

BILL ANALYSIS

Senate Research Center

C.S.S.B. 758
By: Nelson, Uresti
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent child deaths in the state's foster care system revealed weaknesses in oversight of the Department of Family and Protective Services (DFPS). This bill is a follow-up from S.B. 6, 79th Legislature, Regular Session, 2005, to continue needed reforms in protective services and to improve quality and accountability in foster care.

C.S.S.B. 758 clarifies certain provisions and makes adjustments to the privatization plan for foster care in Texas.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commissioner is modified in SECTION 7 (Section 264.106, Family Code) and SECTION 28 (Section 45.002, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 162.304, Family Code), SECTION 7 (Section 264.106, Family Code), SECTION 13 (Section 264.2011, Family Code) and SECTION 24 (Section 42.044, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the Department of Family and Protective Services in SECTION 25 (Section 42.0535, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Amends Section 162.304, Family Code, by adding Subsections (g) and (h), as follows:

(g) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to provide that the maximum amount of the subsidy under Subsection (b) (relating to the subsidy for the adoption of a child) that may be paid to an adoptive parent of a child under an adoption assistance agreement (agreement) is an amount that would have been paid to the foster parents of the child, based on the child's foster care service level on the date the Department of Family and Protective Services (DFPS) and the adoptive parent enter into the agreement. Provides that this subsection applies only to a child who, based on factors specified in DFPS rules, DFPS determines would otherwise have been expected to remain in foster care until the child's 18th birthday and for whom this state would have made foster care payments for that care. Sets forth certain factors that DFPS is authorized to consider in determining whether a child is eligible for the amount of the subsidy authorized by this subsection.

(h) Requires DFPS to use the minimum amount required to be paid to a foster parent for a child assigned the same service level as the child who is the subject of the agreement and prohibits DFPS from including any amount that a child-placing agency is entitled to retain under the foster care rate structure in effect on the date DFPS and the adoptive parent enter into the agreement.

(b) Makes application of Sections 162.304(g) and (h), Family Code, as added by this Act, prospective.

SECTION 2. Amends Section 261.303, Family Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Requires a medical facility, at the request of DFPS, to release records to DFPS relating to the injury or condition that formed the basis for the original report of a child transferred from a reporting medical facility without requiring parental consent or a court order.

(e) Requires a person, including a utility company, that has confidential locating or identifying information regarding a family that is the subject of an investigation under this chapter to release that information to DFPS on request. Provides that the release of information to DFPS as required by this subsection by a person, including a utility company, is not subject to Section 552.352 (Distribution or Misuse of Confidential Information), Government Code, or any other law providing liability for the release of confidential information.

SECTION 3. Amends Section 263.102, Family Code, by adding Subsections (f) and (g), as follows:

(f) Requires DFPS to consult with relevant professionals to determine the skills or knowledge that the parents of a child under two years of age should learn or acquire to provide a safe placement for the child. Requires DFPS to incorporate those skills and abilities into DFPS's service plans, as appropriate.

(g) Authorizes the service plan for a child under two years of age, to the extent that funding is available, to require therapeutic visits between the child and the child's parents supervised by a licensed psychologist or another relevant professional to promote family reunification and to educate the parents about issues relating to the removal of the child.

SECTION 4. Amends Section 264.012, Family Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires DFPS to spend money appropriated for the child protective services program (program) to pay reasonable and necessary burial expenses for a person for whom DFPS is paying for foster care under Section 264.101(a-1)(2) and who dies while in foster care unless there is money in the person's estate or other money available to pay the person's burial expenses.

(b) Authorizes DFPS to accept donations, gifts, or in-kind contributions to cover the costs of any burial expenses paid by DFPS under this section.

SECTION 5. Amends Subchapter A, Chapter 264, Family Code, by adding Section 264.014, as follows:

Sec. 264.014. PROVISION OF COPIES OF CERTAIN RECORDS. Requires DFPS to provide certain records to the child in a specific time frame if, at the time a child is discharged from foster care, the child is at least 18 years of age or has had the disabilities of minority removed.

SECTION 6. Amends the heading to Section 264.106, Family Code, to read as follows:

Sec. 264.106. CONTRACTS FOR SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES.

SECTION 7. (a) Amends Sections 264.106(a), (b), (c), (e), (g), (i), (j), and (k), Family Code, as follows:

(a) Redefines "case management services," "permanency services," "substitute care provider," and "substitute care services." Defines "conservatorship services." Deletes the existing definition for "independent administrator."

