SUBJECT: Child and adult protective services revisions

COMMITTEE: Human Services — committee substitute recommended

WITNESSES: 7 ayes — Hupp, Eissler, J. Davis, A. Allen, Goodman, Paxton, Reyna

0 nays

2 absent — Gonzalez Toureilles, Naishtat

SENATE VOTE: On final passage, March 3 — 30-0

WITNESSES: None

CHILD PROTECTIVE SERVICES

BACKGROUND: Child Protective Services (CPS) is the state child welfare service administered by the Department of Family and Protective Services (DFPS), and housed under the Health and Human Services Commission (HHSC). When CPS receives a report of abuse, neglect, or abandonment, case workers conduct an investigation and may offer services to stop or prevent abuse or neglect while the child stays in the home, or may remove the child for placement in foster care. CPS also is involved in placing children in foster care into adoptive families and in assisting children in the transition from foster care into adulthood and emancipation.

Under the current system, a report of abuse or neglect is received through a statewide intake system, and it is determined whether the report meets the statutory definition of abuse or neglect. If so, the report is determined a Priority I if the abuse or neglect could pose an immediate risk of death or serious harm. An investigation must be initiated within 24 hours of receiving the report, and law enforcement must accompany the CPS caseworker when responding to the report. All other reports are assigned a Priority II, and investigations must be initiated within 10 days of receiving these reports.

As part of an investigation, a CPS caseworker may interview family members and appropriate collateral sources to determine whether any child in the referred family has been abused or neglected and if the child is still at risk for abuse or neglect. If the investigator does not foresee that a child will be abused or neglected in the future, the case may be closed, or closed with a referral to appropriate community services such as family therapy or rent or childcare assistance programs. If the worker concludes that the child is at risk of abuse or neglect, then the worker may open an In-Home Safety Service Case or have the child removed and placed in Out-of-Home Care.

In-Home Safety Services are designed to reduce the risk of future abuse or neglect while the child remains in the home. Assessments are conducted as the basis to create a plan identifying services needed to ensure the long-term safety and well-being of the child and family. Contracts are made with community agencies to provide identified services, and caseworkers work with the families to achieve specific goals over a three-to-nine month period. In 2004, 53,248 kids received in-home services and 3,729 received purchased services.

If a court determines that the child cannot remain safely in the home, the child is placed in either the home of a relative, a foster home, or a residential facility. Children in out-of-home care are eligible for Medicaid. Foster homes and residential facilities are reimbursed for child care-related costs at a rate based upon the needs of each child. During this time, DFPS staff and the family develop a service plan to resolve barriers to safety, and DFPS caseworkers are responsible for arranging all medical, dental and therapeutic services as well as all the child's basic needs. In fiscal 2004, CPS caseworkers conducted 9,503 removals.

Courts have 12 months to issue a final order for children in DFPS conservatorship, with the potential for a six-month extension. Actions could include returning the child to the parents, naming another relative or person the managing conservator, appointing the department or other party as the managing conservator, or termination of the parent-child relationship. Families that are reunited may continue to receive services, including family therapy, at-risk child care, and parenting classes.

For those adolescents in out-of-home care that are aging out of the foster care system, such services are offered as Preparation for Adult Living

(PAL). DFPS contracts with community organizations to provide Life Skill training classes to equip adolescents with basic living skills, money management skills, and vocational education. The PAL program served 5,341 youths in fiscal 2004.

DFPS seeks adoptive homes for children of families in which parental rights have been terminated. DFPS provides adoption services directly, and DFPS contracts with Child Placing Agencies to provide adoption placement and consummation in some cases. In fiscal 2004, there were 2,512 consummated adoptions.

Adoption subsidies are available to eligible children to help cover the costs of their care until age 18. Adoption subsidy payments are for a negotiated amount based upon the documented needs of the child. The subsidy can include a monthly stipend and coverage for non-recurring adoption expenses.

In response to highly publicized cases of child death and instances in which children were subjected to abuse or neglect despite CPS involvement, Gov. Rick Perry issued Executive Order RP 35 directing HHSC to review and reform the state's CPS system. The Office of the Inspector General performed 2,221 case reviews to determine the source of problems in the CPS system, and in cases where further action was required, the primary finding was that excessive caseloads led to early closure or mishandling of investigations. HHSC created a reform proposal based on the inspector general's findings as well as the input of both internal and external stakeholders. The comptroller also has published a report and the system has been watched closely by advocacy groups across the state.

In 2003, Texas had a population of about 6 million children. Over the course of that year, CPS received 186,000 reports alleging abuse and neglect. They completed more than 131,000 cases, from which they confirmed that about 78,000 children had been subject to abuse or neglect. Since that time, reports of abuse and neglect have continued to rise. Despite the fact that additional funding for staff, including caseworkers, has been provided in each legislative session subsequent to 1995, when 607 FTEs were cut through the appropriations process, average caseloads for investigators still have risen from 47.9 per month in November 2001, to the current level of 74 per month.

DIGEST:

CSSB 6 would change the CPS system by implementing statewide privatization of substitute care and case management services. DFPS would develop performance based contracting practices to maintain oversight of the newly privatized system and hold service providers accountable for outcomes. DFPS would seek independent administrators that would manage substitute care services and case management services.

Goals would be established to reduce caseloads and improve the quality of investigations. CPS investigators would incorporate forensic methods of investigation with an emphasis on screening out less serious cases not requiring further investigation. Caseworkers would co-locate, where possible, with law enforcement, shelters, and health care providers. The use of technology would be encouraged throughout the system.

When children were removed from the home, DFPS first would seek placement for the child with relative caregivers. If not placed in a relative's home, the child could be placed in a foster home or foster group home. Residential treatment facilities and administrators would be licensed and monitored by DFPS. Children in foster care would receive medical care through a medical home and would have a health passport readily accessible to health care providers containing the child's full medical history. Services would be provided to foster care children aging out of the system to ease the transition into adulthood.

These provisions would take effect September 1, 2005.

Privatization of substitute care and case management services

Not later than September 1, 2009, DFPS would complete the statewide privatization of the provision of all substitute care and case management services. After that date, child-care institutions and child-placing agencies would provide these services. The HHSC commissioner would adopt rules to implement the privatization of these services and define case emergencies in which the state would be allowed to provide these services. Case management services would include caseworker-child visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child was progressing toward permanency within state and federal mandates. Hiring preference among

substitute care or case management service providers would be given to DFPS employees in good standing with the department whose positions were eliminated through privatization.

Goals for the new structural model for the community-centered delivery of substitute care and case management services would be improving protective services, achieving timely permanency for children in substitute care, including family reunification, placement with a relative, or adoption, and improving the overall well-being of children in substitute care. To meet this goal, DFPS and the HHSC would, in consultation with various stakeholders, develop and adopt a substitute care and case management services transition plan by March 1, 2006.

Transition plan. The transition plan would include information specific to each region, including demographics, local resources and services, and other characteristics that would affect privatization. It also would define the roles of the various public and private entities participating in the privatization effort, including specifics on the transfer of duties to these entities, financial arrangements, formal training requirements, performance expectations, and data reporting and management, ensuring that the department retained the legal authority to effectively provide oversight. It would describe the child needs assessment process, the manner in which DFPS would procure kinship services, and the costs and fiscal impacts of the transition. Finally, it would evaluate existing rate structures for compensating substitute care providers and recommend rate adjustments where appropriate.

The transition plan would include a schedule with deadlines for implementation of the plan in each region of the state. The transition would be completed in the first region not later than December 31, 2006, and the transition would be completed statewide not later than September 1, 2009. By the first anniversary of the first regional privatization contract, DFPS would institute an independent evaluation of the implementation of the privatization of substitute care and case management services assessing performance based on compliance with defined quality outcomes for children. The department would report the results of the evaluation to the Legislature to determine whether to refine the service delivery model for the remaining regional transitions.

Independent administrators. DFPS would develop a comprehensive strategy for contracting for management support services from independent administrators on a regional basis. An independent

administrator would be defined as an independent agency selected through a competitive procurement process to secure, coordinate, and manage substitute care services and case management services in a geographically designated area of the state, and ensure continuity of care for a child referred to the administrator by the department and the child's family from the day a child entered the child protective services system until the child left the system.

If DFPS determined an independent administrator could procure substitute care and case management service contracts with private agencies and conduct placement assessment in a cost-effective manner, DFPS would transfer these responsibilities to the independent administrator. Otherwise, DFPS would retain those duties for that region. A contract for the purchase of substitute care services would be procured using department procurement procedures or procurement procedures approved by the executive commissioner that promote open and fair competition. The private agencies with which the independent administrator would contract would have to increase local foster and adoptive placement for all children, especially teens, sibling groups, minority children, children with severe or multiple disabilities, and other difficult-to-place kids. Agencies also would have to expand efforts to recruit foster and adoptive families and alternative care providers through faith-based and other targeted recruitment programs.

An independent administrator could not directly provide substitute care services or have a financial interest in a community-based organization that provided permanency services in Texas. Administrative services to be provided by an independent administrator would include recruiting and subcontracting with community-based substitute care providers to ensure a full array of services in defined geographic areas, managing placements and making referrals for placement based on DFPS-approved protocols, monitoring services delivered by subcontractors, providing training and technical assistance to contract providers, maintaining data systems that support tracking and reporting key performance and outcome data, and ensuring accountability for achieving defined client and system outcomes.

