respond to reports of abuse and neglect that are assigned the highest priority.

(f) Requires an investigation of a report to DFPS that alleges that a child has been or may be the victim of conduct that constitutes a criminal offense, rather than one that is assigned the highest priority in accordance with DFPS rules adopted under Subsection (d), which poses an immediate risk of physical or sexual abuse that could result in the death of or serious harm to the child, to be jointly conducted by a peace officer from the appropriate local law enforcement agency and DFPS or the agency responsible for conducting the investigation.

(g) Provides that the inability or unwillingness of a local law enforcement agency to conduct a joint investigation under this section, rather than Subsection (f)(pertaining to joint investigations), does not constitute grounds to prevent or prohibit DFPS from performing its duties under this subtitle. Requires DFPS to document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under this section rather than Subsection (f).

(h) Requires the appropriate law enforcement agency, with assistance from DFPS, rather than DFPS and the local law enforcement jointly, to conduct an investigation of a report alleging that a child has or may have been the victim of conduct that constitutes a criminal offense, rather than one that is the highest priority in accordance with department rules adopted under Subsection d, which poses an immediate risk of physical or sexual abuse that could result in the death of or serious harm to the child.

(b) Makes application of this section prospective.

SECTION 1.06. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.3011, as follows:

Sec. 261.3011. JOINT INVESTIGATION TRAINING. Requires DFPS to provide joint training to department investigators and law enforcement officers relating to methods to effectively conduct joint investigations under Section 261.301 (Investigation of Report).

SECTION 1.07. (a) Amends Subchapter D, Chapter 261, Family Code by adding Section 261.3031, as follows:

Sec. 261.3031. FAILURE TO COOPERATE WITH INVESTIGATION; CAPIAS. (a) Requires the court to issue a capias for the arrest of an individual if the individual is subject to a court order under Section 261.303 (Interference with Investigation; Court Order) and is shown to have failed to comply with the order.

(b) Requires law enforcement officials to treat the capias in the same manner as an arrest warrant for a criminal offense and to enter the capias in the computer records for outstanding warrants maintained by the local police, sheriff, and Department of Public Safety (DPS). Requires the capias to be forwarded to and disseminated by the Texas Crime Information Center and the National Crime Information Center.

(c) Requires the law enforcement officer to take certain actions if the person is taken into custody.

(b) Makes application of this section prospective.

SECTION 1.08. Amends Section 261.310, Family Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Includes law-enforcement-style training, containing training relating to forensic interviewing and investigatory techniques and the collection of physical evidence among the required information in the professional training curriculum developed under this section. Makes nonsubstantive changes.

(e) Requires DFPS, in conjunction with DPS, to provide advanced training in investigative protocols and techniques to DFPS's residential child-care facility licensing investigators.

SECTION 1.09. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.3126, as follows:

Sec. 261.3126. COLOCATION OF INVESTIGATORS. (a) Requires, in each county with a population of 75,000 or more, DFPS and municipal law enforcement agencies that investigate child abuse in the county to enter into a memorandum of understanding to provide for the colocation of DFPS investigators and law enforcement agencies to improve the efficiency of child abuse investigations. Requires DFPS to consider locating its investigators and investigators from law enforcement agencies at a children's advocacy center in the county.

(b) Requires, if a county with a population of 75,000 or more does not have a children's advocacy center, DFPS to consider the establishment of such a center and locating its investigators and investigators from law enforcement agencies there.

SECTION 1.10. Amends Subchapter E, Chapter 261, Family Code, by adding Section 261.410, as follows:

Sec. 261.410. REPORT OF ABUSE BY OTHER CHILDREN. (a) Defines "physical abuse" and "sexual abuse."

(b) Requires DFPS to require a residential child-care facility to report each incident of physical or sexual abuse committed by a child against another child.

(c) Requires DFPS to compile a report about such incidents that includes certain information.

SECTION 1.11. Amends Subchapter C, Chapter 262, Family Code, by adding Section 262.206, as follows:

Sec. 262.206. DESIGNATING PERSON TO CONSENT TO CERTAIN TREATMENT. Provides that an order appointing DFPS as the temporary managing conservator of a child must include the name of an individual who has the right to consent to certain health and mental health treatment for the child.

SECTION 1.12. (a) Amends Section 263.102(a), Family Code, to include that a service plan must state any specific skills or knowledge that the child's parent must acquire or learn to achieve the plan goal. Makes nonsubstantive changes.

(b) Amends Section 263.202(c), Family Code, to include a review of whether the parties have acquired or learned any specific skills or knowledge stated in the service plan among the service plan progress that will be reviewed at subsequent hearings.

(c) Makes application of this section prospective.

SECTION 1.13. Amends Section 263.202, Family Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Requires, except as provided in Subsection (e), a status hearing to be limited to matters related to the contents and execution of the service plan filed with the court. Makes a nonsubstantive change.

(e) Requires the court, at the status hearing, to make a finding as to whether the court has identified the individual who has the right to consent for the child under Section 262.206 (Designating Person to Consent to Certain Treatment) as added by this Act.

SECTION 1.14. Amends Section 263.401(b), Family Code, to prohibit the court from retaining jurisdiction of the suit after the time described by Subsection (a) (the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator) unless the court finds that extraordinary circumstances prevent the court from rendering a final order within that time and that continuing the department's appointment as temporary managing conservator is in the best interest of the child. Provides that if the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). Makes a conforming change.

