

BILL ANALYSIS

Senate Research Center
87R19707 MCK-F

H.B. 3691
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Health & Human Services
5/20/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years the state's foster care system has been shifting to a community-based care model since the enactment of S.B. 11 in 2017 which directed the Department of Family and Protective Services (DFPS) to implement a regional approach to administering foster or substitute care services. Interested parties have suggested that the transition to this new model of substitute care services has been hampered by inefficiencies. In a recent evaluation of the state's transition to the community-based care model, Texas Tech University provided new recommendations on ways DFPS can improve its implementation.

By revising the initial statutes providing for the transition to community-based care and incorporating certain of the recommendations from that evaluation, H.B. 3691 seeks to increase the efficiency and flexibility of the state's foster care system by providing for the statewide implementation of community-based foster care and family preservation services.

H.B. 3691 amends current law relating to the statewide implementation of community-based foster care by the Department of Family and Protective Services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 7 (Section 264.157, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 264.151, Family Code, as follows:

Sec. 264.151. LEGISLATIVE INTENT. (a) Requires that services provided by the community-based nonprofit and local governmental entities that have the ability to provide child welfare services include direct case management to prevent entry into substitute care, reunify and preserve families, and ensure child safety, permanency, and well-being, in accordance with state and federal child welfare goals.

(b) Provides that it is the intent of the legislature that the provision of community-based care for children be implemented with measurable goals relating to:

(1) and (2) makes no changes to these subdivisions;

(3) the provision of services to children in the least restrictive environment possible and with minimal placement changes, rather than the provision of services to children in the least restrictive environment possible, and if possible in a family home environment.

(4) the reduction of the time a child is in the conservatorship of the Department of Family and Protective Services (DFPS) and placed in substitute care;

(5) makes no changes to this subdivision;

(6) the placement of children with siblings, when possible;

- (7) - (10) makes no changes to these subdivisions;
- (11) and (12) makes nonsubstantive changes to these subdivisions; and
- (13) the preservation of families to avoid placing children in foster care.

Makes nonsubstantive changes.

SECTION 2. Amends Section 264.152, Family Code, by amending Subdivisions (2) and (4) and adding Subdivisions (5), (6), (7), and (8), to redefine "case management" and "community-based care" and to define "child who is a candidate for foster care," "family preservation service," "family preservation services plan," and "foster care services" for purposes of Subchapter B-1 (Community-Based Care), except as otherwise provided.

SECTION 3. Amends Section 264.153, Family Code, as follows:

Sec. 264.153. COMMUNITY-BASED CARE IMPLEMENTATION PLAN. (a) Requires DFPS to develop and maintain a plan for implementing community-based care. Requires that the plan:

(1) define, rather than describe, DFPS's expectations, goals, and statewide strategic plan for, rather than approach to, implementing community-based care and the method DFPS uses to determine the cost of implementing community-based care, including DFPS resources used to provide community-based care;

(2) include a timeline for implementing community-based care throughout this state, the specific order and rationale for implementing community-based care in the catchment areas of this state where community-based care will expand, any limitations related to the implementation, and a progressive intervention plan and a contingency plan to provide continuity of the delivery of foster care services and services for relative and kinship caregivers if a contract with a single source continuum contractor ends prematurely;

(3) delineate and define the case management roles and responsibilities of DFPS and DFPS's contractors, the duties, employees, and related funding that will be transferred to the contractor by DFPS, and the method for determining the state-level and catchment-level resources to be transferred;

(4) makes no changes to this subdivision;

(5) makes a nonsubstantive change to this subdivision;

(6) include a detailed plan that describes DFPS's method of monitoring contracts and includes an evaluation of each contractor conducted by an entity based in this state independent of DFPS that:

(A) assesses the effectiveness of the transfer of responsibilities to each contractor;

(B) measures the performance and contract outcomes of each contractor; and

(C) compares the outcomes in the contractor's catchment area to the outcomes in:

(i) that same catchment area before community-based care was implemented;

(ii) other catchment areas in which community-based care has been implemented; and

(iii) other DFPS regions in which DFPS is providing services.