Contract management. DFPS would monitor all contracts through DFPS as well as each independent administrator and ensure that services were provided in accordance with state and federal law. By March 1, 2006, DFPS would develop a plan for reorganizing operations to support new

contracting, monitoring, and licensing enforcement needs, including provisions for reducing duplication of monitoring.

A contract between DFPS and an independent administrator would include provisions that enabled the department to monitor the effectiveness of services and regulate acceptance of clients. A contract between an independent administrator and a provider of substitute care and case management services would include department-approved provisions that enabled the independent administrator and DFPS to monitor the effectiveness of substitute care and case management services, described how performance was linked to reimbursement or incentives, and required all independent administrators and private contractors to disclose to DFPS any information that may indicate an actual or potential conflict of interest. All contracts would include provisions specifying performance standards, authorizing the termination of the contract for cause, authorizing the inspection of documents relating to the contract, and other provisions DFPS deemed necessary to ensure accountability for the delivery of services and for the expenditure of public funds.

Performance under past contracts would be considered in determining whether to contract with a substitute care provider or an independent administrator. DFPS would retain the rights and duties as the temporary or permanent managing conservator of a child. DFPS would create financing payment arrangements providing incentives for independent administrators and subcontractors to achieve safety, permanency, and well-being outcomes and improved system performance.

Technology. Permanency service providers would be allowed to enter relevant data in DFPS's client data system. Subject to appropriated funds, DFPS would enhance existing data systems to include contract performance information and implement a contracting data system developed or procured by DFPS to track quality assurance and other contracting tools to effectively manage, monitor, and evaluate performance-based contracting functions. DFPS would develop and implement a comprehensive multidisciplinary team to monitor and evaluate the performance of independent administrators. The team would consist of specialized staff who would enable the department to measure achievement of client and system outcomes, compliance with contractual terms and conditions, and any history of noncompliance with the department's licensing standards. DFPS would establish a quality assurance program that used comprehensive, multitiered assurance and

improvement systems based, subject to the availability of funds, on real-time data to evaluate performance.

Investigations

The HHSC commissioner could establish divisions within DFPS as necessary for efficient administration and for the discharge of the department's functions. The commissioner also could appoint advisory committees. An investigations division would be established, directed by a person with law enforcement experience, to oversee and direct the investigation functions of the CPS program, including the receipt and screening of all reports of alleged child abuse or neglect. The investigations division would, as appropriate, refer children and families in need of services to other department divisions or to other persons or entities with whom the department contracts for the provision of the needed services. The investigations division would not investigate reports of alleged child abuse or neglect in state-licensed facilities.

Staffing and workload. DFPS would develop and implement a staffing and workload distribution plan for CPS to reduce caseloads, enhance accountability, improve the quality of investigations, eliminate delays, and ensure the most efficient and effective use of CPS staff and resources. In developing and implementing the plan, the department would, subject to available funds:

- develop a methodology to ensure an equitable assignment of cases in each area of the state;
- evaluate the duties of investigators and supervisors, identifying and reassigning functions that would be performed more efficiently by paraprofessional staff;
- ensure that investigative and service units contained adequate supervisory and support staff and these individuals were paid appropriately to increase employee retention;
- provide incentives to recruit and retain caseworkers and supervisors assigned to investigative units and specialized staff with law enforcement or forensic investigation experience;
- identify and use alternative work schedules, when appropriate;
- develop a program to replace caseworkers and investigators with trainees hired in anticipation of vacant positions or mobile caseworkers who would provide coverage for vacancies as needed;

- use a system of regional hiring supervisors for targeted recruitment efforts;
- improve staff recruitment and screening methods to promote the hiring of the most qualified candidates and improve an applicant's understanding of the job requirements;
- reduce the time necessary to complete a plan of service for a child and family when providing family-based safety services; and
- increase accountability by identifying methods to reduce the administrative area for which each manager was responsible.

To improve training for CPS caseworkers, DFPS would centralize accountability and oversight of all training in order to ensure statewide consistency. Classroom-based training would be augmented with a blended learning environment using computer-based modules, structured field experience, and simulation for skills development. All new caseworkers would be taught a core curriculum, and advanced training would be conducted before assuming responsibilities for specialized jobs.

DFPS would employ one child safety specialist per administrative region to focus on investigative issues, including conducting reviews to ensure that risk assessment tools were properly used and reviewing and evaluating cases where there had been multiple referrals of the same family to CPS. Subject to the availability of funds, DFPS also would employ or contract with medical and law enforcement professionals to assist caseworkers with assessment decisions and intervention activities and subject matter experts to consult on general caseworker duties. DFPS would designate liaisons to develop relationships with local law enforcement agencies and courts.

An attorney ad litem appointed for a child in the CPS system would have to complete three hours of legal continuing education on child advocacy unless the attorney had experience in this area. The education would be low-cost, available on the Internet and through the State Bar, and would focus on the duties of attorneys ad litem in these cases. The attorney ad litem would be required to meet with a child four years of age or older and the person with whom the child resided before the hearing unless good cause was shown not to do so. DFPS would support the expansion of court-appointed volunteer advocate programs into counties in which there were needs for such programs.

DFPS and the Department of State Health Services (DSHS) would work cooperatively with the Child Fatality Review Committee and individual review teams. DSHS would:

- promote and coordinate team training;
- assist the committee in developing model protocols for reporting and investigating child fatalities, collecting data regarding child deaths; and operating the review teams; and
- develop and implement procedures for the operation of the committee.

Screening and initial response. Highly skilled caseworkers would screen cases to determine their severity, and cases could be closed administratively if it was determined that the child's future safety could be assured on the basis of information collected from credible sources. DFPS would develop policies and monitor closed cases to ensure that cases were not closed inappropriately. The penalty would be increased for knowingly or intentionally making a false report of child abuse and neglect from a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) to a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) for the first offense and a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) for any subsequent offenses.

The HHSC would adopt rules requiring that, subject to the availability of funding, DFPS would respond to Priority II reports of abuse and neglect within 72 hours and to Priority I reports within 24 hours. Priority I investigations would be conducted jointly with a peace officer. DFPS would seek assistance to obtain a court order if a parent or other person refused to cooperate with an investigation and it posed a risk to the child's safety. Interfering with an investigation by taking, retaining, or concealing a child would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) and could be prosecuted under this law or any other applicable law.

DFPS would develop an automated reporting and tracking system to monitor compliance with timely responses to reports of abuse. Investigative actions would be documented no later than the day after they occur. Casework quality indicators would be developed and reported in real time so department supervisors could access them and use them in caseworker supervisor training. A case tracking system would notify

supervisors and management when cases were not progressing quickly. DFPS would use current data reporting systems and provide general training for department supervisors and management in using it for monitoring cases and making decisions.

Joint investigations. DFPS would develop, in consultation with law enforcement agencies in each county, guidelines and protocols for joint investigations incorporating the use of forensic methods of investigating alleged abuse. Joint training would also be conducted on interviewing, evidence gathering, and testifying in court for criminal investigations. DFPS and local law enforcement agencies that had at least one full-time peace officer designated to investigate reports of child abuse and neglect would, to the extent possible, house their respective child abuse investigators in the same offices, potentially at a child advocacy center in the county. If the county did not possess a child advocacy center, DFPS would, if practicable, establish one and co-locate investigators**.**

Technology

DFPS, in cooperation with district and county courts, would expand the use of teleconferencing and videoconferencing to facilitate participation by medical experts and other individuals in court proceedings.

DFPS continually would explore the use of technology to improve services, reduce workload, increase accountability, and enhance overall efficiency and effectiveness of operations. The department would develop plans and seek funding for those determined feasible and cost-effective. To the extent that funds were appropriated for these purposes, DFPS would implement a mobile technology project, including online transcription services designed to increase caseworker access to department policy and family case history, facilitate communication between caseworkers and supervisors, allow timely and accurate data entry, and reduce backlogged investigations. DFPS also would implement a modified design of the department's automated case management system to improve risk and safety assessment and service plan development and to facilitate incorporation of historical case data.

Subject to appropriated funds, DFPS would develop and implement a pilot program designed to facilitate the progression of child protective services cases through the judicial process through the paperless exchange of information between the department and one or more courts with

jurisdiction over CPS cases. On or before December 1, 2006, DFPS would submit a report to the governor, the lieutenant governor, and the speaker of the House, including a description of the status of the pilot program, the effects of the program on the progression of CPS cases through the judicial process, and an evaluation of the feasibility of expanding the system statewide.

Relative and other designated caregivers

DFPS would develop and administer a program based upon rules adopted by the HHSC commissioner to promote continuity and stability for children by placing them with relative caregivers or other individuals with whom they had a longstanding and significant relationship. The program also would facilitate placement with these caregivers by providing assistance to the caregiver in obtaining permanent legal status for the child and, based upon a family's need, providing a one-time cash payment of not more than $1,000, specified reimbursements for child-care expenses, and support services. The department and other state agencies actively would seek and use federal funds available for these purposes.

DFPS would provide parents with a child placement resources form on which the parents would identify three potential relative or other designated caregivers. This form would be provided at the status hearing if it had not previously been submitted. Prior to the full adversary hearing, DFPS would expedite background and criminal history checks on all identified individuals and perform a home study on the individual determined the most appropriate substitute caregiver. The department could place the child with an individual identified on the placement resources form prior to conducting the checks and home study if it determined it was in the best interest of the child. A relative or other individual with whom a child was placed would be provided with any information necessary to ensure that individual was prepared to meet the needs of the child, including information on abuse or neglect suffered by the child.

