

BILL ANALYSIS

Senate Research Center

H.B. 39
By: Wu et al. (Zaffirini)
Health & Human Services
5/16/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Child protective services caseworkers work with limited resources under challenging circumstances, resulting in service gaps and inefficient case management systems. Currently, youth who enter the foster care system are not receiving timely assessments for developmental or intellectual disabilities or mental health screenings, nor do they have access to programs that would support the obtaining of a high school diploma or its equivalent.

H.B. 39 would respond to service gaps and ensure the Department of Family and Protective Services (DFPS) assesses the health needs of children entering the state's custody promptly; establish a more efficient case management system; provide certain protections to caseworkers; require DFPS to collaborate with foster care youth and community entities (e.g., local workforce development boards, community and technical colleges, appropriate workforce industry resources, etc.) to create a career development and education program for foster care youth; and provide resources for parties involved in child welfare and the foster care system.

H.B. 39 amends current law relating to the provision of child protective services and other health and human services by certain state agencies and authorizes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 1 (Section 261.3017, Family Code) and SECTION 20 of this bill.

Rulemaking authority is expressly granted to the executive commissioner or the commissioner of the Department of Family and Protective Services, as appropriate, in SECTION 2 (Section 262.1041, Family Code) of this bill.

Rulemaking authority is expressly granted to the governor in SECTION 8 (Section 264.2042, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.3017, as follows:

Sec. 261.3017. ABBREVIATED INVESTIGATION AND ADMINISTRATIVE CLOSURE OF CERTAIN CASES. (a) Authorizes a Department of Family and Protective Services (DFPS) casework to refer a reported case of child abuse or neglect to a DFPS supervisor for abbreviated investigation or administrative closure at any time before the 60th day after the date the report is received if:

- (1) there is no prior report of abuse or neglect of the child who is the subject of the report;
- (2) DFPS has not received an additional report of abuse or neglect of the child following the initial report; and

(3) either after contacting a professional or other credible source, the caseworker determines that the child's safety can be assured without further investigation, response, services, or assistance; or the caseworker determines that no abuse or neglect occurred.

(b) Requires a DFPS supervisor to review each reported case of child abuse or neglect that has remained open for more than 60 days and administratively close the case if the supervisor determines that the circumstances described by Subsections (a)(1) through (3) exist and that closing the case would not expose the child to an undue risk of harm.

(c) Authorize a DFPS supervisor to reassign a reported case of child abuse or neglect that does not qualify for abbreviated investigation or administrative closure under Subsection (a) or (b) to a different DFPS caseworker if the supervisor determines that reassignment would allow DFPS to make the most effective use of resources to investigate and respond to reported cases of abuse or neglect.

(d) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) to adopt rules necessary to implement this section.

(e) Defines "professional."

SECTION 2. Amends Subchapter B, Chapter 262, Family Code, by adding Sections 262.1041 and 262.1042, as follows:

Sec. 262.1041. VOLUNTARY TEMPORARY CAREGIVER PROGRAM. (a) Requires DFPS to create a program that allows a child who is removed from the child's home under this chapter (Procedures in Suit by Governmental Entity to Protect Health and Safety of Child) to be placed in the care of an individual approved as a voluntary temporary caregiver (caregiver).

(b) Requires DFPS to establish an application and verification process to approve individuals to serve as caregivers. Authorizes DFPS to charge each person applying to serve as a caregiver an application fee in an amount reasonable and necessary to cover the cost of administering the program. Requires that DFPS's verification process:

(1) include a background and criminal history record check of each caregiver;

(2) verify the caregiver meets certain requirements;

(3) require each member of the caregiver's household to undergo a screening test for tuberculosis infection approved by the executive commissioner; and

(4) include any other administrative procedure DFPS determines is necessary to ensure the caregiver will provide a safe home for the child.

(c) Requires DFPS to require each caregiver to receive four hours of training relating to child development and disciplinary techniques for children who are classified above a basic service level. Requires a caregiver who applies to become a licensed or verified foster home to receive a credit of four hours toward the training hours required by Section 42.0537 (Caregiver Training Requirement), Human Resources Code, for a person to become a licensed or verified foster home.

(d) Requires a caregiver to agree to care for a child placed with the caregiver for at least 14 days.

(e) Authorizes a child, except as provided by Subsection (f), to be placed with a caregiver for not more than 14 days after the date the child is removed from the child's home.

(f) Authorizes the child's caseworker, if the caseworker determines that it is in the child's best interest for the child to remain in the care of the caregiver for more than 14 days, to, if the caregiver agrees:

(1) allow the child to remain in the care of the caregiver;

(2) designate the caregiver as the caregiver of the child under a parental child safety placement agreement in accordance with Subchapter L (Parental Child Safety Placements), Chapter 264 (Child Welfare Services); or

(3) designate the caregiver as a designated caregiver of the child in accordance with Subchapter I (Relative and Other Designated Caregiver Placement Program), Chapter 264.