SECTION 1.15. Amends Section 263.502(c), Family Code, to include evaluation of whether the child's current education placement is appropriate for meeting the child's academic needs amongst requirements for the placement review. Makes nonsubstantive changes.

SECTION 1.16. Amends Section 264.001, Family Code, as follows:

Sec. 264.001. New heading: DEFINITIONS. Defines "commission," "executive commissioner," and "residential child-care facility." Redefines "department."

SECTION 1.17. Amends Subchapter A, Chapter 264, Family Code, by adding Section 264.013, as follows:

Sec. 264.013. TRAINING ON MENTAL HEALTH ISSUES. (a) Requires DFPS to provide training related to children's mental health issues to certain individuals.

(b) Provides that training provided under this section must include certain relevant information.

- (c) Requires DFPS to work with stakeholders to create training programs required by this section.

SECTION 1.18. Amends Section 264.101, Family Code, by adding Subsection (d-1) as follows:

(d-1) Authorizes the executive commissioner of the Health and Human Services Commission (HHSC) (executive commissioner) to adopt rules that prescribe the maximum amount of state money that a residential child-care facility may spend on nondirect residential services, including administrative services. Requires HHSC to recover the money that exceeds the maximum amount established under this subsection.

SECTION 1.19. (a) Amends Section 264.106., Family Code, as follows:

Sec. 264.106. New heading: **REQUIRED CONTRACTS FOR SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES.** (a) Defines "case management services," "substitute care provider," and "substitute care services."

(b) Redesignated from existing Subsection (a). Requires DFPS to assess the need for substitute care services throughout the state for children for whom DFPS has been appointed temporary or permanent managing conservator and to contract with substitute care providers for those services. Deletes text of existing Subsection (b) referring to contracting only to the necessary extent and that referring to determinations to be made prior to contracting with a substitute care provider.

(c) Requires DFPS, in addition to contracts required by Subsection (b), to contract with substitute care providers to provide case management services for children in substitute care for whom DFPS has been appointed permanent managing conservator.

(d) Requires DFPS to monitor services provided under this section and to ensure that the services meet certain quality standards.

(e) Redesignated from existing Subsection (c). Adds specifying performance criteria to the provisions that a contract with a substitute care provider must include.

(f) Provides that DFPS must include caseworker-child visits in the performance criteria specifies in the required substitute care provider contract. Requires DFPS to establish guidelines and documentation requirements for those visits.

(g) Adds previous contracts for case management services to the previous contracts required to be considered by DFPS when determining whether to contract with a substitute care provider. Redesignated from existing Subsection (d).

(h) Provides that a contract under this section does not affect the rights and duties of DFPS in its capacity as the temporary or managing conservator of the child.

(i) Prohibits DFPS, notwithstanding any other law, from directly providing certain services on and after September 1, 2008. Deletes existing text of Subsection (e) defining "substitute care provider."

(b) Requires the executive commissioner to adopt a substitute care and case management services transition plan and rules to implement this section. Sets forth certain requirements for the plan.

(c) Makes application of this section prospective.

SECTION 1.20. SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES TRANSITION TASK FORCE. (a) Sets forth certain requirements for the purpose and objectives of the substitute care and case management services transitions task force (task force).

- (b) Provides that the task force is to be composed of three members appointed by certain elected officials.
- (c) Provides that the committee member appointed by the comptroller will serve as the presiding officer.
- (d) Requires the task force to meet at least monthly.
- (e) Requires DFPS to implement recommendations or take certain steps to implement the recommendation within a specific timeframe regarding the implementation of Section 264.106 (Required Contracts for Substitute Care and Case Management Services), Family Code, as amended by this Act.
- (f) Requires the task force to submit a report on at least a quarterly basis to certain legislative entities pertaining to the status of the implementation of Section 264.106, Family Code, as amended by this Act.
- (g) Provides that this section expires and the task force is abolished August 31, 2008.

SECTION 1.21. Amends Section 264.1075, Family Code, as follows:

Sec 264.1075. New heading: ASSESSING THE NEEDS OF A CHILD. Requires DFPS, as soon as possible after a child begins receiving foster care under this subchapter, to assess whether the child has a developmental disability or mental retardation. Requires HHSC to establish the procedures that DFPS must use in making said assessment. Provides that the procedures may include screening or participation by certain individuals. Makes a nonsubstantive change.

SECTION 1.22. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1076, as follows:

Sec. 264.1076. FOSTER CARE DEVELOPMENTAL DISABILITIES ADVISORY COMMITTEE. (a) Requires the Foster Care Developmental Disabilities Advisory Committee (advisory committee) to advise DFPS on certain issues relating to the care of foster children with developmental disabilities or mental retardation.

- (b) Requires the executive commissioner to determine the number of individuals who serve on the committee.
- (c) Requires the executive commissioner to appoint the members of the committee and determine each member's length of service and to attempt to include certain types of people when making appointments to the committee.
- (d) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the committee.
- (e) Authorizes HHSC or DFPS to pay any expenses incurred by the committee.

SECTION 1.23. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1095, as follows:

Sec. 264.1095. CHILD SUPPORT. Requires DFPS to file suit for child support for a child for whom it has been named temporary managing conservator, unless DFPS has been assigned support rights under Section 264.109 (Assignment of Support Rights in Substitute Care Cases).