(7) include a report on issues that impede transition to community-based care, rather than include a report on transition issues resulting from implementation of community-based care;

(8) include an evaluation of each contractor's processes and fiscal and qualitative outcomes concerning the children and families in its care conducted by an entity based in this state that is independent of DFPS and has demonstrated expertise in statistical, financial, actuarial, logistical, and operational analysis;

(9) require DFPS to transmit immediately on receipt all reports and evaluations required under this subsection immediately to the relevant standing committees of the legislature and the Office of the Governor; and

(10) include a specific implementation plan for each catchment area identified for expansion of community-based care that includes a timeline for the transfer of services as described by Section 264.155 (Required Contract Provisions) developed after consulting with local stakeholders, as appropriate, including stakeholders listed in Section 264.155(a)(8) (relating to requiring a contractor to provide preliminary and ongoing community engagement plans with certain local stakeholders) and other stakeholders identified as significant in a particular catchment area.

Deletes existing text requiring the plan to include DFPS's contract monitoring approach and measures for evaluating the performance of each contractor and the community-based care system as a whole that includes an independent evaluation of each contractor's processes and fiscal and qualitative outcomes.

(b) Requires DFPS, not later than August 31 each year, rather than annually, to:

(1) makes no changes to this subdivision; and

(2) provide a copy of the plan to the governor, lieutenant governor, speaker of the Texas House of Representatives, and presiding officer of each standing committee of the legislature with jurisdiction over matters involving DFPS, rather than post on DFPS's Internet website the progress DFPS has made toward its goals for implementing community-based care.

SECTION 4. Amends Section 264.154, Family Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires an entity, to enter into a contract with DFPS to serve as a single source continuum contractor to provide services under Subchapter B-1, rather than to provide foster care service delivery, to be:

(1) a nonprofit entity that has:

(A) an organizational mission focused on child welfare; and

(B) a majority of the entity's board members residing in this state; or

(2) a governmental entity.

(c) Requires DFPS to request local stakeholders in a catchment area, including those listed in Section 264.155(a)(8), to provide any necessary information about the catchment area that will assist DFPS in:

(1) preparing DFPS's request for bids, proposals, or other applicable expressions of interest to provide community-based care in the catchment area; and

(2) selecting a single source continuum contractor to provide community-based care in the catchment area.

SECTION 5. Amends Section 264.155, Family Code, as follows:

Sec. 264.155. **REQUIRED CONTRACT PROVISIONS.** (a) Requires that a contract with a single source continuum contractor to provide services under Subchapter B-1, rather than to provide community based care services, in a catchment area include provisions that:

(1) establish a timeline for the implementation of community-based care in the catchment area, including a timeline for implementing:

(A) and (B) makes nonsubstantive changes to these paragraphs;
and

(C) family preservation services;

(2) establish conditions for the single source continuum contractor's access to DFPS data, rather than relevant DFPS data, and require the participation of the contractor in the data access and standards governance council created under Section 264.159 (Data Access and Standards Governance Council);

(3) - (7) makes no changes to these subdivisions;

(8) - (9) makes nonsubstantive changes to these subdivisions;

(10) identify the employees and other resources to be transferred to the contractor for the purpose of providing necessary implementation, case management, operational, and administrative functions and outline the methodology for determining the resources to be transferred;

(11) create a risk-sharing funding model that strategically and explicitly balances financial risk between the state and the contractor and mitigates the financial effects of significant unforeseen changes in the contractor's duties and responsibilities or its contract population; and

(12) require the annual review and adjustment of the funding based on updated cost and finance methodologies, including changes in policy, foster care rates, and regional service usage.

(b) Provides that a contract with a single source continuum contractor under Subchapter B-1 is required to be consistent with the requirements of applicable law and is authorized to only include terms authorized by the laws or rules of this state.

(c) Authorizes a contractor, in regions identified for implementing community-based care and in regions where community-based care has been implemented, to apply to DFPS for a waiver from any statutory and regulatory requirement to increase innovation and flexibility for achieving contractual performance outcomes.