Family preservation and prevention services

CSSB 6 would define family preservation to include the provision of preventive services designed to help a child at risk of foster care placement remain safely with the child's family and services designed to help a child return, when safe and appropriate, to the family from which

the child was removed. In instances where the child had not been removed, the court could impose sanctions, including removal, if a family did not follow orders for participating in services to protect the health and safety of the child.

The service plan would have to be written in a clear and understandable manner to facilitate a parent's ability to follow the plan. A new section would be added to the plan stating any specific skills or knowledge that the child's parents would need to acquire or learn to achieve the plan goal. The court would review knowledge and skills learned or acquired at each subsequent hearing.

DFPS would develop a statewide strategy to build local alliances and networks at the local level that would support the detection and treatment of child abuse and neglect and enhance the coordination and delivery of services to children and families. The strategy would include plans to move staff from centralized office sites into community-based settings and enter into agreements for the establishment or development of joint offices or workplaces with local officials and organizations, including child advocacy centers, law enforcement officials, prosecutors, health care providers, and domestic violence shelters. DFPS could employ specialized staff, to the extent that funds were appropriated, to serve their regions as legal liaisons to support the prosecution of legal cases and community initiative specialists who would focus on building community alliances and networks.

DFPS would fund evidence-based prevention programs offered by community-based organizations and periodically would evaluate these programs to determine their continued effectiveness. The department would place priority on programs that targeted children whose race or ethnicity was disproportionately represented in the CPS system. DFPS also could collaborate with courts and other entities to develop and implement family group conferencing as a strategy for promoting family preservation and permanency for children.

DFPS would administer a grant program to provide funding to community organizations, including faith-based or county organizations, to respond to low-priority, less serious cases of abuse and neglect and cases in which an allegation of abuse or neglect of a child was unsubstantiated but involved a family that previously had been investigated. The organization would execute and be monitored for an interagency agreement or a

contract with the department for a requested service. In areas of the state in which community organizations received grants under the program, the department would refer low-priority cases to a community organization receiving a grant under the program. A community organization receiving a referral would 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. If the family chose to use the family services, a case manager from the organization would monitor the case and ensure that the services were delivered. The department would not award a grant to a community organization in an area of the state in which a similar program already was providing effective family services in the community.

DFPS would establish a drug-endangered child initiative in which the Department of Public Safety and a local law enforcement agency, upon discovering a child exposed to methamphetamine or to materials used in its illicit manufacture, would report to the department. DFPS would maintain a record of these reports, including actions taken by DFPS to ensure the child's safety and well-being.

If DFPS determined that the number of children of a particular race or ethnicity in the CPS system was not proportionate to the general population, the department would attempt to reduce the disproportionate representation by documenting it and instituting policies and practices to promote parity in outcomes for all children. Prevention and early intervention services would be prioritized for identified communities and groups. Cultural competency training would be developed and provided to DFPS staff. Recruitment efforts would be targeted both to ensure diversity among department staff and find foster and adoptive families who could meet the needs of children waiting for permanent homes. Finally, DFPS would develop collaborative partnerships with community groups, agencies, faith-based organizations, and other community-based organizations to provide culturally competent services to children and families of every race and ethnicity.

Children in foster care and adoptive placements

The department would conduct a confidential, annual survey of a sample of children at least 14 years of age receiving substitute care services from each region of the state. The survey would assess the quality of care provided to the child and any improvements that could be made to enhance the program.

The children's policy council would reviewissues related to foster children with developmental disabilities or mental retardation and perform studies and make recommendations on minimizing the number of foster children placed in institutions and maximizing the number of foster children receiving community-based care.

Transitional services. The performance of students in foster care or other residential care under the conservatorship of DFPS would be reported on campus report cards and the district performance report. Outreach programs would be developed for children in grades 9-12 to ensure awareness of exemptions available for certain foster and adopted children from payment of tuition and fees.

To assist children in the conservatorship of the department in transitioning to independent living, the department would improve discharge planning and increase the availability of transitional family group decision-making for each child age 16 or older in DFPS's permanent managing conservatorship. The discharge plan would identify the services and tasks needed to assist the child and evaluate whether the child's educational placement was appropriate for meeting his or her academic needs. As necessary to achieve the goals of the Preparation for Adult Living Program, DFPS would coordinate, to the extent possible, extended foster care eligibility, transition services, and Medicaid coverage for youths age 21 or younger who formerly were in foster care. Such children also could receive workforce-related services and referrals for short-term housing stays.

The definition of a parent would be extended to include one whose parental rights had been terminated but who paid child support or was required to provide medical support for a child. The court could order parents who financially were able to provide child support even if parental rights had been terminated. This would apply to a child in substitute care until the child was adopted, turned 18 years of age or graduated from high school, or died, whichever occurred earliest. The parent could be ordered to continue providing support to a disabled child for an indefinite period. The attorney general would monitor cases in which DFPS provided services to a child that should be receiving child support, and would bring charges to enforce a child support order if the obligor fell 60 days behind.

Passports. HHSC would develop an education passport for each child in foster care and, in conjunction with DFPS, would determine the format of

the passport, including an electronic format. The passport would contain educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other educational information HHSC deemed important. DFPS would maintain the passport as part of the department's records for as long as the child remained in foster care. DFPS and HHSC would collaborate with the Texas Education Agency to develop policies and procedures to ensure that the needs of foster children were met in every school district.

HHSC also would develop a health passport to make available the most complete health history of the child to the person authorized to consent to medical care and any provider of health care. HHSC, in conjunction with DFPS, would determine the format of the passport, including an electronic format.

HHSC would develop and implement passport programs if specific monies were appropriated, and if not, it could use other dollars appropriated. The passports would be developed only if money for technological privacy was available. By March 1, 2006, the form and content of passports would be finalized. By September 1, 2007, passports would be made available electronically, and they would interface with other programs by September 1, 2008.

Medical services including medical homes. Subject to the availability of funds, a comprehensive, cost-effective medical services delivery model would be developed to meet the needs of children served by DFPS. Under the model, each child in foster care would receive a medical home at which the child would receive an initial comprehensive assessment as well as all other necessary treatments to meet the child's ongoing physical and mental health needs. The medical services delivery model also would include designation of health care facilities with expertise in child abuse and neglect, a statewide telemedicine system, a review system to assess clinical care recommendations for foster children, and development of protocols for use of psychotropic medications for foster children. As part of HHSC's drug utilization review, the commission annually would monitor the use of medications for foster children.

On removing a child from the home, the department would use assessment services provided by a child-care facility, child-placing agency, or the child's medical home during the initial substitute care placement. Soon after a child began receiving foster care, DFPS would assess, by means

including screening or participation by outside sources, whether the child had a developmental disability or mental retardation.

DFPS would work with the HHSC and the federal government to develop a program to provide medical assistance to adopted children who needed medical care but did not qualify for adoption assistance.

Designated individuals could petition the court for any order related to medical care of a child in foster care. Medical care could not be provided to a child in foster care unless the court approved such a petition or consent was provided by a relative caregiver authorized by the court, the person responsible for a child's case, DFPS medical personnel, or another caregiver designated by DFPS. Before giving consent, these authorized individuals would complete a training program related to consent, be aware of a child's medical condition and history, and attend each of the child's appointments with a medical care provider. The name of each person who could provide consent for medical care would be filed with the court, and these individuals would be notified if any individual petitioned the court regarding the child's medical care.

Unless a parent could not be located or had executed an affidavit of relinquishment of parental rights, DFPS would notify the child's parent of any life-threatening or potentially serious injury or illness as soon as practicable, but not later than 24 hours after the department learned of the condition.

At each hearing, or more frequently if ordered by the court, the court would review a summary of the medical care provided to the child since the previous hearing. The summary would include information regarding:

- any emergency medical care provided to the child and the circumstances surrounding it;
- any medication prescribed for the child and the condition requiring it;
- the degree to which the child or foster care provider had complied with any medical treatment plan;
- adverse reactions or side effects of any medical treatment;
- any specific medical condition that had been diagnosed or for which tests were being conducted;
- any activity that the child should avoid or engage in that might affect the effectiveness of the treatment; and

- other information required by department rule or by the court.

At or before each hearing, DFPS would provide this summary of medical care to the court, the person authorized to consent to medical treatment for the child, the guardian ad litem or attorney ad litem, if one had been appointed by the court, the child's parent, if the parent's rights had not been terminated, and any other person determined by the department or the court to be necessary or convenient to the provision of medical care to children in foster care.

Residential child-care licensing and administration

Residential child-care facilities would include child-care institutions, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes. The controlling person, either alone or in connection with others, would have the ability to directly or indirectly influence or direct the management, expenditures, or policies of a residential child-care facility.

The executive commissioner of the HHSC would adopt rules governing the placement and care of children by a child-placing agency, as necessary to ensure the health and safety of those children; the verification and monitoring of agency foster homes, agency foster group homes, and adoptive homes by a child-placing agency; and if appropriate, child-placing agency staffing levels, office locations, and administration. The executive commissioner would require residential child-care facilities to report immediately to DFPS when a child was missing or if there was a serious incident involving the child, including death or serious injury, abuse or neglect, or arrest or truancy.

