

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 5
By: Frank et al. (Schwertner)
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised regarding the structure of the Department of Family and Protective Services (DFPS) with respect to the pace of decision-making in abuse and neglect investigations and a lack of organizational flexibility for DFPS to manage its service delivery and workforce more effectively. H.B. 5 seeks to better meet the needs of children in the foster care system and at-risk youth in Texas by removing DFPS from the state's health and human services system under the direction of the Health and Human Services Commission.

C.S.H.B. 5 amends current law relating to the powers and duties of the Department of Family and Protective Services and the transfer of certain powers and duties from the Health and Human Services Commission.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) is transferred to the commissioner of the Department of Family and Protective Services (DFPS) in SECTIONS 3, 4, 5, 6, 7, 9, 11, and 15 (Sections 107.152, 107.159, 107.160, 162.304, 162.3041, 263.009, 265.105, and 266.003, Family Code) and SECTION 28 (Section 40.030, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 16 (Section 266.006, Family Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of DFPS in SECTION 27 (Section 40.027, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 58.0051(a)(2), Family Code, to redefine "juvenile service provider."

SECTION 2. Amends Section 58.0072(c), Family Code, to include the Department of Family and Protective Services (DFPS) among the entities to which the Texas Juvenile Justice Department may grant access to juvenile justice information for certain approved purposes.

SECTION 3. Amends Section 107.152(c), Family Code, to change a reference to the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) to the commissioner of the Department of Family and Protective Services (DFPS).

SECTION 4. Amends Section 107.159(a), Family Code, to make conforming changes.

SECTION 5. Amends Section 107.160(a), Family Code, to make conforming changes.

SECTION 6. Amends Sections 162.304(b-2) and (g), Family Code, to make conforming changes.

SECTION 7. Amends Section 162.3041(a-1), Family Code, to make conforming changes.

SECTION 8. Amends Subchapter A, Chapter 261, Family Code, by adding Section 261.004, as follows:

Sec. 261.004. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION. Provides that in this chapter, a reference to the executive commissioner or the executive commissioner of HHSC means the commissioner of DFPS and a reference to HHSC means DFPS.

SECTION 9. Amends Section 263.009(a), Family Code, to make conforming changes.

SECTION 10. Amends Subchapter A, Chapter 264, Family Code, by adding Section 264.0011, as follows:

Sec. 264.0011. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION. Provides that in this chapter, a reference to the executive commissioner or the executive commissioner of HHSC means the commissioner of DFPS and a reference to the commission or HHSC means DFPS.

SECTION 11. Amends Section 265.105, Family Code, as added by Chapter 1257 (H.B. 2630), Acts of the 84th Legislature, Regular Session, 2015, to make conforming changes.

SECTION 12. Amends Section 265.106, Family Code, to make a conforming change.

SECTION 13. Amends Section 265.109(a), Family Code, to make a conforming change.

SECTION 14. Amends Section 266.001, Family Code, by adding Subdivision (1-b) to define "commissioner."

SECTION 15. Amends Section 266.003, Family Code, as follows:

Sec. 266.003. MEDICAL SERVICES FOR CHILD ABUSE AND NEGLECT VICTIMS. (a) Changes a reference to HHSC to DFPS. Requires DFPS to collaborate with HHSC and health care and child welfare professionals to design the described medical services delivery model.

(b) and (c) Makes conforming changes.

(d) Provides that HHSC is responsible for administering contracts with managed care providers for the provision of medical care to children in foster care. Requires DFPS to collaborate with HHSC to ensure that medical care services provided by managed care providers match the needs of children in foster care.

SECTION 16. Amends Sections 266.006(a), (b), and (e), Family Code, as follows:

(a) Requires that the health passport be maintained in an electronic format and use DFPS's, rather than HHSC's and DFPS's, existing computer resources to the greatest extent possible.

(b) Requires the executive commissioner, in collaboration with the commissioner, to adopt rules specifying the information required to be included in the passport.

(e) Requires HHSC, in collaboration with DFPS, to provide training or instructional materials to foster parents, physicians, and other health care providers regarding use of the health passport.

SECTION 17. Amends Sections 266.008(a) and (d), Family Code, as follows:

(a) Requires DFPS to develop an education passport for each foster child. Requires DFPS to determine the format of the passport, rather than requires HHSC, in conjunction with DFPS, to determine the format of the passport. Makes conforming changes.

(d) Requires DFPS, rather than DFPS and HHSC, to collaborate with the Texas Education Agency (TEA) to develop policies and procedures to ensure that the needs of foster children are met in every school district.

SECTION 18. Amends Chapter 266, Family Code, by adding Section 266.013, as follows:

Sec. 266.013. CONTINUITY OF SERVICES PROVIDED BY COMMISSION. (a) Requires HHSC, in addition to the requirements of Section 266.003(d), to continue to provide any services to children in the conservatorship of DFPS that HHSC provided to those children before September 1, 2017.

(b) Provides that Subsection (a) does not apply to any services provided by HHSC in relation to a child's education passport created under Section 266.008.