SECTION 1.24. (a) Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.116, as follows:

Sec. 264.116. TEXAS FOSTER GRANDPARENTS PROGRAM. (a) Requires DFPS to work with volunteer and advocacy organizations from the community to develop and implement a statewide foster grandparents program that recruits senior citizen volunteers and encourages them to serve as mentors to children residing in a residential child-care facility.

(b) Authorizes DFPS, from funds available for that purpose, to reimburse volunteers for expenses incurred while participating in the program, including travel expenses. Requires the executive commissioner, by rule, to develop guidelines for the reimbursement of expenses under the program.

(c) Provides that a volunteer who participates in the program is subject to state and national criminal background checks in accordance with current law.

(d) Requires DFPS to require foster parents or employees of residential child-care facilities to provide appropriate supervision over volunteers during their program participation.

(e) Provides that this program is subject to Chapter 2109 (Volunteers), Government Code.

(b) Requires DFPS to implement the statewide foster grandparents program added by this section not later than June 1, 2006.

SECTION 1.25. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.117, as follows:

Sec. 264.117. MEDICAL PASSPORT. (a) Requires DFPS to develop a medical passport (passport) for each foster child. Requires DFPS to determine the format of the passport. Authorizes the passports to be maintained in electronic format. Requires the passport to include certain medical information.

(b) Requires the child or the child's caretaker to present the passport during each physician or therapist visit to ensure that the physician or therapist has a complete record of the child's medical treatment.

(c) Requires the passport to be a part of DFPS's record for the child as long as the child is in foster care. Requires the passport to remain with the child as the child changes placements, physicians, or therapists.

(d) Requires DFPS to develop a procedure for maintaining and updating passports.

(e) Requires DFPS to work with stakeholder groups to create the passport.

SECTION 1.26. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.118, as follows:

Sec. 264.118. PREPARATION FOR ADULT LIVING PROGRAM. (a) Requires DFPS to enter into cooperative agreements with the Texas Workforce Commission (TWC) and local workforce development boards to facilitate the effectiveness of the Preparation for Adult Living Program operated by DFPS. Requires DFPS, TWC, and local boards to maintain one-stop centers for foster care children to obtain services under this program.

(b) Authorizes DFPS to enter into an agreement with any private citizen to facilitate the program's effectiveness, including maintenance of the one-stop centers.

SECTION 1.27. Amends Subchapter C, Chapter 264, Family Code, by adding Section 264.204, as follows:

Sec. 264.204. **COMMUNITY-BASED FAMILY SERVICES.** (a) Requires DFPS to administer a grant program to provide funding to community organizations, including faith based organizations, to respond to low-priority, less serious cases of abuse and neglect.

(b) Requires the executive commissioner to adopt rules to implement the grant program, including rules governing the submission and approval of grant requests and the cancellation of grants.

(c) Provides that, to receive a grant, a community organization whose grant request is approved must execute an interagency agreement or a contract with DFPS. Provides that the contract must require the organization receiving the grant to perform the services as state on the approved grant request and must contain appropriate program and fiscal monitoring provisions.

(d) Requires DFPS, in areas of the state where community organizations receive grants under the program, to refer low-priority, less serious cases of abuse and neglect to a community organization receiving a grant under the program.

(e) Requires a community organization receiving a referral under Subsection (d) to make a home visit and offer family social services to enhance the parents' ability to provide a safe and stable home environment for the child. Requires a case manager from the organization to monitor the case and ensure that the services are delivered if the family chooses to use the family services.

(f) Requires the community organization to refer the case to DFPS for a full investigation if after the home visit the community organization determines that the case is more serious than DFPS indicated.

(g) Prohibits DFPS from awarding a grant to a community organization in an area of the state in which a similar program is already providing family services in the community.

SECTION 1.28. Amends Chapter 264, Family Code, by adding Subchapter I, as follows:

SUBCHAPTER I. PRESCRIPTION OF PSYCHOTROPIC DRUGS TO FOSTER CHILDREN

Sec. 264.751. **DEFINITION.** Defines "psychotropic drug."

Sec. 264.752. **INFORMED CONSENT TO PRESCRIPTION OF PSYCHOTROPIC DRUGS.** (a) Authorizes a physician to prescribe a psychotropic drug to a child in foster care if the court-designated individual for the child consents to the prescription, except as otherwise provided by this section.

(b) Prohibits a psychotropic drug may from being prescribed to a child in foster care who is younger than six years of age without court approval. Provides that for the purpose of this section, it is a rebuttable presumption that psychotropic medication is inappropriate for a child in foster care who is younger than six years of age.

(c) Prohibits a psychotropic drug may from being prescribed to a child in foster care who is 16 years of age or older unless the child consents to the use of the psychotropic drug. Authorizes, if the child refuses consent, the psychotropic drug to be prescribed only with court approval.

(d) Requires a foster child and the child's caretakers to be provided with certain information on the drug in accordance with the guidelines of the American

Academy of Child and Adolescent Psychiatry prior to starting any prescribed psychotropic drug.

Sec. 264.753. REVIEW OF PSYCHOTROPIC DRUG PRESCRIPTION PATTERNS

(a) Requires HHSC's office of inspector general to annually review the psychotropic medication prescribing patterns of psychiatrists and other health care providers as part of the drug utilization review program. Requires the inspector general to identify those health care providers who annually write more than the average number of psychotropic drug prescriptions for children in foster care.