HHSC would contract with the state auditor to perform on-site financial audits of selected residential contractors selected on the basis of the contract's risk assessment rating, allegations of fraud or misuse of state or other contract funds, or other appropriate audit selection criteria. The residential contractors selected for audit would be included in the audit plan and approved by the Legislative Audit Committee. DFPS would require that all files related to contracts for residential care of foster children were complete, accurately reflect the contractor's actual updated contract performance, were maintained in accordance with the department's record retention procedures, and were made available to the state auditor when requested. Subject to the availability of funds, DFPS

could develop an online system to enable residential contractors to review their reimbursement accounts or other pertinent financial data and reconcile their accounts.

The department would provide a standard inspection checklist and other forms for use in conducting inspections of residential child-care facilities and issuing inspection reports. DFPS would promulgate minimum standards based on the designated risk associated with each standard and could consult with a committee to do so. For monitoring and compliance purposes, DFPS periodically would use the inspection checklist to conduct inspections of a random sample of agency foster homes and group homes. On completion of an inspection of a residential child-care facility, the inspector would hold an exit conference with a representative of the inspected facility. The representative would receive a copy of the inspection checklist and could discuss potential violations.

All new personnel hired to conduct inspections or investigations of residential child-care facilities would be required to hold a bachelors degree, have at least two years of relevant work experience, and meet training and examination requirements regarding any facility to which the person would be assigned. DFPS annually would evaluate and determine the effectiveness of these training programs and would determine the number of residential child-care facility licensing violations identified statewide and any regional discrepancies in licensing enforcement.

DFPS could deny an application for licensure if the applicant had had a license revoked in another state or had been barred from operating a facility in another state. DFPS could invalidate the verification of a 24-hour agency foster home or agency foster group home located in a county with a population of less than 300,000 if it was not verified using proper procedures. An order for emergency suspension or closure of a facility would be effective for 30 days for a residential child-care facility or 10 days for all other facilities. A residential child care facility for which a license had been revoked or suspended would have to mail a certified letter to the parents or managing conservator of each child served by the facility no later than five days after the facility was notified.

The department could not issue a license, listing, registration, or certification to a person for whom these items had been revoked or an application for these items had been denied for a substantive reason until five years after the item finally had been revoked for a residential child-

care facility or, for other facilities, two years after the item finally had been revoked. Issuance of a license, listing, registration, or certification also could be refused to a person:

- whose license or certification for a residential child-care facility had been revoked by court order;
- who was a controlling person of a residential child-care facility at the time conduct occurred that resulted in the revocation of the facility's license or certification;
- who voluntarily closed a residential child-care facility or relinquished a license or certification over a noncompliance issue; or
- who was a controlling person of a residential child-care facility at the time conduct occurred that resulted in the closure of the facility or relinquishment of the license or certification.

DFPS could impose an administrative penalty against a residential child-care facility or controlling person if the party violated a term of a license or registration, made false statements on license or registration applications, refused DFPS access to investigate records or the facility, interfered with the work of an investigator or enforcement actions, or failed to pay a penalty by the due date. Penalties would be designated from $50 to $500 based on the maximum number of children the facility was authorized to care for or the number of children under care at the time of the violation.

DFPS would license, register, and enforce regulations applicable to child placing agency administrators. A person could not serve as a child-placing agency administrator without a license issued by DFPS after January 1, 2006. To qualify for an administrator's license, a person would be required to provide information for DFPS to conduct criminal history and background checks, have one year of full-time experience in management of child-placing personnel and programs, have either a graduate or higher degree or a bachelors degree and two years of full-time experience placing children in residential settings or adoptive homes, and pass an examination. A person failing an examination three times could not submit a new application until one year after the date the person last failed the exam. The license could not be issued until after appropriate criminal history and background checks were performed. To be eligible for renewal of an administrator's license, the person would have to present evidence of

participation in continuing education for 15 hours each year prior to the renewal.

The department could deny, revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for various violations, including:

- engaging in fraud or deceit related to the duties of an administrator;
- providing false or misleading information to the department during the license application or renewal process for any person's license;
- making a statement about a material fact during the license application or renewal process that the person should know is false;
- having a criminal history or central registry record that would prohibit a person from working in a child-care facility;
- using drugs or alcohol in a manner that jeopardized the person's ability to function as an administrator; or
- performing duties as a child-care administrator in a negligent manner.

A person whose license was revoked for these reasons would not be eligible to apply for another license for a period of five years after the date the license was revoked.

A person whose license was denied would be entitled to a hearing conducted by the State Office of Administrative Hearings. During the appeals process for a license denial, revocation, or suspension, the person could not continue operations as an administrator if deemed a threat to the health or safety of a child by DFPS. The department would notify the person and applicable governing bodies of this determination. Serving as a child-care or child-placing agency administrator without a license would be a class C misdemeanor (maximum fine of $500).

A residential child-care facility would implement a behavior intervention program approved by the department to assist the facility in managing a child's conduct, including behavior intervention instruction for staff members who work directly with children and training for all employees regarding the risks associated with the use of prone restraints.

DFPS would include, in an annual report on licensing activities, a summary of training programs required by DFPS and their effectiveness, a report of trends in licensing violations on a statewide and regional basis, and the department's plans to address those trends through the provision of technical assistance.

One license could be issued for child-care institutions acting as a single operation that were across the street from one another, in same city block, or on same property.

General provisions

The bill would change the scheduled Sunset review date for DFPS from September 1, 2009, to September 1, 2013. It would make various technical and conforming changes.

Within 180 days of the effective date of this bill, and every six months after that date, HHSC would have to provide a detailed progress report to the state leadership. Progress toward meeting goals and performance measures would be documented, as would steps taken to enhance internal and external accountability to achieve favorable outcomes for children needing protective services. HHSC also would have to discuss any obstacles encountered or significant unanticipated fiscal implications.

SUPPORTERS SAY:

Privatization. CSSB 6 would roll out privatization of substitute care and case management services in a highly planned and responsible fashion so that Texas children no longer would be endangered by the failings of the current CPS system. Evidence and experience have shown that adding more resources to the current system alone has not resolved CPS's problems. The severity of the current crisis necessitates drastic reforms. Privatization would balance the need for immediate action with a process to assess each regional privatization effort so that the state could learn from best practices and implement them in subsequent regional transitions.

Contracting with community-based organizations for substitute care and case management services would allow CPS to focus on performing effective investigations and making determinations on child removals in each child's best interest. The infrastructure already exists for privatization because approximately 75 percent of foster care services currently are privately provided. The array of private services available, including basic care, emergency shelters, therapeutic foster care, group homes, and

residential treatment centers, assures that the remaining children in public foster care could be absorbed into the private system.

The current system is inefficient, because case management services are duplicated by CPS staff and case managers within child care facilities. The privatized system would result in greater efficiency because those best equipped to determine each child's needs — the people who work with the child on a daily basis — would make case management decisions. The system would provide greater continuity and allow more frequent contact between case managers and children and families, facilitating greater input from parents.

Although issues concerning recruitment and training likely would remain, private agencies set the bar for providing creative supports not available to public agency employees. Agency employees, already experienced in dealing with family separations, would need to learn the intricacies of the CPS system through education and work in the courts, and this transition has been made successfully in other states. This transition also would be eased by the fact that experienced CPS caseworkers would receive hiring preference, which also would minimize job displacement.

Under the current system, DFPS both regulates and manages itself, which creates a conflict of interest. The privatization plan would remove this conflict of interest, because the independent administrators who selected the substitute care provider statutorily would be prevented from providing such services themselves or having a financial interest in such providers. As an additional safeguard, providers would be required to disclose potential conflicts of interest as parts of their contracts.

Privatization would yield better child and family outcomes. Independent administrators could build, train, and support networks of providers on a regional basis. This would enhance their ability to place each child locally with the best qualified provider to obtain permanency goals for the child. Under the current system, children often are sent to other regions to receive care. Performance measures would be built into each contract, and providers not meeting certain standards could face contract termination or financial sanctions. Payment methodologies would be aimed at achieving desired outcomes and would prevent abuses by creating a disincentive to serve children in foster care longer than necessary. Through DFPS contract management, bad actors would be weeded out of the system and outcomes for children would improve. In addition, nonprofits naturally are

accountable to multiple stakeholders, including donors, and many have longstanding reputations for quality service provision.

DFPS would maintain the authority to provide services in emergencies. Ultimate decision making authority would remain with DFPS as the child's managing conservator, so the department could weigh in on contested terminations and exercise its authority when it deemed necessary. Other states have demonstrated positive outcomes from privatization, and costs would not be too high unless DFPS micromanaged at the case level, rather than effectively monitoring results and ensuring compliance with federal and state laws.

Collaboration with law enforcement. Law enforcement and CPS often work on the same cases, and greater collaboration and coordination could lead to a better knowledge exchange among agencies and more timely and effective investigations. CPS investigators should develop a better understanding of forensic methods of investigation, because this is crucial to understanding the types of evidence that can be gathered and the methods for gathering this evidence. Evidence that is not gathered in a timely or professional manner may be worthless for future investigations. If crimes have occurred, proper evidence collection is key to successful prosecutions.

Call screeners. Intake specialists sometimes receive false reports over custody battles and other issues, many of which could be disproved through better fact-gathering, intake techniques, rather than full CPS investigations. Screening out more cases would help reduce caseloads for the state's overburdened caseworkers and would allow investigators to focus more time on helping true victims of abuse and neglect. The better the fact-gathering process, the more accurately intake specialists could prioritize the severity of incoming reports, which would determine the appropriate level of response by the proper authorities and provide more useful evidence in conducting investigations.