(b) Requires DFPS, in accordance with Chapter 45, Human Resources Code, to assess the need for substitute care services, rather than substitute care and case management services, to contract with substitute care providers for the provision of all necessary substitute care services, rather than using an independent administrator to contract for those services, and to monitor the quality of services for which DFPS contracts, rather than DFPS and each independent administrator contract. Deletes existing Subdivision (3) regarding contracting with an independent administrator to coordinate and manage certain services, if cost beneficial. Makes conforming changes.

(c) Requires DFPS to develop a pilot program for the competitive procurement of case management services in one or more geographic areas of the state. Requires DFPS to contract with one or more substitute care providers to provide case management services under the pilot program. Requires DFPS to have a goal of privatizing case management services in at least 10 percent of the cases in which DFPS has been appointed temporary or permanent managing conservator of a child. Deletes existing text prohibiting an independent administrator from directly providing substitute care services or being governed by a board with certain members.

(e) Sets forth certain provisions required to be included in a contract authorized under this section (Required Contracts for Substitute Care and Case Management Services).

(g) Makes conforming changes.

(i) Prohibits DFPS, except as provided by Subsections (j) and (k) and notwithstanding any other law, from directly providing substitute care services for children for whom DFPS has been appointed temporary or permanent managing conservator on and after September 1, 2009, rather than 2011.

(j) Makes conforming changes.

(k) Makes conforming changes.

(b) Requires DFPS to enter into one or more contracts for case management services under the pilot program described by Section 264.106, Family Code, as amended by this section, on or before September 1, 2009, with a goal of contracting for case management services in at least 10 percent of the cases in the state in which DFPS has been appointed temporary or permanent managing conservator of a child. Requires DFPS, notwithstanding this deadline, to continue to provide case management services in any area covered by the pilot program if certain conditions are met.

(c) Requires the executive commissioner to adopt rules describing the circumstances in which DFPS may continue to provide case management services on an emergency basis during the pilot program described in Section 264.106, Family Code, as amended by this section.

SECTION 8. Amends Section 264.1063, Family Code, to make conforming changes.

SECTION 9. Amends Sections 264.107(c), (d), (e), and (f), Family Code, as follows:

(c) Requires DFPS to institute the use of real-time technology in the DFPS placement system to screen possible options for a child and match the child's needs with the most qualified providers with vacancies. Deletes existing text regarding the duties of an independent administrator or other authorized entity.

(d) Requires DFPS to ensure that placement decisions are reliable and are made in a consistent manner. Deletes existing text regarding the duties of an independent administrator or other authorized entity.

(e) Requires DFPS, in making placement decisions, to consult with the child's caseworker and the child's attorney ad litem, guardian ad litem, or court-appointed volunteer advocate and to use clinical protocols to match a child to the most appropriate placement resource. Deletes existing text regarding the duties of an independent administrator or other authorized entity.

(f) Makes a conforming change.

(g) Authorizes a DFPS employee who has on file a background and criminal history check to provide temporary emergency care for the child if DFPS is unable to find an appropriate placement for the child. Requires DFPS to provide notice to the court for a child placed in temporary care under this subsection not later than the next business day after the date the child is placed in temporary care.

SECTION 10. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1071, as follows:

Sec. 264.1071. PLACEMENT FOR CHILDREN UNDER AGE TWO. Requires DFPS, in making a placement decision for a child under two years of age, to ensure that the child is placed with a person who will provide a safe and emotionally stable environment and give priority to a person who will be able to provide care for the child without disruption until the child is returned to the child's parents or DFPS makes a permanent placement for the child.

SECTION 11. Amends Section 264.113, Family Code, by adding Subsections (c) and (d), as follows:

(c) Requires DFPS to work with OneStar Foundation to expand the program described by Subsection (b) (relating to a DFPS program to recruit foster parents from faith-based organizations) to increase the number of foster families available for DFPS and its private providers. Authorizes OneStar Foundation, in cooperation with DFPS, to provide training and technical assistance to establish networks and services in faith-based organizations based on best practices for supporting prospective and current foster families.

(d) Requires DFPS to work with the Department of Assistive and Rehabilitative Services to recruit foster parents and adoptive parents who have skills, training, or experience suitable to care for children with hearing impairments.

SECTION 12. Amends Section 264.121, Family Code, by adding Subsection (c), to require DFPS to provide an information booklet to a child and foster parent, at the time a child enters the Preparation for Adult Living Program, describing the program and the benefits available to the child. Sets forth the benefits to be described in the booklet for the program.