(b) Requires HHSC to determine the average number of psychotropic drug prescriptions written for children in foster care using Medicaid prescription data for the fiscal year preceding the year in which the office conducts the review.

Sec. 264.754. PSYCHOTROPIC DRUG REVIEW TEAMS; OFFENSE. (a) Requires DFPS to establish review teams to evaluate the administration of psychotropic drugs to children in foster care. Authorizes DFPS to create one or more review teams for each DFPS region for child protective services.

(b) Provides that review team members are appointed by the governor and serve staggered two-year terms. Provides that review team members must be individuals from the region for which the team is established, including certain medical professionals, representatives of DFPS, and representatives of foster parents' groups.

(c) Requires a review team to review the records of children in foster care receiving certain combinations of psychotropic drugs as well as a random sampling of children in foster care receiving psychotropic drugs.

(d) Requires a review team to report to DFPS the results of the team's review. Prohibits the report from including confidential information.

(e) Provides that a review team member commits a Class C misdemeanor offense if the member discloses confidential information.

SECTION 1.29. Requires DFPS to study the level of care system that is used in determining a child's foster care needs to ascertain whether the system creates incentives for prescribing medications to children in foster care. Requires DFPS to report the study's findings and proposed changes to the level of care system to the legislature no later than October 1, 2006. Provides that this section expires January 1, 2007.

SECTION 1.30. (a) Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.078, as follows:

Sec. 531.078. POOLED FUNDING FOR FOSTER CARE PREVENTIVE SERVICES.

(a) Requires HHSC and DFPS to develop and implement a plan to combine their funds with funds of other state agencies and local governmental entities to provide certain types of services designed to prevent children from being placed in foster care.

(b) Requires the plan to provide for specifications and procedures for funding distribution and a reporting mechanism to ensure appropriate use of the funds.

(c) Authorizes HHSC, for the purposes of this section, to request and accept certain funding from an entity or individual for use in providing services designed to prevent the placement of children in foster care. Requires HHSC to use the amounts received from specific entities in the geographical areas required by the terms of their funding.

(b) Requires HHSC to provide the governor and the Legislative Budget Board a report on the status and progress of the preventative services funding plan, required by Section 531.078, as added by this section, no later than November 1, 2006.

SECTION 1.31. (a) Amends Subchapter C, Chapter 2155, Government Code, by adding Section 2155.1442, as follows:

Sec. 2155.1442. FOSTER CARE RESIDENTIAL CONTRACT MANAGEMENT. (a) Requires the state auditor to conduct a management review of the residential contract management employees of HHSC and DFPS and to make recommendations regarding the organization of, and skills and educational requirements for, those employees. Requires the state auditor to make additional recommendations regarding the implementation of financial accountability provisions and processes to ensure effective and efficient expenditure of state and other contract funds. Requires the state auditor to report annually to the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller on the auditor's recommendations and HHSC's and DFPS's implementation of each recommendation.

(b) Requires HHSC, in coordination with the state auditor, to perform complete on-site financial audits of selected residential contractors as necessary. Requires the state auditor to select the contractors based on certain appropriate audit selection criteria. Requires the state auditor to include findings from the on-site financial audits in the annual report required by Subsection (a). Requires, in addition, the state auditor to immediately report to the governor and each person listed in Subsection (a) any findings of fraud or other misuse of state or other contract funds.

(c) Authorizes DFPS to develop an Internet-based system enabling residential contractors to review their reimbursement accounts or other pertinent financial data and reconcile their accounts.

(b) Makes application of this section prospective.

(c) Requires the state auditor to complete and publish the required management review report no later than December 1, 2005.

(d) Requires HHSC, in coordination with the state auditor to begin required on-site review of selected contractors no later than October 1, 2005.

SECTION 1.32. (a) Amends Section 32.055, Human Resources Code, as follows:

(a) Defines "medically fragile child."

(b) Includes medically fragile children under the conservatorship of DFPS who are placed in foster care within individuals with catastrophic health problems who are assisted through the catastrophic case management system.

(c) Redesignated from existing Subsection (b).

(d) Redesignated from existing Subsection (c). Includes education of a foster parent, as applicable, among support services that may be provided by a case manager under the catastrophic case management system.

(e) Requires HHSC, in implementing the system for medically fragile children, to coordinate with DFPS and authorizes HHSC to contract with health care providers to provide case management services to foster children.

(f) Redesignated from Subsection (d).

(b) Requires HHSC to implement the required catastrophic case management system for medically fragile children no later than January 1, 2006.

SECTION 1.33. Amends the heading of Chapter 40, Human Resources Code, to read as follows:

CHAPTER 40. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

SECTION 1.34. Amends Section 40.001(3), Human Resources Code, to redefine "department."

SECTION 1.35. Amends Subchapter A, Chapter 40, Human Resources Code, by adding Section 40.009, as follows:

Sec. 40.009. QUALITY ASSURANCE PROGRAM AND QUARTERLY REPORTS.

(a) Requires DFPS to develop and implement an independent quality assurance program (program) for child protective services provided by or on behalf of DFPS.

(b) Requires the program to include periodic audits of the completeness and accuracy of certain investigatory and inspection-related reports prepared or required by DFPS.

(c) Requires an audit to be conducted in accordance with professional standards and generally recognized sampling techniques.

