

BILL ANALYSIS

Senate Research Center

S.B. 1889
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Parents of children with severe behavioral or mental disorders face a high financial burden in securing the necessary medical care for their child. Although Medicaid waiver programs cover mental and behavioral health services for children with disabilities, some private insurers only cover mental health services if the child is determined to be homicidal or suicidal or they may limit coverage of care. In these cases, parents without adequate health insurance or financial means may face the last resort decision to place their child in the custody of Child Protective Services (CPS) to obtain the mental health services or treatment the child needs. In doing so, parents are deemed as having refused to accept parental responsibility and are placed on Texas' abuse and neglect registry. Parents who have given up custody of their children to CPS for the sole reason of gaining behavioral or mental health services for their children do not pose a present or future threat to the safety of children and should not be entered into the abuse and neglect registry.

S.B. 1889 would prohibit DFPS from reporting the names of parents who are on the state's abuse and neglect registry solely for the purposes of obtaining mental health services for their children by changing the definition of neglect to exclude these cases; requiring agency rules to prohibit the agency from placing a parent's name on the abuse and neglect registry in these cases; and requiring agency rules to establish guidelines to remove the names of parents who were registered on the abuse and neglect registry solely to obtain mental health services for their children. What's more, the committee substitute would require the agency to collect data regarding the number of children and parents impacted by this issue; require the agency to discuss the option of joint managing conservatorship with parents to provide them the opportunity to continue partial custody of their child since there is no abuse or neglect, unless it is not in the best interest of the child; repeal the study to develop alternatives to relinquishment of custody to obtain mental health services established by S.B. 44 (2013); and conform and update language to implement these measures.

S.B. 1889 amends current law relating to the definition of neglect of a child, the exclusion of certain information from the Department of Family and Protective Services central registry of child abuse or neglect cases, and the report of certain information regarding those cases to the legislature.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 2 (Section 261.002, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.001(4), Family Code, to redefine "neglect."

SECTION 2. Amends Section 261.002(b), Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(b) Requires, rather than authorizes, the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules necessary to carry out this section. Requires that the rules:

(1) prohibit the Department of Family and Protective Services (DFPS) from making a finding of abuse or neglect against a person in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child; and

(2) establish guidelines for reviewing the records in the registry and removing those records in which DFPS was named managing conservator of a child who has a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child.

Deletes existing text requiring that the rules provide for cooperation with local child service agencies, including hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system.

SECTION 3. Amends Section 262.352, Family Code, as follows:

Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD. (a) Creates this subsection from existing text. Requires DFPS, before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, to, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS.

Deletes existing text requiring DFPS, before a person relinquishes custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, to, if it is in the best interest of the child, discuss with the person relinquishing custody of the child the option of seeking a court order for joint managing conservatorship of the child with DFPS.

(b) Requires DFPS, not later than November 1 of each even-numbered year, to report the following information to the legislature:

(1) with respect to children described by Subsection (a):

(A) the number of children for whom DFPS has been appointed managing conservator;

(B) the number of children for whom DFPS has been appointed joint managing conservator; and

(C) the number of children who were diverted to community or residential mental health services through another agency; and

(2) the number of persons whose names were entered in the central registry of cases of child abuse and neglect only because DFPS was named managing conservator of a child who has a severe emotional disturbance because the child's family was unable to obtain mental health services for the child.

(c) Provides that Subsection (b) and this subsection expire September 1, 2019.

SECTION 4. Repealer: Section 262.353 (Study to Develop Alternatives to Relinquishment of Custody to Obtain Mental Health Services), Family Code.

SECTION 5. Requires DFPS to implement the changes in law made by this Act using funds appropriated to DFPS for the state fiscal biennium ending August 31, 2017.

SECTION 6. Effective date: September 1, 2015.