SECTION 13. Amends Subchapter C, Chapter 264, Family Code, by adding Section 264.2011, as follows:

Sec. 264.2011. ENHANCED IN-HOME SUPPORT PROGRAM. (a) Requires DFPS to develop a program to strengthen families through enhanced support (support program) to the extent that funding is available. Requires the support program to assist certain low-income families and children in child neglect cases in which poverty is believed to be a significant underlying cause of the neglect and in which the enhancement of in-home support appears likely to prevent removal of the child from the home or to speed reunification of the child with the family.

(b) Provides that eligible families are able to receive limited funding from a flexible fund account to cover nonrecurring expenses that are designed to help the family accomplish the objectives included in the family's service plan.

(c) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules establishing specific eligibility criteria for the support program in this section, the maximum amount of money made available to a family from the flexible fund account, and the purposes for which money can be spent under the support program.

(d) Requires DFPS to evaluate the results of the support program to determine whether the support program is successful in safely keeping families together. Requires DFPS to continue the support program to the extent that funding is available if DFPS determines that the support program is successful.

SECTION 14. Amends Section 264.203(a), Family Code, to authorize DFPS to order the parent, managing conservator, guardian, or other member of the subject child's household to participate in services provided or purchased by DFPS to alleviate the effects of abuse or neglect that has occurred, reduce the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future, and to permit the child and any siblings to receive services.

SECTION 15. Amends Chapter 266, Family Code, as added by Chapter 268, Acts of the 79th Legislature, Regular Session, 2005, by adding Section 266.0031, as follows:

Sec. 266.0031. COMMITTEE ON PEDIATRIC CENTERS OF EXCELLENCE RELATING TO ABUSE AND NEGLECT. (a) Provides that the committee on pediatric centers of excellence relating to abuse and neglect (committee) is composed of nine members appointed by the executive commissioner. Requires certain representatives of interested parties to be included as members of the committee.

(b) Requires the executive commissioner to designate a member representing the Department of State Health Services as the presiding officer of the committee.

(c) Requires the executive commissioner to appoint the medical director to be DFPS's representative on the committee, if DFPS has a medical director.

(d) Requires the committee to develop guidelines to designate regional pediatric centers of excellence, develop protocols for certain health care providers to follow in evaluating suspected cases of child abuse and neglect, and to recommend methods to finance the centers of excellence and services described by this section.

(e) Requires the committee to report its findings and recommendations to DFPS and the legislature not later than September 1, 2009.

(f) Provides that this section expires January 1, 2010.

SECTION 16. Amends Section 2155.1442(a), Government Code, to delete existing text requiring the state auditor to report annually to the governor, lieutenant governor, speaker of the house of representatives, and comptroller on the auditor's recommendations and Health and Human Services Commission's (HHSC) and DFPS's implementation of each recommendation.

SECTION 17. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.0325, as follows:

Sec. 40.0325. STUDY OF CASEWORKER EDUCATION REIMBURSEMENT. (a) Requires DFPS to study the effect that providing reimbursement for certain educational expenses would have on recruiting and retaining qualified child protective services caseworkers. Requires the study to include a comparative analysis of the cost of training new caseworkers and the benefits of having an experienced caseworker staff with the cost of providing reimbursement for educational expenses.

(b) Requires DFPS, in determining the cost of reimbursing caseworkers for educational expenses, to consider reimbursing caseworkers for certain academic expenses while the caseworker was enrolled in a bachelor's degree or advanced degree program in an academic program that DFPS determines provides necessary training for child protective services caseworkers.

(c) Requires DFPS, not later than December 1, 2008, to report its findings and recommendations to the governor, lieutenant governor, and speaker of the house of representatives.

SECTION 18. (a) Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.0326, as follows:

Sec. 40.0326. DEGREE REQUIREMENTS FOR CASEWORKERS. (a) Prohibits DFPS from employing a person as a caseworker unless the person holds a bachelor's degree or advanced degree in a certain academic area.

(b) Authorizes DFPS, notwithstanding Subsection (a), to employ a person as a caseworker who does not hold a degree required by Subsection (a) if the person has other exceptional education or experience that DFPS determines qualifies the person to perform the functions of a caseworker.

(b) Makes application of Section 40.0326, Human Resources Code, as added by this Act, prospective.