SECTION 19. Amends Section 531.001(4), Government Code, to delete Paragraph (D) including DFPS among the agencies under "health and human services agencies."

SECTION 20. Amends Section 531.00553, Government Code, as added by Chapter 837 (S.B. 200), Acts of the 84th Legislature, Regular Session, 2015, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Creates an exception under Subsection (a-1).

(a-1) Provides that, in relation to DFPS, the term "administrative support services" does not include legal, human resources, contracting, or strategic planning and evaluation services.

(b) Requires the executive commissioner, subject to Subsection (c), to plan and implement an efficient and effective centralized system of administrative support services for the health and human services system and DFPS, as applicable.

SECTION 21. (a) Amends Section 531.02013, Government Code, as follows:

Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN AGENCIES. Provides that the following functions are not subject to transfer under Sections 531.0201 and 531.02011:

(1) the functions of DFPS, including the statewide intake of reports and other information, related to the following:

(A) makes no changes to this paragraph;

(B) adult protective services, including, rather than other than, investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(i) and (ii) makes no changes to these subparagraphs;

(C) makes no changes to this paragraph; and

(D) investigations of alleged abuse, neglect, or exploitation occurring at a child-care facility, including a residential child-care facility, as those terms are defined by Section 42.002 (Definitions), Human Resources Code; and

(2) makes no changes to this subdivision.

(b) Prohibits, notwithstanding any provision of Subchapter A-1 (Consolidation of Health and Human Services System), Chapter 531 (Health and Human Services Commission),

Government Code, or any other law, the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility, including a residential child-care facility, as those terms are defined by Section 42.002, Human Resources Code, from being transferred to HHSC and provides that it remains the responsibility of DFPS.

(c) Requires the commissioner of DFPS, as soon as possible after the effective date of this section, to transfer the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility, including a residential child-care facility, to the child protective services division of DFPS. Requires the commissioner to transfer appropriate investigators and staff as necessary to implement this section.

(d) Effective date, this section: upon passage or on the 91st day after the last day of the legislative session.

SECTION 22. Amends Section 531.0202(a), Government Code, to delete existing Subdivision (5) and redesignate existing Subdivisions (6) and (7) as Subdivisions (5) and (6).

SECTION 23. Amends Section 531.0206(a), Government Code, as follows:

(a) Requires the Sunset Advisory Commission (Sunset) to conduct a limited-scope review of HHSC during the state fiscal biennium ending August 31, 2023, in a certain manner, and requires that the review provide:

(1) makes no changes to this subdivision;

(2) an evaluation and recommendations regarding the need to continue the Department of State Health Services (DSHS), rather than DFPS and DSHS, as a state agency separate from HHSC; and

(3) makes no changes to this subdivision.

SECTION 24. Amends Section 531.102(a), Government Code, to include services provided by DFPS among the services to which this subsection applies.

SECTION 25. Amends Sections 40.0026 and 40.0027, Human Resources Code, as effective September 1, 2017, as follows:

Sec. 40.0026. REFERENCES IN LAW MEANING DEPARTMENT. Provides that in this code or any other law, a reference to DFPS or HHSC in relation to a function described by Section 40.0025(b) (relating to the provision that DFPS performs only functions related to certain protective, prevention, and early intervention services) or a legal, human resources, contracting, or strategic planning and evaluation function for DFPS means DFPS. Deletes existing text providing that a reference in law to DFPS in relation to any other function has the meaning assigned by Section 531.0011 (References in Law Meaning Commission or Appropriate Division), Government Code.

Sec. 40.0027. REFERENCES IN LAW MEANING COMMISSIONER OR DESIGNEE. Provides that in this code or in any other law, a reference to the commissioner of DFPS or the executive commissioner of HHSC in relation to a function described by Section 40.0025(b) or a legal, human resources, contracting, or strategic planning and evaluation function for DFPS means the commissioner. Deletes existing text providing that a reference in law to the commissioner in relation to any other function has the meaning assigned by Section 531.0012 (References in Law Meaning Executive Commissioner or Designee), Government Code.

SECTION 26. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Sections 40.021, 40.022, 40.023, 40.024, 40.025, and 40.026, as follows:

Sec. 40.021. FAMILY AND PROTECTIVE SERVICES COUNCIL. (a) Provides that the Family and Protective Services Council (council) is created to assist the commissioner in developing rules and policies for DFPS.

(b) Provides that the council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. Requires the governor, in making appointments to the council, to consider persons who have a demonstrated knowledge of DFPS and the health and human services system in general, including former DFPS employees, court-appointed special advocates, foster care providers, and employees of child advocacy centers.

(c) Requires the council to study and make recommendations to the commissioner regarding the management and operation of DFPS, including policies and rules governing the delivery of services to certain persons, the rights and duties of certain persons, and the consolidation of the provision of certain administrative support services. Prohibits the council from developing policies or rules relating to administrative support services provided by HHSC for DFPS.

(d) Provides that Chapter 551 (Open Meetings), Government Code, applies to the council.

(e) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the council.

(f) Provides that a majority of the members of the council constitute a quorum for the transaction of business.