False reporting. People often make reports with malicious intent that disrupt the lives of innocent individuals and cause caseworkers to waste time on unnecessary cases. Such actions interfere with the functions the department and merit harsh punishment. By deterring false reports, the bill would allow caseworkers to focus on cases where the safety of children truly was at risk.

Psychotropic drugs. Following recommendations on the proper administration of psychotropic drugs would safeguard children and prevent problems associated with over-medication. There have been many horror stories on children in foster care taking excessive amounts of drugs each day. Drugs are not the proper treatment for every person, and behavioral problems are often mistaken for mental health issues. Doctors are quick to prescribe drugs for children, yet there are many other treatment avenues, including the promotion of regular eating and sleeping habits.

Medical passports. Medical passports would be a tremendous resource, because kids in the foster care system often move from place to place and their records are lost in the process. Medical histories can provide critical information relevant to determining treatments and understanding what therapies have previously been successful for individual children. The medical passport would provide all relevant information in one easy to access place, and these passports would be created using proper privacy safeguards.

Prevention services. Studies have shown the risk of child abuse and neglect is greater among parents who are unprepared for parenting, have financial or other environmental stressors, have difficulty in relationships, and have mental health problems. Services that target these issues could prevent parents from reaching the stage where they abuse children. A preventive rather than reactive approach is what will eventually heal the CPS system and reduce caseloads. More resources should continually be poured into prevention services so that families learn to deal with the stressors that lead to abuse.

OPPONENTS SAY:

Privatization. Privatization is not the answer to problems caused by a shortage of well-trained workers, a dearth of high quality foster homes, and insufficient social services such as mental health and drug and alcohol counseling. The major crisis in the CPS system, contributing to the tragic, recent cases of child abuse and death despite CPS involvement, is occurring at the investigations level, which privatization would not resolve. Although financial resources have been added to enhance operations of the current system, sufficient resources never been committed to keep pace with caseload growth, leaving CPS starved for adequate funding to achieve its mission.

Privatization alone will not improve the lack of service providers under the current system. The reason children often are sent to far-off treatment facilities is not because of a lack of effort by DFPS to obtain services locally but rather because reimbursement rates are not adequate to fund the higher costs of providing services in certain areas. Only more money will entice service providers into these hard-to-serve areas, which could be allocated with or without privatization.

Private providers lack the relevant experience, including dealings with the court system, to equip them to take over case management responsibilities. It makes no sense to transfer such duties to private providers when many of the supposed benefits of privatization could be obtained under the current system. Given reduced caseloads and hence more time to devote to each case, CPS caseworkers could spend more time interacting with children and families and ensure that parents' input was heard and addressed. DFPS could build, train, and support networks of providers on a regional basis and also could enhance outcomes for children through performance-based contracting and various payment methodologies.

Privatizing on the basis of benefits that DFPS could provide under the current system only would add another administrative layer of costs for oversight of cases and contract management. This potentially would create more duplication than some critics claim now exists. While CPS caseworkers deal with case decisions and related litigation, case managers at facilities deal with specific services provided to children and families. Privatizing case management responsibilities currently held by CPS caseworkers only would impose increased liability on the state. While ultimate responsibility for child outcomes still would fall to the state, CPS no longer would have control over case decision-making.

The care of children should not be determined by for-profit organizations. Although nonprofits could bid on contracts to become independent regional administrators, they lack the resources in most cases to undertake such duties. In addition, the definition of case management in CSSB 6 leaves room for further potentially harmful conflicts of interest, because the independent administrator only would make the initial child placement, after which time case managers working for specific providers would make determinations on child and family service needs and would have an incentive to make decisions that could benefit their facilities. If payment methodologies intended to prevent abuses by minimizing the time a child spent in out-of-home care were not implemented carefully,

they inadvertently could provide an incentive to deny children and families the full array of services needed. Although reunification is ideal, it should not be promoted at the expense of a child's welfare.

Some states identified as best practice models for CPS reform and used as justification for the benefits of privatization actually performed similar to or worse than Texas on key outcome measures. Among the few states that have attempted similar wide-scale privatization efforts, increases in the cost of case management services have approached as much as 300 percent over prior spending on the system.

Even with additional funding, the privatization proposal in CSSB 6 would be too cumbersome for agency management to implement within the proposed timeline, given the many other pressing reforms included in the bill. Privatization would require a complete transformation of the CPS system, necessitating highly-trained professionals, strong oversight, and a clear plan implemented according to deadlines that would not disrupt services to children. If privatization were to be explored, a more judicious approach would be to implement a pilot program that fully could examine various privatization models and weigh the consequences of each prior to rolling out a reform on a statewide basis. Such a pilot would prevent resources from being pumped into a system that had not been proven safe or beneficial to the welfare of children and families in Texas.

Collaboration with law enforcement. The more children and families encounter law enforcement officers, either through their presence at investigations or at co-located facilities, the more they may feel intimidated or defensive, which could heighten tension and potentially could lead to confrontations. CPS's mission would be served better by building trust with families rather than adopting the appearance of a policing agency. Forensic interview methods are not conducive to building a rapport with families that could promote greater willingness to participate in reunification services.

Call screeners. Placing a greater emphasis on screening out calls could influence intake specialists to report fewer cases, which could allow more cases of real neglect and abuse to be overlooked. Intake specialists already receive thorough training on the legal definitions of abuse and neglect, proper interviewing techniques, and documentation of reports of alleged offenses. This training is sufficient to make the statutorily required reports of abuse and neglect to the proper authorities, and no more specialized

services are needed upon intake. Even if more cases were screened out, there would be no cost saving because of the cost of hiring and training specialized caseworkers, so there is no reason to burden the system with such a change.

False reporting. While designed to decrease unnecessary investigations, increasing penalties for giving false reports could prevent some sincere individuals from making reports. People who suspect they may have witnessed abuse or neglect might keep quiet for fear of unintentionally making a prosecutable false report, which would result in unnecessary further suffering for a child who was the victim of genuine abuse. Meanwhile, proving that someone knowingly made a false report can be very difficult. It is likely the agency would not seek to prosecute many cases, which would do little to deter false reports.

Psychotropic drugs. While it is true that many children have been overmedicated, caution should be exercised in questioning the expertise of a physician who in the best position to assess a child's treatment needs. Needs of children in foster care, given the trauma they often have experienced, tend to be greater than those of the average child. Some children can benefit from the proper administration of multiple drugs, and communication among service providers is key. The introduction of such stringent protocols could open doctors' treatment decisions to unwarranted scrutiny, which in some cases could harm children.

Medical passports. The proposal for medical passports to be accessible by computer poses a great privacy concern. Identity theft is on the increase, and recent break-ins to major computer systems, from which criminals have drawn thousands of records, demonstrate the insecurity of online information. In addition to information of interest to identity thieves, full medical histories containing sensitive information also would be at risk. Traditional methods of record-keeping should be retained.

Prevention services. At a time when so many children in the system already are victims of abuse and neglect, resources should not be diverted to focus on other kids who may or may not fall victim to abuse. A grant program for prevention services inappropriately would direct funds away from the crisis area of reducing investigator caseloads, which would hamper efforts at more effective case determinations. In addition, children who already have been removed from the home as victims of abuse would have the greatest need for counseling and other services.

NOTES:

CSSB 6 provisions not included in SB 6:

- provisions related to privatization of case management services and the addition of independent administrators;
- academic reporting requirement on foster care students;
- added duties of attorneys ad litem;
- civil penalty for those convicted of false reports;
- child support orders for parents whose parental rights had been terminated, and enforcement by the attorney general of these orders;
- monitoring of performance of substitute care and case management providers;
- use of real-time technology in child placement;
- date for DFPS Sunset review moved to 2013;
- new requirements for the Children's Policy Council;
- paperless information exchange pilot program;
- drug endangered child-initiative;
- risk assessment process for promulgating minimum standards for licensing inspections; and
- behavior intervention programs and training for staff at residential child-care facilities.

SB 6 provisions not included in CSSB 6:

- study of privatization of child protective services;
- discipline of attorneys ad litem;
- exchange of child abuse and neglect information between states;
- audio/videotaping of investigations;
- removal of certain investigative information from records;
- reports of abuse by other children;
- requirement for court finding regarding medical consent;
- length of time a suit could be maintained on court's docket;
- restrictions by rule on amount of state funds used for nondirect residential services;
- substitute care services transition task force;
- foster care developmental disabilities advisory committee;
- child support for child in temporary managing conservatorship;
- Texas foster grandparents program;
- increase in family protection fee collected on suits for the dissolution of marriage, and new uses for such fees;

- deletion of references to certain alternative accreditation;
- pooled funding for foster care prevention services;
- catastrophic case management;
- quality assurance program for child protective services, and quarterly reports;
- protective services legislative oversight committee;
- missing children website;
- informal dispute resolution procedures;
- residential child-care inspection information database;
- requirements for certain background and criminal history checks;
- drug testing and risk assessment for certain persons with access to children in residential child-care facilities;
- prohibition on certain employment by residential child-care facilities;
- additional requirements regarding range of penalties;
- definition of "victim" in a provision of the Code of Criminal Procedure
- Penal Code provisions relating to certain injuries to, or exploitation of, a child, elderly individual, or disabled individual;
- think tank meeting on child abuse and neglect investigations; and
- caseworker function study.