(d) Requires DFPS to retain the results of an audit conducted under this section until at least the fifth anniversary of the date of the audit's completion.

(e) Requires DFPS to file with certain elected officials a quarterly written report assessing the delivery of child protective services and examining the outcomes for children and families served by child protection, foster care, and adoption programs, as well as related programs in the state.

(f) Sets forth certain requirements for the required quarterly report.

SECTION 1.36. (a) Amends Subchapter A, Chapter 40, Human Resources Code, by adding Section 40.010, as follows:

Sec. 40.010. PROTECTIVE SERVICES LEGISLATIVE OVERSIGHT COMMITTEE.

(a) Provides that the Protective Services Legislative Oversight Committee (committee) is created to facilitate the reformation of DFPS and to monitor the services of DFPS.

(b) Provides that the committee is composed of 14 members. Sets forth certain requirements for the appointment and makeup of the committee.

(c) Provides that the commissioner of DFPS (commissioner) is an ex officio member of the committee.

(d) Provides that a member of the committee serves at the pleasure of the appointing official.

(e) Requires the lieutenant governor and the speaker of the house of representatives to alternately designate a presiding officer for a term of one year from among their respective appointments.

(f) Prohibits a member of the committee from receiving compensation for serving on the committee but provides that a committee member is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee as provided by the General Appropriations Act.

(g) Requires the committee to perform certain duties in addition to those prescribed by Subsection (a).

(h) Authorizes the committees to request reports and other information from the HHSC, DFPS, and the attorney general relating to protective services in this state and other appropriate issues.

(i) Requires the committee to use existing staff of the senate and house of representatives to assist the committee in performing its duties under this section.

(j) Provides that Chapter 551 (Open Meetings), Government Code, applies to the committee.

(k) Requires the committee to report to the governor, the lieutenant governor, and the speaker of the house of representatives not later than November 15 of each even-numbered year. Sets forth certain requirements for the content of the report.

(b) Requires the speaker, the lieutenant governor and the governor to make appointments to the committee as soon as possible after the effective date of this section. Requires the lieutenant governor to designate the initial presiding officer of the committee. Requires the presiding officer to call the initial meeting of the committee as soon as possible after the committee members are appointed.

SECTION 1.37. (a) Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.0322, as follows:

Sec. 40.0322. CASEWORKER REPLACEMENT PROGRAM. Requires DFPS, to the extent that funding is available, to develop a program to provide for the timely replacement of caseworkers with trainees hired in anticipation of vacancies.

(b) Requires the turnover rate of caseworkers in the region to be considered when developing the program.

(b) Requires DFPS to develop the caseworker replacement program by December 31, 2005, unless sufficient funds are not available.

SECTION 1.38. Amends Section 40.058, Human Resources Code, by amending Subsections (b) and (c) and adding Subsections (f)-(i), as follows:

(b) Adds, if applicable, clearly defined performance standards that relate directly to the quality of care provided to residents of foster care facilities to the list of information required to be included in a contract for the purchase of program-related client services. Makes nonsubstantive changes.

(c) Adds review of each foster care services contract and evaluation of the contract for compliance with the performance standards of the contract to the required monitoring activities of DFPS.

(f) Requires DFPS to terminate a contract with a foster care services provider if the contractor does not meet certain performance standards. Prohibits DFPS from awarding or renewing a foster care services contract with a contractor not meeting those performance standards.

(g) Requires HHSC to create a foster care performance team (team) to develop performance criteria for foster care services contracts. Requires the team to include certain individuals and experts. Requires the team to develop clearly defined and measurable standards for foster care services contracts that directly relate to factors within the control of the providers. Requires DFPS to adopt the clearly defined performance standards for inclusion in foster care services contracts as developed and recommended by the team. Requires the team to develop performance standards that provide measurable criteria for identification of certain foster care services providers that are not providing quality care, should not receive additional contracts, and whose contracts should be revoked.

(h) Requires HHSC to create an alternative payment plan in all foster care services contracts encouraging the reduction of the period that children are in intensive levels of care. Provides that the incentive payment plan must provide several alternative payment mechanisms to encourage foster care services

contractors to improve the quality of care, encourage efficient use of funding, or reduce the period of intensive care for children under program-related client services contracts for foster care.

(i) Requires a contract for the provision of foster care services to contain a provision requiring DFPS's contract management employees to make periodic unannounced visits to the contractor's facilities in accordance with HHSC rules and to report their findings to HHSC.

(b) Makes application of the changes to this section prospective.

SECTION 1.39. (a) Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.071, as follows:

Sec. 40.071. MISSING CHILDREN WEBSITE. Requires DFPS to develop and implement certain information relating to any child in the foster care system who has been reported missing on the DFPS website. Authorizes DFPS to display other relevant information to efforts in locating and ensuring the safety of the child.

(b) Provides that, notwithstanding any other law, information required to be provided under this section is public information.

(c) Requires DFPS to regularly update the website.

(b) Requires the executive commissioner of HHSC to adopt rules and establish standards, policies, and procedures to implement and administer Section 40.071, Human Resources Code, no later than January 1, 2006

SECTION 1.40. Amends Section 42.002, Human Resources Code, by adding Subdivision (18), to define "residential child-care facility."

SECTION 1.41. (a) Amends Section 42.042, Human Resources Code, by adding Subsection (g) to require each residential child-care facility to notify DFPS and the appropriate law enforcement agency immediately on determining that a child is missing from the facility.