(g) Provides that a caregiver with whom a child is placed is not entitled to any reimbursement for the care the caregiver provides for the child.

(h) Provides that a caregiver is not liable for the cost of any medical care the child receives while the child is placed with the caregiver. Requires that the cost of any medical care be covered by the existing health insurance provided for the child.

(i) Requires a caregiver to ensure that the child continues to attend the school in which the child was enrolled immediately before the child was removed from the child's home or attends another school chosen by the child's caseworker if the child's caseworker determines that it is unsafe for the child to continue to attend the school in which the child was enrolled immediately before the child was removed from the child's home.

(j) Requires DFPS to publicize the caregiver program and notify the parents of a child being removed from the child's home whether the child will be placed with a caregiver.

(k) Requires the executive commissioner or the commissioner of DFPS, as appropriate, to adopt rules necessary to implement this section.

Sec. 262.1042. RELEASE OF CHILD BY LAW ENFORCEMENT OR JUVENILE PROBATION OFFICER TO VOLUNTARY TEMPORARY CAREGIVER. Authorizes a law enforcement or juvenile probation officer who takes possession of a child under this chapter to release the child to a caregiver approved under Section 262.1041.

SECTION 3. Amends Section 264.1075, Family Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires DFPS, as soon as possible after a child is placed in the managing conservatorship of DFPS, rather than as soon as possible after a child begins receiving foster care under this subchapter (Foster Care), to assess whether the child has a developmental or intellectual disability.

(c) Requires DFPS, if the assessment required by Subsection (b) indicates that the child might have an intellectual disability, to ensure that a referral for a determination of intellectual disability is made as soon as possible and that the determination is conducted by an authorized provider before the date of the child's 16th birthday, if practicable.

Requires that the determination of intellectual disability, if the child is placed in the managing conservatorship of DFPS after the child's 16th birthday, be conducted as soon as possible after the assessment required by Subsection (b). Defines "authorized provider."

SECTION 4. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1076, as follows:

Sec. 264.1076. **MEDICAL EXAMINATION REQUIRED.** (a) Provides that this section applies only to a child who has been taken into the conservatorship of DFPS and remains in the conservatorship of DFPS for more than three business days other than a child admitted to an inpatient medical facility.

(b) Requires DFPS to ensure that each child described by Subsection (a) is examined by and receives an initial medical examination and a mental health screening from a physician or other health care provider authorized under state law to conduct medical examinations not later than a certain date, if the child is located in a rural area, as that term is defined by Section 845.002 (Definitions), Insurance Code. Prohibits a physician or other health care provider conducting the medical examination from administering a vaccination as part of the examination, except that a physician is authorized to administer a tetanus vaccination if the physician determines that an emergency circumstance requires the administration of the vaccination. Provides that the prohibition on the administration of a vaccine does not apply after DFPS has been named managing conservator of the child after a hearing under Section 262.106 (Initial Hearing After Taking Possession of Child in Emergency Without Court Order) or 262.201 (Full Adversary Hearing; Findings of the Court).

(c) Requires DFPS to collaborate with HHSC and relevant medical practitioners to develop guidelines for the medical examination, including guidelines on the components to be included in the examination.

(d) Requires DFPS, not later than December 31, 2019, to submit a report to the standing committees of the house of representatives and the senate with primary jurisdiction over child protective services and foster care evaluating the statewide implementation of the required medical examination. Requires that the report include the level of compliance with the requirements of this section in each region of the state. Provides that this subsection expires September 1, 2021.

SECTION 5. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1131, as follows:

Sec. 264.1131. **FOSTER CARE PROVIDER RECRUITMENT PLAN.** Requires DFPS, in addition to foster parent recruitment from nonprofit organizations and from organizations under Section 264.113 (Foster Parent Recruitment), to, subject to the availability of funds, collaborate with current foster and adoptive parents to develop and implement a foster care provider recruitment plan. Requires that the plan meet certain conditions.

SECTION 6. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.1211, as follows:

Sec. 264.1211. **CAREER DEVELOPMENT AND EDUCATION PROGRAM.** Requires DFPS to collaborate with certain entities and any other appropriate workforce industry resource to create a program that:

(1) assists foster care youth and former foster care youth in obtaining a high school diploma or a high school equivalency certificate and industry certifications necessary for high demand occupations;

(2) provides career guidance to foster care youth and former foster care youth; and

(3) informs foster care youth and former foster care youth about certain tuition and fee waivers and programs to assist youth with transitioning to independent living.

SECTION 7. Amends Section 264.201, Family Code, by adding Subsection (f), to require DFPS, in providing services to a family under this section (Services by Department), to ensure that the services provided are narrowly tailored to address the allegations of abuse or neglect DFPS is investigating and do not duplicate other services the family is receiving.