Fiscal note. The fiscal note reflects a total cost of the bill for both CPS and APS provisions of approximately $122 million in general revenue-related funds and an addition of 427 FTEs through August 31, 2007. By fiscal 2010, the cost would be nearly $436 million in general revenue-related funds and a loss of 1104.6 FTEs from fiscal 2005 figures. The loss of FTEs would be attributable to privatization.

The total impact of privatization would be, by fiscal 2010, a savings of $125.8 million and a cost of $182.7 million. There would be 2,058 FTEs fewer than 2005 levels based solely upon privatization related figures. The transition to privatization would be considered cost neutral.

Privatization of substitute care services would involve estimated transfers of $3.4 million to providers in fiscal 2007 rising to $18.9 million in fiscal 2010. For case management services, the cost of transfer to providers would be $15.3 million in fiscal 2007, rising to $86 million in fiscal 2010. Other estimated costs associated with privatization changes in fiscal 2010 would be $18.5 million to independent administrators, $37.9 million for

child placing agency rate differentials, $5.5 million for foster Day Care purchased services, and $15.3 million for other purchased services.

Further FTEs and program funding would be necessary to implement the new call screening process, the relative caregiver placement program, enhanced training processes for caseworkers, increased inspections of agency homes, and increased home studies and background checks on prospective caregivers. Costs for new technologies would be spread throughout the new initiatives.

ADULT PROTECTIVE SERVICES

BACKGROUND: Adult Protective Services (APS), administered by the Department of Family and Protective Services (DFPS) and housed under HHSC, investigates reports of abuse, neglect, and exploitation of elderly and disabled adults while making available protective services to alleviate and prevent the recurrence of such cases. The growing elderly population and heightened awareness of abuse dramatically have increased reports of adult abuse, neglect, and exploitation. In 2003, APS completed 61,342 investigations of maltreatment, of which 44,694 were confirmed.

The major components of APS include in-home investigations, mental health and mental retardation investigations, and guardianship services.

The in-home investigative department serves elderly adults (age 65 or older) and disabled adults who live in private homes, adult foster homes, and unlicensed board and/or long-term care homes. The mental health and mental retardation (MH/MR) section investigates reports involving persons receiving mental health or mental retardation services in settings such as state facilities, community centers and local authorities, and home and community-based services.

Human Resources Code, ch. 48 details the investigative procedures required for all cases involving elderly or disabled individuals. An investigation must begin within 24 hours of receiving a legitimate report of severe abuse, neglect, or exploitation. Investigations of cases that are reported to be less severe or urgent may begin later. APS must interview the elderly or disabled person, if appropriate, and may interview other persons at its discretion.

If the investigation reveals evidence of criminal abuse, neglect, or exploitation, APS must submit a copy of the investigation to law enforcement. In addition, APS may petition a court to authorize emergency protective services if evidence of maltreatment suggests that the person's life or personal safety may be at risk. If the person is incapacitated and cannot protect his or her own well being, APS may petition a court to appoint a guardian for that person. Before the court can grant emergency protective services or guardianship, it must receive a medical report, signed by a doctor, indicating that the abuse threatened the health or life of the person, and that the person is physically or mentally incapacitated.

APS may provide protective or guardianship services directly or may contract them out to another party. APS provides direct guardianship services as a last resort when no suitable guardian is available and only to resolve the maltreatment of the incapacitated adults.

Government Code, ch. 531 outlines the provisions and organization of HHSC. In determining caseload standards, the commissioner considers the recommendations of advisory committees that review professional standards and make minimum and maximum caseload recommendations. The commissioner must establish caseload standards based on actual duties of the caseworker while ensuring that the standards are reasonable, achievable, and consistent with existing professional caseload standards, the caseload standards of other state agencies, and the standards of other states.

In 2004, there were numerous accounts statewide of elderly individuals living under horrific conditions who had been visited and evaluated by APS. Motivated by these reports, Gov. Rick Perry issued an executive order directing HHSC to oversee the systemic reform of the APS program, limited strictly to the in-home investigation services. The study looked at all aspects of the department, including an independent review of cases. HHSC's report, released in November 2004, found that caseworkers were not assessing client cases appropriately. The mental capacity assessment test was found to have been inconsistently applied and to have allowed the early closure of cases without intervention. The report outlined a $34.1 million reformation plan for APS that would fund additional direct delivery staff and reduce caseloads, strengthen training and management,

and deploy new technology to assist caseworkers in the field over the next three years.

DIGEST:

CSSB 6 would change Adult Protective Services (APS) through the transfer of guardianship services to the Department of Aging and Disability Services (DADS). It also would extend the period during which a court could extend an order for emergency protective services and would allow a health professional other than a physician to sign a report indicating the physical and mental condition of the subject of such an order.

The bill would establish new risk assessment criteria for use by APS personnel in determining whether an elderly or disabled person required protective services. New employee qualification and recruitment requirements would seek to attract and retain high quality university graduates to APS, and training and evaluation requirements would attempt to improve skills and increase accountability.

HHSC would be required to implement a caseload reduction program, a pilot program to monitor and remediate certain unlicensed long-term care facilities, and a media campaign to educate the public and potentially prevent the mistreatment of elderly and disabled people.

These provisions would take effect September 1, 2005.

Transfer of guardianship services to DADS

CSSB 6 would transfer the state's guardianship program from DFPS to DADS. The general powers and duties of DADS would be amended to include serving as guardian of the person and/or estate for an incapacitated individual. APS/DFPS and DADS would enter into a memorandum of understanding detailing the roles and duties of each agency with regard to guardianship services.

The authority of APS to be appointed as a temporary or permanent guardian for individuals would be removed, and APS instead would be required to refer an individual to DADS for guardianship services if the individual was:

- a minor 16 years of age or older in the conservatorship of APS whom APS believed, because of a physical or mental condition,

substantially would be unable to provide for himself or herself as an adult; or

- an elderly or disabled person whom APS believed was incapacitated and in a state of abuse, neglect, or exploitation.

If an appropriate, less restrictive alternative to guardianship existed, APS would be required to pursue it rather than making a guardianship referral to DADS.

To be appointed guardian of the person and/or estate of a minor person referred to the department by APS, DADS would have to file an application. DADS would have to evaluate the capacity of a minor and ensure that a less restrictive alternative to guardianship was not available. The guardianship created for a minor as a result of an application would not take effect before the minor's 18th birthday.

For an elderly or disabled person referred by APS to the department, DADS would have to conduct a thorough assessment of the conditions and circumstances of the person to determine whether a guardianship was appropriate. The resources and funds available to meet the needs of the individual could be considered by DADS in determining the appropriateness of a guardianship. If DADS determined that guardianship was appropriate, it would be required to file an application to be appointed guardian of the estate/and or person of the individual. If an appropriate, less restrictive alternative were identified, DADS would have to pursue it instead of applying for appointment as guardian.

APS could make a guardianship referral to a court with probate jurisdiction in the county where the individual lived or was found if the court had requested APS to notify it of any individuals who might be appropriate for a court-initiated guardianship proceeding. APS would be required to provide to the court all relevant and available information, but the court could not require APS to perform the duties of a guardian ad litem or court investigator or gather additional information not contained in APS' records.

A court could not require DADS to file an application for guardianship, and DADS could not be appointed guardian unless it filed an application or otherwise agreed to serve as the individual's guardian. If a court requested the information, DADS would have to notify it of any guardianship referral made by APS to a probate court in the county where

an individual who might be appropriate for a court-initiated guardianship proceeding lived or was found. If requested, DADS would have to provide to the court all relevant information in DADS' records relating to the individual. The court, however, could not require DADS to perform the duties of a guardian ad litem or court investigator, or gather additional information not contained in APS' records.

The bill would allow DADS to contract with a political subdivision of the state, a guardianship program, a private agency, or another state agency for the provision of guardianship services. DADS would have to develop or implement a quality assurance program for guardianship services, which would monitor any contracts DADS entered into to ensure the quality of the guardianship services.

DADS, a political subdivision of the state, or a state agency that DADS contracted with for guardianship services would not be responsible for posting a bond or paying any cost or fee associated with any bonds required by probate law in guardianship matters. DADS would not be responsible for any costs or fees associated with court proceedings or other services, or fees associated with the appointment of a guardian ad litem or attorney ad litem. DADS also would not be liable for funding services provided to a ward, including long-term care or burial expenses.

DADS would review all pending guardianship cases at least once a year to determine whether a more suitable person, guardianship program, or private professional guardian was willing and able to serve as successor guardian for a DADS ward. DADS would have to notify the court in which the guardianship was pending if it became aware of a possible successor guardian.

DADS would be required to refer a minor or elderly or disabled individual referred by DFPS/APS to a guardianship program, private professional guardian, or other person willing and able to provide guardianship services to the individual.

DADS would have access to all of the records or documents concerning an individual referred for guardianship services necessary to the performance of DADS' duties, including client-identifying information and medical, psychological, educational, or residential information. DADS could petition the proper court for access to a necessary, but unobtainable, record or document. On good cause, the court could order the person or entity

denying access to a record or document to disclose it. Access to, or disclosure of, a confidential record or other confidential information would not constitute a waiver of confidentiality for other purposes.

