

BILL ANALYSIS

Senate Research Center
81R10220 MCK-D

S.B. 1411
By: West
Health & Human Services
4/5/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

On October 7, 2008, H.R. 6893, the federal Fostering Connections to Success Act, became law. Part of that law requires states that do not already do so to notify all grandparents and other adult relatives of a child's removal and to provide these relatives with information on the option to become foster parents. The notification project will likely result in a cost to the state, not only for the additional outreach, but also for the additional foster care payment responsibilities the state will assume when notified relatives opt for those payments. The extension of benefits to children who achieve the permanency after age 16 will encourage permanency for older youth, and the extension of foster care benefits will assist youth who age out of foster care at age 18 in transitioning to adulthood.

As proposed, S.B. 1411 creates the Permanency Care Assistance Program at the Texas Department of Family and Protective Services (DFPS). This bill requires DFPS to enter into permanency care assistance agreements, with a kinship provider who is eligible to receive permanency care assistance benefits and authorizes DFPS to enter into agreements with certain kinship providers only if the kinship provider meets certain eligibility requirements. S.B. 1411 also requires DFPS to offer adoption assistance to be extended to a youth's 21st birthday if the youth's adoption assistance agreement was entered into after the youth's 16th birthday and the youth is pursuing certain educational goals or is unable to do so due to a disability.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services (executive commissioner) in SECTION 5 (Section 264.853, Family Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 1 (Section 162.3041, Family Code) and SECTION 2 (Section 264.101, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 162.3041, Family Code, by adding Subsection (a-1), and amending Subsection (d), as follows:

(a-1) Requires the Department of Family and Protective Services (DFPS), notwithstanding Subsection (a) (relating to requiring DFPS to provide adoption assistance to the child's adoptive parents until certain requirements are met), if DFPS first entered into adoption assistance agreement with a child's adoptive parents after the child's 16th birthday, in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), to offer adoption assistance after the child's 18th birthday to the child's adoptive parents under an existing adoption agreement until the first day of the month of the child's 21st birthday, provided the child is:

- (1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;
- (2) regularly attending an institution of higher education or a postsecondary vocational or technical program;

(3) participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours a month; or

(5) incapable of doing any of the activities described by Subdivisions (1) through (4) due to a documented medical condition.

(d) Provides that DFPS is not required to provide adoption assistance benefits under Subsection (a-1) unless DFPS is specifically appropriated funds for purposes of that subsection.

SECTION 2. Amends Section 264.101, Family Code, by amending Subsections (a-1) and (d), and by adding Subsection (a-2), as follows:

(a-1) Requires DFPS to continue to pay the cost of foster care for a child for whom DFPS provides care, including medical care, until the first day of the month in which the child attains the age of 18. Requires DFPS to continue to pay the cost of foster care for a child after the month in which the child attains the age of 18 as long as the child is:

(1) regularly attending high school or enrolled in a program leading toward a high school diploma or a high school equivalency certificate;

(2) regularly attending an institution of higher education or postsecondary vocational or technical program;

(3) participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours a month; or

(5) incapable of performing the activities described by Subdivisions (1) through (4) due to a documented medical condition.

Deletes existing text requiring DFPS to pay the cost of foster care for a child for whom DFPS provides care, including medical care, until the date the child attains 18 or the date the child graduates from high school or ceases to be enrolled in a secondary school in a program leading to a high school diploma. Makes nonsubstantive changes.

(a-2) Requires DFPS to continue to pay the cost of foster care under Subsection (a-1)(1) until the first day of the month in which the child attains the age of 22 and Subsections (a-1)(2) through (5) until the first day of the month the child attains the age of 21.

(d) Authorizes the executive commissioner to adopt rules that establish criteria and guidelines for the payment of foster care, including medical care, for a child and for providing care for a child after the child becomes 18 years of age if the child meets the requirements for continued foster care under Subsection (a-1), rather than is regularly attending an institution of higher education or a vocational or technical program.

SECTION 3. Amends Sections 264.751(1) and (3), Family Code, to redefine "designated caregiver" and "relative caregiver."

SECTION 4. Amends Subchapter I, Chapter 264, Family Code, by adding Section 264.760, as follows:

Sec. 264.760. ELIGIBILITY FOR FOSTER CARE PAYMENTS AND PERMANENCY CARE ASSISTANCE. Authorizes a relative or other designated caregiver who becomes licensed by DFPS or verified by a licensed child-placing agency to operate a foster home, foster group home, agency foster home, or agency foster group

home under Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code, notwithstanding any other provision of this subchapter, to receive foster care payments in lieu of the benefits provided by this subchapter, beginning with the first month in which the relative or other designated caregiver becomes licensed or is verified.

SECTION 5. Amends Chapter 264, Family Code, by adding Subchapter K, as follows:

SUBCHAPTER K. PERMANENCY CARE ASSISTANCE PROGRAM

Sec. 264.851. DEFINITIONS. Defines "foster child," "kinship provider," "permanency care assistance agreement," "permanency care assistance benefits," and "relative."

Sec. 264.852. PERMANENCY CARE ASSISTANCE AGREEMENTS. (a) Requires DFPS to enter into a permanency care assistance agreement (agreement) with a kinship provider who is eligible to receive permanency care assistance benefits.

(b) Authorizes DFPS to enter into an agreement with a kinship provider who is the prospective managing conservator of a foster child only if the kinship provider meets the eligibility criteria under federal and state law and DFPS rule.

(c) Prohibits a court from ordering DFPS to enter into an agreement with a kinship provider unless the kinship provider meets the eligibility criteria under federal and state law and DFPS rule, including requirements relating to the criminal history background check of a kinship provider.

(d) Authorizes an agreement to provide for reimbursement of the expenses a kinship provider incurs in obtaining permanent managing conservatorship of a foster child, including attorney's fees and court costs. Prohibits the reimbursement of the expense under this subsection from exceeding \$2,000.

Sec. 264.853. RULES. (a) Requires the executive commissioner to adopt rules necessary to implement the permanency care assistance program. Requires the rules to establish eligibility requirements to receive permanency care assistance benefits under the program, provide for the amount of permanency care assistance payments under the program and ensure that the program conforms to the requirements for federal assistance as required by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. No. 110-351).

(b) Requires the executive commissioner, in adopting rules regarding permanency care assistance payments, to ensure that permanency care assistance payments do not exceed the monetary assistance available for a foster care provider caring for the child for whom the kinship provider is caring.

Sec. 264.854. CONTINUED ELIGIBILITY FOR PERMANENCY CARE ASSISTANCE BENEFITS AFTER AGE 18. Authorizes DFPS, if DFPS first entered into an agreement with a foster child's kinship provider after the child's 16th birthday, to continue to provide permanency care assistance payments until the first day of the month of the child's 21st birthday, provided the child is:

(1) regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;

(2) regularly attending an institution of higher education or a postsecondary vocational or technical program;

(3) participating in a program or activity that promotes, or removes barriers to, employment;

(4) employed for at least 80 hours a month; or

(5) incapable of performing the activities described by Subdivisions (1) through (4) due to a documented medical condition.

Sec. 264.855. APPROPRIATION REQUIRED. Provides that DFPS is not required to provide permanency care assistance benefits under this subchapter unless DFPS is specifically appropriated money for purposes of this subchapter.

SECTION 6. Requires the executive commissioner, not later than December 1, 2009, to adopt rules to implement and administer the permanency care assistance program under Subchapter K, Chapter 264, Family Code, as added by this Act.

SECTION 7. Requires HHSC, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 8. Effective date: September 1, 2009.