SECTION 8. Amends Subchapter C, Chapter 264, Family Code, by adding Section 264.2042, as follows:

Sec. 264.2042. GRANTS FOR FAITH-BASED COMMUNITY COLLABORATIVE PROGRAMS. (a) Requires the governor, using available funds or private donations, to establish and administer an innovation grant program to award grants to support faith-based community programs that collaborate with DFPS and HHSC to improve foster care and the placement of children in foster care.

(b) Provides that a faith-based community program is eligible for a grant if it meets certain criteria.

(c) Requires the regional director for DFPS in the region where a grant recipient program is located, or the regional director's designee, to serve as the liaison between DFPS and the program for collaborative purposes. Authorizes DFPS, for a program that operates in a larger region, to designate a liaison in each county where the program is operating. Prohibits DFPS or HHSC from directing or managing the operation of the program.

(d) Provides that the initial duration of a grant under this section is two years. Authorizes the governor to renew a grant awarded to a program if funds are available and the governor determines that the program is successful.

(e) Prohibits the governor from awarding to a program grants under this section totaling more than \$300,000.

(f) Requires the governor to adopt rules to implement the grant program created under this section.

SECTION 9. Amends Section 264.903, Family Code, by adding Subsection (a-1), to require DFPS to expedite the evaluation of a potential caregiver under this section (Caregiver Evaluation) to ensure that the child is placed with a caregiver who has the ability to protect the child from the alleged perpetrator of abuse or neglect against the child.

SECTION 10. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.040, as follows:

Sec. 402.040. CHILD PROTECTIVE SERVICES LIAISON. Requires the Texas attorney general (attorney general), for each regional office of DFPS that provides child protective services, to appoint an employee to serve as a liaison to DFPS for that regional office. Provides that DFPS is not required to provide the liaison with an office in DFPS's regional office. Requires the liaison to:

(1) serve as a point of contact for the Office of the Attorney General (OAG) to increase communication between the regional office and OAG;

(2) provide assistance to the regional office in locating absent parents of children in the managing conservatorship of DFPS; and

(3) provide to the regional office information in the attorney general's child support database that will enable the regional office to locate absent parents of children in the managing conservatorship of DFPS.

SECTION 11. Amends Sections 531.055(a), (b), and (e), Government Code, as follows:

(a) Requires certain entities, including HHSC, DFPS, the Department of State Health Services (DSHS), the Texas Education Agency (TEA), rather than each health and human services agency, to enter into a joint memorandum of understanding to promote a system of local-level interagency staffing groups to identify and coordinate services, rather than to coordinate services, for persons needing multiagency services. Requires the division within HHSC that coordinates the policy and delivery of mental health services to oversee the development and implementation of the joint memorandum of understanding.

(b) Requires that the memorandum:

(1) clarify the statutory responsibilities of each agency in relation to persons needing multiagency services, including subcategories for different services such as:

(A) family preservation and strengthening, rather than prevention, family preservation and strengthening. Creates this paragraph from existing text;

(B) physical and behavioral health care;

(C) prevention and early intervention services, including services designed to prevent child abuse, neglect, or delinquency, truancy, or school dropout;

(D) diversion from juvenile or criminal justice involvement;

(E) housing;

(F) and (G) creates these paragraphs from existing text and makes nonsubstantive changes;

(H) residential care, rather than diagnosis and evaluation, residential care. Creates this paragraph from existing text;

(I) creates this paragraph from existing text and makes nonsubstantive changes;

(J) information and referral, rather than information and referral, medical care. Creates this paragraph from existing text; and

(K) creates this paragraph from existing text and makes no further changes to this paragraph.

(2) through (13) makes no changes to these subdivisions.

(e) Requires the agencies to ensure that a state-level interagency staffing group provides:

(1) information and guidance to local-level interagency staffing groups regarding the availability of programs and resources in the community and best practices for addressing the needs of persons with complex needs; and

(2) creates this subdivision from existing text and makes no further changes to this subdivision:

(A) through (C) redesignates existing Subdivisions (1) through (3) as Paragraphs (A) through (C) and makes no further changes to these paragraphs.

SECTION 12. Amends Section 552.117(a), Government Code, as follows:

(a) Provides that information is exempted from the requirements of Section 552.021 (Availability of Public Information) if it is information that relates to certain identifying information of the following person or that reveals whether the person has family members:

(1) through (11) makes no changes to these subdivisions; or

(12) a current or former employee of DFPS, regardless of whether the employee complies with Section 552.024 (Electing to Disclose Address and Telephone Number) or 552.1175, or a current or former employee of a DFPS contractor performing services for the contractor on behalf of DFPS.