All files, reports, and records developed by DADS in the assessment or provision of guardianship services to an individual would be confidential and could be released only as required by law, or as necessary to enable DADS to exercise its powers and duties. A court could order disclosure of confidential information only following a motion requesting release of the information and a hearing. Notice of the hearing would be served to DADS and all interested parties. After the hearing and an *in camera* review, the court would have to determine that disclosure was essential to the administration of justice and would not endanger the life or safety of an individual being assessed for guardianship services, a ward of DADS, or an individual providing services to a ward.

DADS would establish policy and procedures for the exchange of necessary information relating to a ward with another state agency or governmental entity, including a court, with a local guardianship program to which an individual was referred for services, or any other entity that provided services to a ward of DADS.

The bill would provide for the prosecuting attorney representing the state in criminal cases in county court to represent DADS in any proceeding unless this posed a conflict of interest, in which case the attorney general would represent DADS. If unable to serve, the attorney general could approve and deputize a private attorney or DADS-employed attorney to represent the agency. The prosecuting attorney representing the state in civil cases in Harris County would represent DADS in any proceeding in Harris County unless this posed conflict of interest.

CSSB 6 would transfer all authority for guardianship services from DFPS and APS to DADS on September 1, 2005, and the HHSC commissioner would have to establish a plan to accomplish the transfer. The bill would amend the Human Resources Code and the Probate Code to note the transfer of guardianship services from DFPS to DADS. All matters involved in the provision of guardianship services would transfer from DFPS to DADS, including, but not limited to:

- DFPS employees who performed guardianship duties;
- HHSC rules and references in legal documents to DFPS or the

Department of Protective and Regulatory Services; and

- money, appropriated funds, contracts, waivers, rights, obligations, property and records administered by or in the custody of DFPS.

Proceedings involving DFPS relating to guardianship services for incapacitated persons would continue in effect, continue until expired or lawfully terminated, and transfer without change in status to DADS. DADS would assume the position of DFPS in proceedings in which DFPS was a party. All public and private entities or any other person would be required to accept DADS as guardian in the same manner as it would have accepted DFPS' authority as guardian of a particular ward.

Provisions that apply to APS

Orders for emergency protective services. APS would be required to petition the proper court for an emergency order authorizing protective services if APS determined that an individual was suffering from abuse, neglect, or exploitation in a manner that threatened the person's life or physical safety. A report containing the nature of the abuse, neglect, or exploitation could be signed by a physician assistant, registered nurse, advanced practice nurse, or licensed psychologist, in addition to a physician. It would have to state that the elderly or disabled person had suffered from abuse, neglect, or exploitation, which presented a threat to life or physical safety, and was incapable physically or mentally of consenting to services.

Following the receipt of a medical report signed by a physician, a court could render a one-time extension of an emergency order for an additional period of not more than 30 days past the initial 72-hour period allowed under current law. The report would have to be based on an examination the physician performed not earlier than the date the court granted the initial emergency order. After a hearing, the court also would have to find that the immediate danger to the health and safety of the person continued to exist. The court could shorten the term or terminate the emergency order on petition of APS, the elderly or disabled person, or a person interested in the elderly or disabled person's welfare.

Subject to the availability of funds, APS would provide protective services to elderly and disabled persons or contract for the provision services, particularly to persons residing in rural or remote areas of the state not

previously served by APS and where APS did not have the resources for the direct provision of service.

Risk assessment criteria. The HHSC commissioner by rule would develop and maintain risk assessment criteria for use by APS personnel in determining whether an elderly or disabled person required protective services due to abuse, neglect, or exploitation. The criteria would have to provide for the comprehensive assessment of the person's environment, physical condition, medical and mental health condition, financial condition, and social interaction and support.

Investigation unit. The bill would require the creation of an investigation unit for APS. The unit would investigate reports of abuse and would contact the appropriate law enforcement agency if it determined that the subject of the report had suffered from abuse, neglect, or exploitation as a result of the criminal conduct of another person.

Employee qualification and recruitment requirements. When hiring employees whose duties relate to the provision of services directly to an elderly or disabled person, APS would, to the extent possible, hire staff with relevant professional credentials, including licensed master social workers or licensed professional counselors.

APS would be required to develop and implement a system to ensure that, to the greatest extent possible, abuse, neglect, or exploitation investigations that involved complex issues, such as identity theft, were assigned to experienced, trained personnel.

Subject to the availability of funds, the HHSC commissioner would develop, and DFPS would implement, a program designed to recruit and retain persons with professional credentials for employment in the APS division. An incentive program also would be created to encourage non-credentialed APS employees to obtain professional credentials that related to the provision of services directly to an elderly or disabled person.

DFPS would coordinate with the Texas Higher Education Coordinating Board (THECB) to:

- promote certificate or degree programs in the fields of social work and psychology for students in Texas universities; and
- ensure that graduates with bachelors or advanced degrees in social

work or psychology had the knowledge and skills necessary for successful employment by APS in the provision of protective services.

Training program. APS would develop and implement a training program that each new employee would have to complete before:

- initiating an investigation of a report of alleged abuse; or
- providing protective services to elderly or disabled persons.

The training would have to provide the employee with information about such matters as:

- frequency and types of reports of abuse, neglect, and exploitation, including false reporting;
- the use and implementation of new risk assessment criteria and criteria designed to assess whether a person was incapacitated;
- legal procedures for the protection of individuals, including how to obtain a court order for emergency protective services;
- best practices for case management from intake to the provision of services, including referrals of individuals to appropriate public agencies or services;
- investigation of suspected identity theft and other forms of financial exploitation; and
- the establishment and maintenance of working relationships with community organizations and other local providers of services to elderly and disabled persons.

Employees would receive on-the-job training, which would require another APS caseworker with more experience to accompany and train the caseworkers in the field for a three-month period. At least once a year, APS would have to provide comprehensive case management training to supervisors of employees who conduct investigations.

APS employees who had completed initial training would have to meet annual continuing education requirements, which would focus on changes in APS policies and procedures and statutory changes affecting APS or persons served by the agency.

QA program and performance review. APS would develop and implement a quality assurance (QA) program based on client-centered outcome measures on the intake process, investigations, risk assessment determinations, and the delivery of protective services in the APS program. The QA program also would incorporate minimum job performance standards for APS personnel and work departments and periodic performance reviews associated with job performance standards. APS promptly would have to address the failure of an employee or department to meet the minimum standards by issuing a corrective action plan detailing necessary improvement measures or, if necessary, imposing stricter disciplinary action, including termination, for repeated failure to meet the standards. Annual performance evaluation would be required and disciplinary or other corrective action would follow against managers who failed to conduct the evaluations in a timely manner.

A summary of the findings from the QA program and performance reviews conducted under this section would be reported to APS regional directors and other senior management. APS would have to file a report with state leadership each fiscal quarter containing a comprehensive review of APS' overall performance during the preceding quarter, including performance on the client-centered outcome measures required by this section. DFPS would have to submit the initial report by February 1, 2006.

Public awareness campaign. APS would have to develop and implement a statewide campaign to educate the public and increase awareness about abuse, neglect, and exploitation of elderly or disabled persons and how to reduce or prevent such instances of maltreatment. APS could use radio and television, the Internet, publications, or other media and could partner with civic, philanthropic, and public service organizations in implementing the campaign.

Technology. HHSC would be required to improve the use of technology in providing guardianship services. Subject to available funding, HHSC would use technology whenever possible in connection with APS to reduce the staff time required for the collection of information necessary to evaluate program effectiveness. HHSC could consult with representatives from the private sector to determine appropriate technology for the APS program.

Caseload management. Subject to the availability of funds, the bill also would require the HHSC commissioner to develop and implement a plan to reduce caseloads for APS caseworkers. The caseload level could not exceed professional standards by more than five cases per caseworker and would have to include specific annual targets for caseload reduction to reach these goals by January 1, 2011. The commissioner would adopt rules to establish the plan by January 1, 2006, and a report on its implementation would have to be submitted to the state leadership not later than December 31 of each even-numbered year. The report would include an assessment of the plan's effectiveness and the funding required for its implementation.

Pilot program. HHSC would be required to implement a pilot program to monitor certain unlicensed long-term care facilities. Local task forces comprising health care providers and local government officials would identify persons operating unlicensed facilities or illegally providing personal care services or other care to elderly or disabled persons and would take action necessary to:

- report the facilities to the appropriate regulatory or law enforcement agencies;
- assist a long-term care facility, when possible, in obtaining the appropriate licensure or making the appropriate disclosures; and
- assist the facility or arrangement, when possible, in complying with the applicable regulatory requirements.

The commissioner would have to implement the pilot program in at least one rural area and one urban area of the state by January 1, 2006, and report on the status and progress of the program to state leadership by January 1, 2007.

General provisions

Within 180 days of the effective date of this bill, and every six months after that date, HHSC would have to provide a detailed progress report to the state leadership. Progress toward meeting goals and performance measures would be documented, as would steps taken to enhance internal and external accountability to achieve favorable outcomes for adults needing protective services or guardianship services. HHSC also would have to discuss any obstacles encountered or significant unanticipated fiscal implications.

SUPPORTERS SAY:

CSSB 6 would raise the bar for APS investigations and improve the quality of caseworkers that citizens depend on to safeguard the vulnerable adults of our state. It would provide for improved quality control measures and address key issues related to guardianship services, which are vital to preserving a good quality of life for individuals with reduced capacity.

Widespread problems have been documented in the state's existing systems for protecting elderly and disabled persons from abuse and neglect, and the state cannot depend on the agency to reform itself. The reform measures prescribed by this bill would help prevent the tragedies that transpired in the last two years.