Sec. 40.022. APPOINTMENTS. (a) Requires that appointments to the council be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Requires that appointments to the council be made so that each geographic area of the state is represented on the council. Requires that appointments to the council, notwithstanding Subsection (a), reflect the ethnic diversity of this state.

Sec. 40.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) Prohibits a person who is appointed as a member of the council from voting, deliberating, or being counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) Requires that the training program provide certain information relating to DFPS and HHSC to the member.

Sec. 40.024. TERMS; VACANCY. (a) Provides that members of the council serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) Prohibits a member of the council from serving more than two consecutive full terms as a council member.

(c) Requires that a vacancy on the council be filled in the same manner as the original appointment.

Sec. 40.025. REIMBURSEMENT FOR EXPENSES. Prohibits a council member from receiving compensation for service as a member of the council but provides that the member is entitled to reimbursement for travel expenses incurred while conducting the business of the council as provided by the General Appropriations Act.

Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) Requires the governor to designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) Requires the members of the council to elect any other necessary officers.

(c) Requires the council to meet quarterly and at other times at the call of the presiding officer. Authorizes the council to hold meetings in different areas of the state.

SECTION 27. Amends Section 40.027, Human Resources Code, as follows:

Sec. 40.027. COMMISSIONER. (a) Requires the governor, with the advice and consent of the senate, to appoint a commissioner, rather than requiring the executive commissioner to appoint a commissioner in accordance with Section 531.0056 (Appointment of Agency Director by Executive Commissioner), Government Code.

(b) Provides that the commissioner serves a term of two years, rather than serves at the pleasure of the executive commissioner.

(c) Requires the commissioner, rather than requires the commissioner subject to the control of the executive commissioner, to:

(1) makes no changes to this subdivision;

(2) oversee, rather than assist, the development and implementation of policies and guidelines needed for the administration of DFPS's functions;

(3) oversee, rather than assist, the development of rules relating to certain matters within DFPS jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by DFPS; and

(4) makes no changes to this subdivision.

(d) Requires the commissioner to administer this chapter and other laws relating to DFPS. Deletes existing text specifying laws relating to DFPS under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k) (relating to requiring the executive commissioner and each agency director to enter into a memorandum of understanding in the prescribed manner), Government Code, between the commissioner and executive commissioner, as adopted by rule.

(e) Requires the commissioner, notwithstanding any other law, to adopt rules and policies for the operation of and the provision of services by DFPS.

SECTION 28. Amends Section 40.030, Human Resources Code, to change references to the executive commissioner to the commissioner.

SECTION 29. Amends Section 40.0505, Human Resources Code, as follows:

Sec. 40.0505. New heading: DIVISIONS OF DEPARTMENT. (a) Requires the commissioner to establish certain specified divisions and offices within DFPS.

(b) Authorizes the commissioner to establish additional divisions within DFPS as the commissioner determines appropriate.

(c) Authorizes the commissioner to assign DFPS functions among DFPS's divisions. Deletes existing text providing that, to the extent a power or duty given to the commissioner by this chapter or another law conflicts with Section

531.0055 (Executive Commissioner: General Responsibility for Health and Human Services System), Government Code, Section 531.0055 controls.

SECTION 30. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.0512, as follows:

Sec. 40.0512. CONTINUITY OF SERVICES; INFORMATION SHARING. Requires DFPS to make a good faith effort to share relevant and appropriate information with health and human services agencies regarding persons receiving services from DFPS to ensure continuity of care and the best possible coordination of state-funded resources among health and human services agencies.

SECTION 31. Amends Section 40.058, Human Resources Code, by adding Subsections (i) and (j), as follows:

(i) Requires DFPS and HHSC to enter into contracts for the provision of all shared administrative services, subject to approval by the governor. Provides that shared administrative services do not include legal, human resources, contracting, or strategic planning and evaluation services.

(j) Requires DFPS to collaborate with HHSC to ensure the efficient provision of administrative support services by HHSC.

SECTION 32. Amends Subchapter A, Chapter 48, Human Resources Code, by adding Section 48.0021, as follows:

Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE COMMISSIONER. Provides that in this chapter, a reference to HHSC means DFPS and a reference to the executive commissioner means the commissioner of DFPS.

SECTION 33. Repealers: Sections 261.001(7) (relating to defining "executive commissioner") and 264.001(2) (relating to defining "commission") and (3) (relating to defining "executive commissioner"), Family Code.

Repealers: Sections 40.0506 (Management and Direction by Executive Commissioner) and 40.0507 (Contracting and Auditing Authority; Delegation), Human Resources Code.

SECTION 34. Requires the executive commissioner, as soon as possible after the effective date of this Act, to transfer the appropriate divisions, resources, and personnel to DFPS to allow DFPS to perform the general functions of DFPS under Chapter 40, Human Resources Code, as amended by this Act, including any staff and associated resources previously transferred to HHSC for the purpose of providing legal, human resources, contracting, or strategic planning and evaluation services to DFPS pursuant to the requirements of Chapter 837 (S.B. 200), Acts of the 84th Legislature, Regular Session, 2015.

SECTION 35. Effective date, except as otherwise provided by this Act: September 1, 2017.