SECTION 13. Amends the heading to Section 552.1175, Government Code, to read as follows:

Sec. 552.1175. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONAL IDENTIFYING INFORMATION OF PEACE OFFICERS AND OTHER OFFICIALS PERFORMING SENSITIVE GOVERNMENTAL FUNCTIONS.

SECTION 14. Amends Section 552.1175(a), Government Code, to provide that this section applies only to, among certain persons, a current or former employee of DFPS or a current or former employee of a DFPS contractor performing services for the contractor on behalf of DFPS.

SECTION 15. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Sections 40.0327, 40.0328, and 40.036, as follows:

Sec. 40.0327. NONPROFIT AGENCY SERVICES COORDINATOR. Requires DFPS to designate an office as the nonprofit agency services coordinator to serve as a liaison between DFPS and nonprofit agencies that provide adoption services and assistance to families in crisis and children in care.

Sec. 40.0328. CASEWORKER CASELOAD MANAGEMENT SYSTEM. (a) Requires DFPS to manage the duties of caseworkers to maintain the safety of children in child protective services by establishing a caseload management system that meets certain criteria.

(b) Requires DFPS to make risk assessment guidelines available to the public and accessible on DFPS's Internet website and disclose the results of the assessment for a child to the court and each party to the case before the date the full adversary hearing is held under Section 262.201, Family Code.

(c) Provides that information relating to the assessment performed under this section is inadmissible as evidence in a court.

Sec. 40.036. TRAUMA-BASED CARE TRAINING REQUIREMENT FOR CASEWORKERS. Requires DFPS to ensure that each child protective services caseworker who interacts with children on a daily basis receives evidence-based training in trauma-based care.

SECTION 16. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.0523, as follows:

Sec. 40.0523. RESOURCES FOR CHILD PROTECTIVE SERVICES CASES. Requires DFPS to collaborate with the Office of Court Administration of the Texas Judicial System, the Supreme Court of the Texas Children's Commission, and any other

appropriate interested parties to compile and publish on DFPS's Internet website resources, including links to other websites, for judges, attorneys, and other persons involved in the child welfare system to support consistent practices statewide.

SECTION 17. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0533, as follows:

Sec. 42.0533. EMERGENCY PLACEMENT. Requires DFPS, in consultation with affected providers and other interested parties, to evaluate the need for and develop any necessary protocols and any associated best practice standards for the temporary placement of a child for not more than 30 days in certain foster homes to allow the child to remain in the child's community while DFPS secures a safe and suitable long-term placement for the child.

SECTION 18. Amends Section 25.025(a), Tax Code, to provide that this section (Confidentiality of Certain Home Address Information) applies only to, among certain persons, a current or former employee of DFPS or a current or former employee of a DFPS contractor performing services for the contractor on behalf of DFPS.

SECTION 19. Requires the executive commissioner, not later than December 1, 2017, to adopt the rules necessary to implement Section 261.3017, Family Code, as added by this Act.

SECTION 20. Provides that as soon as practicable after the effective date of this Act:

(1) the executive commissioner is required to adopt rules necessary to implement Sections 262.1041 and 262.1042, Family Code, as added by this Act; and

(2) DFPS is required to implement the caregiver program as required by Sections 262.1041 and 262.1042, Family Code, as added by this Act.

SECTION 21. Prohibits DFPS from implementing the caregiver program created under Section 262.1041, Family Code, as added by this Act, until the rules necessary to implement the program have been adopted.

SECTION 22. Requires the governor, as soon as practicable after the effective date of this Act, to adopt rules for the implementation and administration of the innovation grant program established under Section 264.2042, Family Code, as added by this Act, and begin to award grants under the program.

SECTION 23. (a) Makes application of the changes in law made by this Act relating to a suit affecting the parent-child relationship prospective.

(b) Makes application of Section 264.1076, Family Code, as added by this Act, prospective.

(c) Requires DFPS to implement Section 264.1076, Family Code, as added by this Act, not later than December 31, 2018.

(d) Requires HHSC, DFPS, DSHS, TEA, the Texas Correctional Office on Offenders with Medical or Mental Impairments, the Texas Department of Criminal Justice, the Texas Department of Housing and Community Affairs, the Texas Workforce Commission, and the Texas Juvenile Justice Department, as soon as practicable after the effective date of this Act, but not later than December 1, 2017, to update the joint memorandum of understanding required under Section 531.055, Government Code, as amended by this Act.

(e) Makes application of Sections 552.117 and 552.1175, Government Code, as amended by this Act, and Section 25.025, Tax Code, as amended by this Act, prospective.

(f) Requires DFPS, as soon as practicable after the effective date of this Act, to establish and implement the caseload management system as required under Section 40.0328, Human Resources Code, as added by this Act.

SECTION 24. Effective date: September 1, 2017.