SECTION 19. Amends Section 40.0528, Human Resources Code, by adding Subsection (c), to provide that this section (Comprehensive Staffing and Workload Distribution Plan for Child Protective Services) does not prevent DFPS from contracting for special investigator services as needed.

SECTION 20. Amends Section 40.071, Human Resources Code, to include heroin and cocaine, or any of its forms, to the chemicals and drugs targeted in the DFPS drug-endangered child initiative.

SECTION 21. (a) Amends Subchapter B, Chapter 42, Human Resources Code, by adding Section 42.0211, as follows:

Sec. 42.0211. SAFETY SPECIALISTS, RISK ANALYSTS, AND PERFORMANCE MANAGEMENT. (a) Requires the division designated by DFPS (division) to employ at least one specially trained investigation safety specialist and sets forth the certain duties of this specialist.

(b) Requires the division to employ at least one risk analyst and sets forth specific duties of the risk analyst.

(c) Requires the division to include a performance management unit and sets forth specific duties of this unit.

(b) Requires DFPS to implement the change in law made by the enactment of Section 42.0211, Human Resources Code, only to the extent that funding is available.

SECTION 22. Amends Subchapter B, Chapter 42, Human Resources Code, by adding Section 42.0221, as follows:

Sec. 42.0221. COMMITTEE ON LICENSING STANDARDS. (a) Provides that the committee on licensing standards is composed of six specific members appointed by the governor.

(b) Provides that members of the committee on licensing standards serve two-year terms, with the terms of three members expiring February 1 of each year.

(c) Requires the governor to designate a member of the committee on licensing standards to serve as the presiding officer.

(d) Requires the committee on licensing standards to meet twice a year at the call of the presiding officer.

(e) Requires the committee on licensing standards to review and analyze the information provided by DFPS and to make recommendations for policy and statutory changes relating to licensing standards and facility inspections. Sets forth certain information required to be analyzed by the committee on licensing standards.

(f) Requires the committee on licensing standards to report its findings and recommendations to DFPS and the legislature not later than December 1 of each year.

SECTION 23. Amends Section 42.042, Human Resources Code, by adding Subsection (r), as follows:

(r) Authorizes a residential child-care facility that provides emergency services to temporarily exceed the facility's capacity for not more than 48 hours to provide temporary care for a child in an emergency. Requires the facility to notify DFPS within 24 hours of the placement that the facility temporarily exceeded the facility's capacity.

SECTION 24. (a) Amends Section 42.044, Human Resources Code, by adding Subsection (b-1) and amending Subsection (e), as follows:

(b-1) Sets forth required composition of the team that will conduct at least one of the unannounced, annual inspections of a residential child-care facility.

(e) Requires DFPS, in addition to DFPS responsibilities to investigate an agency foster home or agency foster group home under Subsection (c), to investigate certain incidents, conduct certain inspections, and conduct at least one annual enforcement team conference for each child-placing agency.

(b) Requires the executive commissioner to adopt rules specifying the types of alleged minimum standards violations that are considered to pose a high degree of risk to a child in the care of an agency foster home or agency foster group home under the age of six and is required to be investigated by DFPS under Section 42.044(a)(3), Human Resources Code, as added by this Act.

(c) Requires DFPS to implement the change in law made by this Act to Section 42.044, Human Resources Code, only to the extent that funding is available. Provides that the executive commissioner is not required to adopt rules as directed by Subsection (b) of this section if funding is not available.

SECTION 25. Amends Section 42.0535, Human Resources Code, by adding Subsections (e) and (f), as follows:

(e) Requires DFPS by rule to develop a process by which a child-placing agency is required to report certain information to DFPS.

(f) Requires information gathered under Subsection (e) to be made available to child-placing agencies through a searchable database maintained by DFPS.

SECTION 26. Amends the heading to Chapter 45, Human Resources Code, to read as follows:

CHAPTER 45. CONTRACTS FOR SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES

SECTION 27. Amends Sections 45.001(1), (12), and (13), Human Resources Code, to redefine "case management services," "substitute care provider," and "substitute care services."

SECTION 28. Amends Section 45.002, Human Resources Code, as follows:

Sec. 45.002. New heading: CONTRACTS FOR SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES; DEPARTMENT DUTIES. (a) Requires DFPS, not later than September 1, 2009, to enter into contracts for the provision of all substitute care services needed for children in the temporary or permanent managing conservatorship of DFPS and to contract with one or more providers of case management services in one or more geographic areas of the state as provided by Section 264.106, Family Code, with a goal of contracting for those services in at least 10 percent of the cases in this state.