(b) Requires the executive commissioner of HHSC to adopt rules and establish standards, policies, and procedures to implement and administer Section 42.042(g), Human Resources Code, as added by this section, no later than January 1, 2006.

SECTION 1.42. (a) Amends Section 42.056, Human Resources Code, by adding Subsections (a-1) and (d)-(f) and amending Subsection (b), as follows:

(a-1) Requires, in accordance with rules adopted by the executive commissioner, the director, owner or operator of a residential child-care facility to submit to DFPS the names of certain prospective employees for use in conducting background and criminal history checks.

(b) Includes the information provided under Subsection (a-1) in the information DFPS is required to use when conducting background and criminal history checks.

(d) Prohibits certain individuals from providing direct care or having direct access to a child in a residential child-care facility before completion of the individual's background and criminal history check.

(e) Requires DFPS to provide the results of a background or criminal history check conducted under this section regarding a prospective employee to a director, owner, or operator of a residential child-care facility.

(f) Requires DFPS, as a part of the background check under this section, to provide any relevant information available in DFPS's records regarding an

individual's previous employment in a residential child-care facility to the individual submitting the request.

(b) Requires the director, owner, or operator of a residential child-care facility to begin providing information to DFPS as required by Section 42.056(a-1), Human Resources Code, as added by this section, as soon as possible after the effective date of this section and not later than January 1, 2006.

SECTION 1.43. (a) Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.057, as follows:

Sec. 42.057. DRUG TESTING. (a) Requires residential child-care facility to establish a drug testing policy for employees. Authorizes residential child-care facilities to adopt the model employee drug testing policy adopted by the executive commissioner or another approved by the executive commissioner.

(b) Requires the executive commissioner, by rule, to adopt a model employee drug testing policy for use by a residential child-care facility. Provides that the policy must be designed to ensure the safety of resident children through appropriate drug testing of employees while protecting the rights of employees. Provides that the model policy must require random, unannounced drug testing and at least one scheduled drug test each year of each employee who has direct contact with a resident child in the residential child-care facility.

(c) Requires DFPS to require a drug test of an individual who directly cares for or has access to a child in a residential child-care facility within 24 hours after the department receives notice of an allegation that the person has abused drugs.

(d) Prohibits an employee from providing direct care or having direct access to a child in a residential child-care facility before completion of the initial drug test.

(b) Requires the executive commissioner of HHSC to adopt the model drug testing policy required by Section 42.057, Human Resources Code, as added by this section no later than December 1, 2005.

(c) Requires each residential child-care facility to adopt a drug testing policy required by Section 42.057, Human Resources Code, as added by this section no later than January 1, 2006.

SECTION 1.44. (a) Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.061, as follows:

Sec. 42.061. RISK ASSESSMENT. (a) Requires DFPS to perform a risk assessment of any employee or volunteer at a residential child-care facility who has been convicted of a crime, before the individual is allowed access to a child in the facility. Requires DFPS to perform a similar risk assessment of a person who is at least 14 years of age and who will regularly or frequently be staying at the facility while children are being provided care.

(b) Requires the executive commissioner, by rule, to develop and maintain risk assessment criteria to ensure the safety and well-being of a child's physical or mental health or welfare.

(b) Requires the executive commissioner of HHSC to adopt rules required by Section 42.061, Human Resources Code, as added by this section no later than January 1, 2006.

SECTION 1.45. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.062, as follows:

Sec. 42.062. CERTAIN EMPLOYMENT PROHIBITED. Prohibits a residential child-care facility from employing an individual who is not eligible to receive a license or

certification for the operation of a residential child-care facility under Section 42.072(c-1).

SECTION 1.46. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.063, as follows:

Sec. 42.063. REPORTING OF INCIDENTS AND VIOLATIONS. Defines "serious incident." Requires certain individuals who deal with foster children to report serious incidents and suspected abuse or neglect involving those children to certain appropriate entities. Requires the executive commissioner, by rule, to prescribe procedures governing reporting under this section and the manner in which a report under this must be provided.

SECTION 1.47 (a) Amends Section 42.0705, Human Resources Code, to require the executive commissioner, by rule, to establish gradations of penalties in accordance with the relative seriousness of the violation. Requires the rules to prescribe the violations or number of violations that will result in automatic revocation of a facility's license, certification, or registration. Requires DFPS, in determining the penalty to impose, to consider any matter that justice may require, including certain pertinent information. Makes nonsubstantive changes.

(b) Requires the executive commissioner of HHSC, not later than December 31, 2005, to establish the gradations of penalties requires under Section 42.0705, Human Resources Code, as amended by this section.

SECTION 1.48. Amends Section 42.072, Human Resources Code, by adding Subsection (c-1), to require DFPS, notwithstanding Subsection (c), to refuse to issue a license or certification for the operation of a residential child-care facility to a person who previously held more than 20 percent ownership interest in or served as an officer, director, board member, or administrator of a residential child-care facility at the time of the occurrence of conduct resulting in certain licensure loss or revocation or closure of the facility.

SECTION 1.49. AT-RISK PREVENTION TASK FORCE. (a) Defines "department," "executive commissioner," "prevention service," and "task force."

(b) Provides that the at-risk prevention services task force (task force) is established to create a strategic plan to improve the availability and provision of prevention services in this state.