The state system to protect the elderly and disabled must respond to the needs of the people, a guiding principle that APS appears to have lost in a jumble of bureaucracy and a culture of inefficiency. CSSB 6 would make changes to APS programs that would improve care and strengthen the state's ability to protect to our elderly and disabled. Provisions in the bill would improve investigative practices concerning elder abuse and neglect, support quality casework, improve the effectiveness of ongoing services, reform the guardianship system, increase the coordination with and involvement of community organizations, and enhance agency accountability.

Investigations and protective services. New guidelines on how to act following reports of abuse are needed to ensure that elderly or disabled persons are not left unnecessarily in dangerous situations. By the admission of HHSC officials, APS employees in many instances did not perform quality casework, which left individuals in jeopardy. Accountability for APS and its staff needs to be enhanced. CSSB 6 would improve the training of direct delivery staff to improve incapacity determinations. Far too often state caseworkers have failed to notify the courts that their clients are in danger. There have been several high-profile cases in which people in APS care have been allowed to live in deplorable conditions. APS employees justified leaving people in such conditions, such as living in homes without running water and homes filled with garbage and human waste, by describing them as "lifestyle choices" under the current risk assessment test.

The current assessment test, consisting of a handful of questions, is ineffective, inconsistently applied, and allows cases to be closed early

without intervention. APS must end practices that encourage premature closing of cases. In the past if a person did not want APS service, they did not receive it. Under CSSB 6, if a person did not want services, APS would continue to investigate as best it could and present its findings to the court. The new test better would evaluate the mental capacity of an elderly individual by assessing their living conditions, financial status, physical and medical status, and social interaction and support. HHSC used research from other states, academia, and HHSC staff to evaluate the effectiveness of the new test. An ongoing validation study at the University of Texas at Austin is checking the accuracy of the test by putting it into effect.

Financial exploitation is a major issue facing the elderly and disabled. Many senior citizens across the state are conned out of thousands of dollars every year. The bill would devote specialists to complex issues, including financial exploitation, to prevent and remedy such abuse.

APS caseworkers are overburdened with work because their ranks have been thinned by high turnover. Overwork, lack of support, and low pay are the primary reasons why caseworkers are leaving their jobs. A review of the agency has found inadequate training and poor communication between caseworkers and law enforcement agencies. Caseworkers not only are overworked and overwhelmed with caseloads, but they do not receive the proper training to deal with the issues they encounter. The lack of training occurs because caseworkers spend all their time in the field due to high caseloads. CSSB 6 would encourage the retention of effective caseworkers by providing better training and support for employees who provide protective services to the aged and disabled.

Raising caseworker recruitment standards and improving recruitment efforts would produce more higher education graduates with skills suited to APS work. The increased skill level of employees would improve APS's investigatory and protective services.

The bill would require APS to create a separate unit to investigate allegations of abuse, neglect, and exploitation, allowing other caseworkers to devote their time and efforts to addressing and improving the delivery of protective services. Such changes are necessary to manage and maintain caseload sizes. Higher caseloads result in employee burnout and high turnover. This in turn leads to more training costs and further impacts caseloads, resulting in substandard investigations that place the agency at

risk for liability. The caseload reduction plan mandated by the bill would help to maintain caseloads and increase the quality of investigations.

There is a need to improve the technology currently being utilized by APS. CSSB 6 would improve case management by increasing the use of technology for investigation and protective services. New technology would provide greater and quicker assessments, allowing for earlier decision-making.

A public education campaign would improve citizens' awareness of the abuse, neglect, and exploitation that face elderly and disabled persons. Most of the media attention has been devoted to the gross mismanagement of cases by Child Protective Services. The public must learn about, and be encouraged to help prevent, the mistreatment of the elderly and disabled.

Maintaining a statewide approach to providing all investigative and protective services would result in lower costs in administration, management, and delivery of services. Allowing counties and cooperatives to provide a localized approach to service would be less efficient and require strict and unrelenting oversight. Inadequate supervision could result in a local system being allowed to provide poor quality of care, which this bill seeks to prevent.

Allowing APS to contract with protective services agencies for the provision of direct services to elderly and disabled persons would ease the burden placed on APS while providing services to more people, especially those people in rural communities who otherwise might not receive services.

Transfer of guardianship services to DADS. CSSB 6 would improve state guardianship services by transferring responsibilities from DFPS to DADS. Currently there is a conflict of interest regarding placement of the guardianship program in APS because the agency also is responsible for reviewing and determining the necessity for guardianship. The agency that investigates should not be the same one handling guardianship duties. Individuals would be better served if the guardianship responsibilities were given to another agency.

The bill would keep all guardianship responsibility within DADS. Statewide implementation and management would allow for less expensive administration, management, and delivery of services than a

localized approach. Authorizing local execution of guardianship services would require thorough supervision. A local system likely would provide an inferior quality of services to wards.

OPPONENTS SAY:

Investigations and protective services. CSSB 6 inappropriately would not allow counties to use state money to run their own adult protective service agencies. A local system could handle the cases better because local agencies and officials have more of an interest in what is occurring in their immediate areas. The current opt-out provision is essential because it gives communities the ability to develop alternatives to substandard, inefficient responses from state agencies. Communities would have an incentive to provide adequate services because they would have to relinquish these responsibilities to the state if they failed.

APS should not contract with protective services agencies for the provisions of direct services to elderly and disabled persons. The state should be responsible for the care of its citizens, and services offered by private protective services agencies might be inferior to those offered by the state, as well as more difficult to supervise.

Transfer of guardianship services to DADS. In 1998, APS consolidated guardianship authority in Austin. Before that time, counties had been allowed to provide guardianship services. Consolidation of services resulted in higher instances of cases involving abuse and neglect. CSSB 6 should allow counties once again to execute guardianship services. A local, judge-centered system can better handle the guardianship cases because local authorities have more of an interest in their own citizens. Auditing of the systems, as well as safeguards, would be implemented.

This option would give communities the ability offer alternative solutions to the often inadequate responses offered by state agencies. In addition, local governments would be less inclined to push obligations onto the state. Communities that failed to provide adequate services would have to relinquish responsibilities to the state. Currently, a local guardianship system is working well in El Paso county.

The bill fails to provide for more defined guardianship training standards. Abuse and neglect of wards could be reduced if more training standards for guardians were implemented.

OTHER OPPONENTS SAY:

CSSB 6 should require funding for technology uses, rather than base its implementation on the availability of funds. Currently, there is a critical lack of information circulating within the agency. Prior case information must be merged to provide better investigation and protective services. Maintaining a summary of all records related to investigations of reports in an electronic format would help avoid mismanagement.

The bill should provide for the creation of a second probate court in certain counties that face large and rising caseloads. Probate courts around the state have struggled with their dockets due to a lack of resources to handle growing caseloads.

NOTES:

CSSB 6 provisions not included in SB 6:

- preference to applicants with professional credentials;
- recruitment program;
- cooperation between APS and THECB;
- public awareness campaign;
- contracting with outside agencies for the provision of protective services;
- use of technology;
- caseload management reduction plan;
- pilot program to monitor unlicensed facilities;
- requirement for APS to make guardianship referrals to DADS; and
- comprehensive reporting and auditing requirements for DFPS and APS following implementation of the bill.

SB 6 provisions not included in CSSB 6:

- law enforcement report to investigation unit on results of criminal investigations;
- requirement for supervisors to accompany new caseworkers through the first case assigned, and submit progress reports during three-month review period;
- conduction of continuing education programs by non-DFPS employees under contract;
- two annual performance reviews for employees with less than two years of caseworker experience;
- annual evaluation of supervisors by program administrators;

- review and summary of APS submitted to state leadership by October 1, 2005, rather than February 1, 2006;
- definition of "neglect" to include mentally incompetent person placing himself at risk by leaving a facility against medical advice;
- risk assessment criteria to include assessment of need for legal intervention and specify when caseworker should consult a supervisor;
- required summary of all records related to investigations in electronic format;
- community satisfaction survey soliciting local input on APS performance;
- special task force to monitor investigation of complex cases;
- internal review of completed APS investigations;
- provisions for APS determination of necessity of protective services for an elderly or disabled person;
- temporary emergency shelters for elderly or disabled persons;
- psychological assessment of an elderly or disabled person in lieu of a medical report;
- opt-out provision for a county or cooperative of counties to provide services locally;
- memorandum of understanding between HHSC and all HHS agencies to coordinate provision of multiagency services for an elderly or disabled person;
- requirement for LBB to monitor implementation of the bill;
- feasibility study on statewide network of local adult protective services boards;
- requirement for APS to notify courts in advance about the need for guardianship services among minors, the disabled, and the elderly;
- designation of DADS as only guardian of last resort;
- number of APS wards restricted to 1,500 at once;
- county clerks required to maintain case files on guardianship proceedings;
- requirements for an application for appointment of guardianship;
- requirement for guardianship programs to submit information to the county clerk on program employees, volunteers, and contractors; and
- creation of guardianship alliance office and guardianship resource account.

Fiscal note. The LBB estimates no significant fiscal impact from the APS portion of the bill, except that the incentive program for certain APS employees would cost approximately $80,000 in fiscal 2006 and would rise by some $16,000 each subsequent year.

DFPS reports that additional FTEs would be needed to implement a new training program for APS employees at an approximate cost of $500,000 in fiscal 2006 and $700,000 each subsequent year.