(b) Deletes existing text prohibiting DFPS from directly providing substitute care and case management services under certain circumstances and requiring all substitute care and case management service providers to honor the cultural and religious affiliations of a child. Makes conforming changes.

(c) Requires DFPS to ensure that all substitute care and case management service providers, to the extent possible, honor the cultural and religious affiliations of a child placed in the service provider's care, regardless of the religious affiliation of the service provider. Makes conforming changes.

(d) and (e) Makes conforming changes.

SECTION 29. Amends Section 45.004, Human Resources Code, as follows:

Sec. 45.004. New heading: DEPARTMENT DATA SYSTEM DUTIES. Deletes existing Subsections (a) and (b) requiring DFPS to develop a strategy for contracting management support services from independent administrators.

SECTION 30. Amends the heading to Section 45.054, Human Resources Code, to read as follows:

Sec. 45.054. EVALUATION OF CASE MANAGEMENT SERVICES.

SECTION 31. Amends Sections 45.054(c) and (d), Human Resources Code, as follows:

(c) Requires DFPS to contract with a qualified, independent third party to evaluate the pilot program not later than the second, rather than the first, anniversary of the date DFPS enters into the first contract for case management services under this section (Regional Implementation). Deletes existing text regarding the privatization of substitute care. Deletes existing text requiring an evaluation to compare services provided by DFPS in similar regions. Makes conforming changes.

(d) Requires the independent third party with whom DFPS contracts with under Subsection (c) to submit its reports and recommendations to the House Human Services Committee, or its successor, and the Senate Health and Human Services Committee, or its successor, not later than September 1, 2012.

SECTION 32. Amends Section 45.101, Human Resources Code, as follows:

Sec. 45.101. New heading: GOALS FOR CONTRACTING. Requires DFPS to achieve certain goals in contracting for substitute care and case management services. Deletes existing text requiring the transition plan adopted under Section 45.053 to provide for a new structural model for the community-centered delivery of substitute care and case management services that is based on certain goals.

SECTION 33. (a) Requires DFPS to develop a child protective services improvement plan designed to build on the reform elements added by Chapter 268, Acts of the 79th Legislature,

Regular Session, 2005. Requires DFPS, in developing the plan, to seek to expand on or modify initiatives that have resulted in demonstrable improvements that serve certain primary goals.

(b) Sets forth the required elements of the improvement plan.

(c) Requires DFPS to implement the improvement plan described by this section only to the extent that funds are available for that purpose. Requires DFPS, if funding is only available to fund some elements of the plan, to implement only those parts of the plan for which funding is available. Requires DFPS to contract for services needed to implement certain elements of the improvement plan to the extent feasible.

SECTION 34. (a) Requires DFPS to implement each element of the improvement plan required by Section 29 of this Act for which funding is obtained and continue to implement all reform activities required by Chapter 268, Acts of 79th Legislature, Regular Session, 2005, as modified by this Act, not later than December 31, 2007.

(b) Requires DFPS to prepare and submit a progress report detailing DFPS activities in implementing the plan described by Subsection (a)(1) at the end of each fiscal year beginning August 31, 2008. Requires the progress report to include DFPS's calculation of cost savings from reduced stays in foster care and any other cost savings that can be attributed to the implementation of the improvement plan and continued child protective services reforms.

(c) Requires DFPS to submit the implementation plan and periodic progress reports by this section to the governor, the lieutenant governor, the speaker of the house of representatives, appropriate oversight committees of the legislature, the Legislative Budget Board, and the state auditor.

(d) Provides that this section expires September 1, 2010.

SECTION 35. Repealer: Sections 264.106(d), Family Code (regarding the services to be provided by and the prohibited actions of an independent administrator); Section 264.1062 (Evaluation of Independent Administrators), Family Code; Section 42.022 (State Advisory Committee), Human Resources Code; Sections 45.001(5), (6), and (8) through (11) (defining "family-based safety services," "independent administrator," "permanency services," "placement assessment," "privatize," and "psychotropic medication"), Human Resources Code; Sections 45.052 (Financing) and 45.053 (Adoption of Transition Plan), Human Resources Code; Sections 45.054(a), (b), and (e) through (h) (regarding the privatization of substitute care and case management services on a regional bases in accordance with the transition plan), Human Resources Code; and Section 45.102 (Transition Plan Requirements), Human Resources Code .

SECTION 36. Effective date: September 1, 2007.