(c) Provides that the task force is composed of seven members appointed by the governor.

(d) Requires each member of the task force to have demonstrated experience in the prevention of child abuse or neglect and juvenile crime.

(e) Requires the task force to take certain steps pertaining to prevention services in the state.

(f) Requires DFPS to provide administrative support and services to the task force.

(g) Requires the task force, not later than September 1, 2006, to present DFPS and the executive commissioner of HHSC (executive commissioner) with a strategic plan that would result in the extension of prevention services to more at-risk families in Texas.

(h) Requires the executive commissioner, not later than the 90th day after the date on which the task force presents the strategic plan, to submit to certain individuals a written report concerning the strategic plan of the task force. Requires the report to include certain recommendations pertaining to implementation of and modifications to the strategic plan.

(i) Provides that this section expires and the task force is abolished June 1, 2007.

SECTION 1.50. THINK TANK MEETING ON CHILD ABUSE AND NEGLECT INVESTIGATIONS. Requires DFPS, not later than January 1, 2006, to conduct a meeting with DFPS employees and law enforcement professionals responsible for investigating reports of child abuse and neglect to explore certain standards relating to training and investigation protocols and coordination.

SECTION 1.51. CASEWORKER FUNCTION STUDY. (a) Requires DFPS to conduct a study on the merits of revising the functions performed by DFPS caseworkers. Requires DFPS to explore the benefits of using one caseworker to coordinate efforts on the behalf of the child and the child's parents.

(b) Requires DFPS to report the results of the study conducted under Subsection (a) of this section to the lieutenant governor and the speaker of the house of representatives not later than January 1, 2006.

SECTION 1.52. USE OF LOCAL CASEWORKERS. Requires DFPS to consider using a caseworker from the region in which a child is placed to conduct home visits for the child, if DFPS places a child in a home located in a different administrative region than the child's caseworker.

ARTICLE 2. ADULT PROTECTIVE SERVICES

SECTION 2.01. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.0315, as follows:

Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE SERVICES. Requires the adult protective services division (APSD) of DFPS to maintain an investigation unit to investigate allegation of abuse, neglect, and exploitation of elderly and disabled individuals reported to the division. Requires an investigator in the unit to make a determination regarding the report and to immediately notify the appropriate law enforcement agency upon making a determination that criminal conduct may have occurred.

SECTION 2.02. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.035, as follows:

Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE SERVICES; CONTINUING EDUCATION. (a) Requires DFPS to develop and implement a training program that each newly hired or assigned DFPS employee must complete prior to engaging in certain protective service investigations and activities.

(b) Requires the training program to provide the individual with certain appropriate and comprehensive material.

(c) Requires DFPS to at least annually provide comprehensive case management training to supervisors of department employees who conduct investigations for elderly and disabled individuals. Provides that the training must be designed to enable the supervisors to provide guidance on investigations of complex or unique reports of alleged abuse, neglect, or exploitation.

(d) Requires DFPS to develop and implement appropriate continuing education programs for employees of APSD who have completed initial training under this section. Requires the continuing education programs to be designed to provide an annual update regarding certain changes pertaining to policies, procedures, and applicable law.

(e) Provides that a DFPS employee required to participate in a continuing education program under this section must complete the program at least once each calendar year.

(f) Requires DFPS to make training and continuing education curriculum readily available in written form to DFPS employees and to periodically revise a training or continuing education program as necessary to satisfy training needs identified by DFPS or its employees.

SECTION 2.03. (a) Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.0515, as follows:

Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT PROTECTIVE SERVICES. (a) Requires DFPS to develop and implement a quality assurance program for adult protective services provided by or on behalf of DFPS.

(b) Requires DFPS, in developing the program, to establish certain measures, standards, and means to assess compliance with said standards.

(c) Requires DFPS to promptly address an individual's or work department's failure to meet minimum job performance standards through corrective or disciplinary action.

(d) Provides that each employee of APSD must receive a performance evaluation at least annually. Requires DFPS to ensure that disciplinary or other corrective action is taken against an employee who is required to conduct a performance evaluation and fails to do so in a timely manner.

(e) Provides that a summary of the findings of outcome measures established and performance reviews conducted under this section must be reported to regional directors and other senior management employees of the APSD.

(f) Requires DFPS to file a quarterly report with the governor and the presiding officer of each house of the legislature that includes certain information pertaining to the performance of APSD.

(b) Requires DFPS to submit the initial report required under Section 40.010, Human Resources Code, as added by this section, not later than October 1, 2005.

SECTION 2.04. Amends Subchapter A, Chapter 48, Human Resources Code, by adding Section 48.004, as follows:

Sec. 48.004. RISK ASSESSMENT. Requires the executive commissioner of HHSC, by rule, to develop and maintain risk assessment criteria for use by DFPS personnel in determining whether an elderly or disabled individual is in a state of abuse, neglect, or exploitation and needs protective services. Requires the criteria to provide for comprehensive assessment of certain aspects of the individual's health, financial condition, and social interaction and support.

SECTION 2.05. Amends Section 48.051(a), Human Resources Code, to authorize a person to make a report required by this subsection (regarding suspected abuse, neglect, or exploitation) through a person-to-person telephone interview with local DFPS personnel, through a personal appearance at a DFPS office, or by calling a centralized toll-free telephone number.