SECTION 6. Amends Sections 264.156(a), (b), and (d), Family Code, as follows:

(a) Requires DFPS to develop and apply standard criteria, rather than to develop a formal review process, to assess the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering services under Subchapter B-1, rather than of delivering foster care services and services for relative and kinship caregivers, including the contractor's ability to provide:

(1) case management services for children and families;

(2) evidence-based, promising practice, or evidence-informed services, rather than supports, for children and families; and

(3) sufficient available capacity for inpatient and outpatient services and supports for children at all service levels who have previously been placed in the catchment area.

(b) Requires the single source continuum contractor, as part of the readiness review process, to prepare a report that defines:

(1) the practice model and process the contractor will use to meet contractual performance outcomes and requirements; and

(2) the methods the contractor will use to eliminate conflicts of interest, including financial incentives for a single source continuum contractor that refers a child for foster care services to itself or to a subcontractor in which that contractor has a majority financial stake.

Deletes existing text requiring the single source continuum contractor to prepare a plan detailing the methods by which the contractor will avoid or eliminate conflicts of interest. Deletes existing text prohibiting DFPS from transferring services to the contractor until DFPS has determined the plan is adequate.

(d) Authorizes DFPS, if after conducting the review process developed under Subsection (a), DFPS determines that a single source continuum contractor is able to adequately deliver services described by this subchapter, rather than to adequately deliver foster care services and services for relative and kinship caregivers, in advance of the projected dates stated in the timeline included in the contract with the contractor, to adjust the timeline to allow for an earlier transition of service delivery to the contractor.

SECTION 7. Amends Sections 264.157(a), (b), and (c), Family Code, as follows:

(a) Requires DFPS, not later than the last day of the state fiscal biennium, rather than not later than December 31, 2019, to:

(1) identify the catchment areas in the state where DFPS will implement community-based care, rather than identify not more than eight catchment areas in the state that are best suited to implement community-based care; and

(2) following the implementation of community-based care services in those catchment areas, retain an entity based in this state that is independent of DFPS to conduct an evaluation of the implementation process and the single source continuum contractor performance in each catchment area.

Makes nonsubstantive changes.

(b) Requires DFPS, notwithstanding the process for the expansion of community-based care described in Subsection (a), to accept and evaluate unsolicited proposals from entities based in this state to provide community-based care services in a geographic service area where DFPS has not implemented community-based care. Requires an entity that submits a proposal to provide community-based care services to ensure that it meets all criteria outlined by this subchapter and to demonstrate established connections to the area the entity proposes to serve. Requires the Health and Human Services Commission (HHSC) in conjunction with DFPS to adopt rules to ensure that proposals submitted under this subsection comply with state procurement laws and rules.

Deletes existing text requiring DFPS, notwithstanding the process for the expansion of community-based care described in Subsection (a), and in accordance with the community-based care implementation plan developed under Section 264.153 (Community-Based Care Implementation), beginning September 1, 2017, to begin accepting applications from entities to provide community-based care services in a designated catchment area

(c) Authorizes DFPS, in expanding community-based care, to change the geographic boundaries of catchment areas as necessary to align with specific communities or to enable satisfactory unsolicited proposals for community-based care services to be accepted and implemented.

SECTION 8. Amends the heading to Section 264.158, Family Code, to read as follows:

Sec. 264.158. TRANSFER OF SERVICES TO SINGLE SOURCE CONTINUUM CONTRACTOR.

SECTION 9. Amends Section 264.158, Family Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires DFPS, in each catchment area, rather than in each initial catchment area, where community-based care has been implemented or a contract with a single source continuum contractor has been executed, rather than has been executed before September 1, 2017, to transfer to the single source continuum contractor, rather than in each single source continuum contractor providing foster care services in that area:

(1) makes a nonsubstantive change to this subdivision;

(2) foster care services; and

(3) family preservation services, rather than family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family for the period of time ordered by the court.

(d) Provides that a single source continuum contractor is authorized to implement its own procedures to execute DFPS's statutory duties the contractor assumes and is not required to follow DFPS's procedures to execute the DFPS duties the contractor assumes.

SECTION 10. Amends Section 264.159, Family Code, as follows:

Sec. 264.159. DATA ACCESS AND STANDARDS GOVERNANCE COUNCIL.

(a) Requires DFPS to create a data access and standards governance council (council) to develop protocols for the interoperable electronic transfer of data from single source continuum contractors to DFPS to allow the contractors to perform case management functions and additional contracted services by DFPS.

(b) Requires the council to develop protocols for the access, management, and security of case data that is electronically shared between a single source continuum contractor and DFPS, rather than shared by a single source continuum contractor with DFPS.

(c) Requires the council to develop protocols for the access, management, and security of data shared with an independent entity retained to conduct the independent evaluations required under this subchapter. Requires the protocols to ensure the entity has full, unrestricted access to all relevant data necessary to perform an evaluation.

(d) Provides that the council consists of single source continuum contractors with active contracts and DFPS employees who provide data, legal, information technology, and child protective services. Requires the council to meet at least quarterly during each calendar year.

SECTION 11. Amends Section 264.161, Family Code, as follows:

Sec. 264.161. STATUTORY DUTIES ASSUMED BY CONTRACTOR. Requires a single source continuum contractor providing the services described by Subchapter B-1 in a catchment area, except as provided by Section 264.163, to, either directly or through subcontractors, assume the statutory duties of DFPS in connection with the delivery of services in that catchment area. Requires DFPS to enumerate in its contract with a single source continuum contractor all duties the single source continuum contractor will assume.

Deletes existing text requiring a single source continuum contractor providing foster care services and services for relative and kinship caregivers in a catchment area, except as provided by Section 264.163, to, either directly or through subcontractors, assume the statutory duties of DFPS in connection with the delivery of foster care services and services for relative and kinship caregivers in that catchment area.

SECTION 12. Amends Section 264.162, Family Code, as follows:

Sec. 264.162. New heading: REVIEW AND MONITORING OF CONTRACTOR PERFORMANCE. (a) Creates this subsection from existing text. Requires DFPS to implement a process to monitor and evaluate a single source continuum contractor's performance in achieving contract outcomes in a catchment area, rather than to develop a formal review process to evaluate a single source continuum contractor's implementation of placement services and case management services in a catchment area.

(b) Requires that the contract performance outcomes specified in a contract under Subchapter B-1 be consistent with the purposes described by Section 264.151. Requires that the contract allow the contractor operational discretion in meeting performance outcomes.

(c) Requires DFPS to regularly report on DFPS's and each single source continuum contractor's performance in providing services based on the performance outcomes described by Subsection (b). Requires that the report:

(1) be readily accessible to and understandable by a member of the public and include the following information:

(A) a comparison of the single source continuum contractor's performance in a catchment area with DFPS's performance in that same area during the 10 years preceding the date the contractor began providing services in the area; and

(B) a comparison of the performances of service providers for each region of this state for the time covered by the report;

(2) include information provided by single source continuum contractors;

(3) to the greatest extent feasible, be prepared using existing data sources and DFPS resources; and

(4) be published on the schedule determined appropriate by DFPS but not less than annually.

(d) Requires that the contract clearly define the manner in which the contractor's performance will be measured and identify the information sources DFPS and, if applicable, the independent evaluator will use to evaluate the performance.

SECTION 13. Repealer: Section 264.156(c) (relating to requiring DFPS to develop a review process before DFPS is authorized to expand community-based care outside of the initial catchment areas where community-based care has been implemented), Family Code.

SECTION 14. Requires DFPS, not later than October 1, 2022, to publish the initial report required by Section 264.162(c), Family Code, as added by this Act.

SECTION 15. Provides that the changes in law made by this Act apply only to a contract for foster care services entered into or renewed on or after the effective date of this Act.

SECTION 16. Effective date: September 1, 2021.