SECTION 2.06. Amends Section 48.101, Human Resources Code, by adding Subsections (g) and (g-1), as follows:

(g) Authorizes DFPS to establish procedures to exchange with a community service provider or local governmental entity necessary confidential information relating to a report made under Section 48.051(a). Provides that an exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(g-1) Requires executive commissioner of HHSC, by rule, to provide policies and procedures that are designed to guard against the unauthorized release or dissemination of confidential information that is exchanged under Subsection (g).

SECTION 2.07. Amends Section 48.151, Human Resources Code, by adding Subsection (c-1), to require DFPS to develop and implement a system to ensure that, to the greatest extent possible, investigations conducted by DFPS that involve especially complex issues of abuse, neglect, or exploitation are assigned to personnel who have experience and training in those issues.

SECTION 2.08. Amends Subchapter D, Chapter 48, Human Resources Code, by adding Section 48.158, as follows:

Sec. 48.158. STATUS REPORT OF INVESTIGATION. (a) Requires DFPS, notwithstanding any other law, on written request, to provide to a person who makes a report of alleged abuse, neglect, or exploitation under Section 48.051(a) information on the status of the investigation conducted with respect to the report, unless DFPS determines that providing the information would jeopardize the investigation or endanger the safety or welfare of the person who is the subject of the report.

(b) Requires information provided under Subsection (a) to include information relating to whether DFPS is providing protective services to the person.

SECTION 2.09. Amends Subchapter D, Chapter 48, Human Resources Code, by adding Section 48.159, as follows:

Sec. 48.159. INTERNAL REVIEW OF DEPARTMENT INVESTIGATION. Requires DFPS to establish procedures for conducting an internal review of completed investigations conducted by DFPS under this chapter to determine whether they meet certain requirements.

SECTION 2.10. Amends Subchapter E, Chapter 48, Human Resources Code, by adding Section 48.2055, as follows:

Sec. 48.2055. TEMPORARY EMERGENCY SHELTERS (a) Requires DFPS, in conjunction with the Department of Aging and Disability Services (DADS) and the Department of State Health Services (DSHS), to develop and implement a program to provide temporary shelter to an elderly or disabled individual for whom DFPS obtains an emergency order requiring that the person be moved to safer surroundings.

(b) Requires DFPS, DADS, and DSHS to enter into a memorandum of understanding to clearly define the responsibilities of each agency under this section.

(c) Requires the executive commissioner of HHSC to adopt rules to implement this section.

SECTION 2.11. Amends Section 48.208, Human Resources Code, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Requires the required medical report to contain information required by Subsection (c-1), rather than specifically stating that the person is suffering from abuse, neglect, or exploitation presenting a threat to physical safety and stating that the person is physically or mentally incapable of consenting to services. Includes a psychological report that has been signed by a licensed psychologist that contains information required by Subsection (c-2) in the necessary information for a petition for an emergency order to offer protective services

(c-1) Provides that a medical report obtained from a physician under Subsection (c) (4) must state that the individual is suffering from abuse, neglect, or exploitation presenting a

threat to life or physical safety and is physically or mentally incapable of consenting to services.

(c-2) Provides that a psychological report obtained from a licensed psychologist under Subsection (c) (4) must state that the individual is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety and is physically or mentally incapable of consenting to services.

SECTION 2.12. Amends Section 48.209(c), Human Resources Code, to require DFPS, rather than authorize DFPS if appropriate, to contract with a private agency, rather than a political subdivision of the state or another state agency, for the provision of guardianship services under this section. Makes a conforming change.

SECTION 2.13. (a) Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0551, as follows:

Sec. 531.0551. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR CERTAIN ELDERLY OR DISABLED PERSONS NEEDING MULTIAGENCY SERVICES. (a) Defines "disabled person," "elderly person," and "protective services."

(b) Requires HHSC and each health and human services agency to adopt a joint memorandum of understanding to implement a system of local level interagency staffing groups to coordinate services for an elderly or disabled person who needs multiagency services in addition to receiving protective services from or on behalf of DFPS.

(c) Sets forth certain requirements for the memorandum.

(d) Requires the agencies that participate in the formulation of the memorandum of understanding to consult with and solicit input from advocacy and consumer groups.

(e) Requires each agency to adopt the memorandum of understanding and all its revisions. Requires each agency to review and update the memorandum by no later than the last month of each fiscal year. Requires the agencies to develop revisions as necessary to reflect major agency reorganizations or statutory changes affecting the agencies.

(f) Requires the agencies to ensure that a state-level interagency staffing group provides certain individuals with a biennial report. Sets forth certain requirements for the content of the report.

(b) Requires DFPS, HHSC, DADS, DHS, and the Department of Assistive and Rehabilitative Services to adopt a joint memorandum of understanding as prescribed by Section 531.0551, Government Code, as added by this section no later than March 1, 2006.

SECTION 2.14. Amends the heading of Section 531.055, Government Code, to read as follows:

Sec. 531.055. MEMORANDUM OF UNDERSTANDING ON SERVICES FOR CERTAIN PERSONS NEEDING MULTIAGENCY SERVICES.

SECTION 2.15. Amends Sections 531.055(a), (b), and (e), Government Code, to provide that the memorandum of understanding adopted under this section will apply to individuals, other than elderly or disabled person served through the local-level interagency staffing groups established under Section 531.0551. Makes conforming and nonsubstantive changes.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2005.

