By:  Kolkhorst S.B. No. 1896

(In the Senate - Filed March 12, 2021; March 26, 2021, read first time and referred to Committee on Health & Human Services; April 21, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; April 21, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham                 X

Campbell          X

Hall              X

Miles             X

Powell            X

Seliger           X

COMMITTEE SUBSTITUTE FOR S.B. No. 1896 By:  Hall

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of child-care facilities and foster care placements and services and the creation of the Office of Community-Based Care Transition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter E, Chapter 263, Family Code, is amended by adding Section 263.409 to read as follows:

Sec. 263.409.  FINAL NOTIFICATION OF BENEFITS RELATED TO KINSHIP VERIFICATION. Before a court enters a final order naming a relative or another adult with a longstanding and significant relationship with a foster child as the permanent managing conservator for the child, the court shall verify that:

(1)  the individual was offered the opportunity to become verified by a licensed child-placing agency to qualify for permanency care assistance benefits under Subchapter K, Chapter 264, and the individual declined the verification process and the permanency care assistance benefits; and

(2)  the child-placing agency conducting the verification for the individual's permanency care assistance benefits has been notified of the individual's decision to decline the permanency care assistance benefits.

SECTION 2.  Subchapter B, Chapter 264, Family Code, is amended by adding Sections 264.1071 and 264.1073 to read as follows:

Sec. 264.1071.  OFFICE STAYS PROHIBITED. The department may not allow a child to stay overnight in a department office.

Sec. 264.1073.  TREATMENT FOSTER CARE. The department and single source continuum contractors shall:

(1)  lessen employment restrictions to allow single parents to participate in treatment foster care, when quality care is assured;

(2)  expand the eligible age for treatment foster care to include children 10 years of age or older;

(3)  prepare and plan for the subsequent placement not later than the 30th day after a child is placed in treatment foster care to assist in the transition to the least restrictive placement; and

(4)  extend the length of time for a treatment foster care placement.

SECTION 3.  Subchapter B, Chapter 264, Family Code, is amended by adding Section 264.117 to read as follows:

Sec. 264.117.  MENTORS FOR FOSTER CHILDREN. (a) The department and each single source continuum contractor in this state, in collaboration with local governmental entities and faith- and community-based organizations, shall examine the feasibility of designing a volunteer mentor program for children in congregate care settings.

(b)  Not later than December 31, 2022, the department shall report its findings and recommendations for establishing a mentor program to the legislature.

(c)  This section expires September 1, 2023.

SECTION 4.  (a) Section 264.1261, Family Code, is amended by adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(b-1)  Notwithstanding Section 264.0011, the Health and Human Services Commission in collaboration with the department, and each single source continuum contractor in this state, shall develop a plan to increase the placement capacity in each catchment area of the state with the goal of eliminating the need to place a child outside of the child's community. The commission shall consider whether contracting for additional capacity at residential treatment centers, facilities that provide mental inpatient or outpatient beds for children with behavioral health or mental health needs, and other potential temporary placement options provide the best methods for meeting capacity shortages.

(b-2)  The plan required by Subsection (b-1) must include information and contingency plans to ensure adequate capacity in other facilities to meet placement needs when a facility is placed on probation.

(b-3)  The department and each single source continuum contractor shall contract with facilities for reserve beds to ensure the department may place each child in a facility if capacity is otherwise unavailable.

(b)  Sections 264.1261(a) and (b), Family Code, as added by Chapter 822 (H.B. 1549), Acts of the 85th Legislature, Regular Session, 2017, are repealed.

SECTION 5.  Subchapter B-1, Chapter 264, Family Code, is amended by adding Sections 264.171 and 264.172 to read as follows:

Sec. 264.171.  JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON COMMUNITY-BASED CARE TRANSITION. (a) Notwithstanding Section 264.0011, in this section:

(1)  "Commission" means the Health and Human Services Commission.

(2)  "Committee" means the Joint Legislative Oversight Committee on Community-Based Care Transition.

(3)  "Department" means the Department of Family and Protective Services.

(b)  The Joint Legislative Oversight Committee on Community-Based Care Transition is composed of six voting members as follows:

(1)  three members of the senate, appointed by the lieutenant governor; and

(2)  three members of the house of representatives, appointed by the speaker of the house of representatives.

(c)  The lieutenant governor and speaker of the house of representatives shall each appoint a member described by Subsection (b)(1) or (2), respectively, to serve as joint chairs of the committee.

(d)  The committee shall meet at the call of the joint chairs and may consider public testimony.

(e)  The committee may employ persons necessary to carry out this section through funds made available by the legislature.

(f)  The committee shall monitor and report to the legislature on the following related to the implementation of community-based care:

(1)  the funding of community-based care;

(2)  the performance and outcomes of community-based care statewide and by region;

(3)  statutory or regulatory barriers to the successful implementation of community-based care; and

(4)  other challenges to the successful implementation of community-based care.

(g)  The committee may request any relevant information from the commission, the department, or another relevant state agency, and the commission, the department, or agency shall comply with the request, unless the provision of the information is prohibited by state or federal law.

(h)  Not later than January 1 of each odd-numbered year, the committee shall submit a written report of the committee's findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the standing committees of the senate and house of representatives having primary jurisdiction over child welfare issues.

(i)  The committee shall monitor the continued implementation of community-based care and hold public hearings to receive comments from the public on the implementation of community-based care.

Sec. 264.172.  OFFICE OF COMMUNITY-BASED CARE TRANSITION. (a) In this section:

(1)  "Department" means the Department of Family and Protective Services.

(2)  "Office" means the Office of Community-Based Care Transition created under this section.

(b)  The Office of Community-Based Care Transition is a state agency independent of but administratively attached to the department.

(c)  The office shall:

(1)  assess catchment areas in this state where community-based care services may be implemented;

(2)  develop a plan for implementing community-based care in each catchment area in this state, including the order in which community-based care will be implemented in each catchment area and a timeline for implementation;

(3)  evaluate community-based care providers;

(4)  contract with community-based care providers to provide services in each catchment area in this state;

(5)  measure contract performance of community-based care providers;

(6)  provide contract oversight of community-based care providers; and

(7)  report outcomes of community-based care providers.

(d)  The department shall provide any administrative support the office needs, and the department and the Health and Human Services Commission shall provide access to any information and legal counsel the office requires to implement community-based care.

(e)  The governor shall appoint the director of the office to serve in that capacity at the pleasure of the governor. The director reports directly to the governor.

(f)  The office shall report to the legislature at least once each calendar quarter regarding the implementation of community-based care in the state.

(g)  The office is abolished and this section expires January 1, 2027.

SECTION 6.  (a) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.00521 and 533.00522 to read as follows:

Sec. 533.00521.  STAR HEALTH PROGRAM: HEALTH CARE FOR FOSTER CHILDREN. (a) The commission shall annually evaluate the use of benefits under the Medicaid program in the STAR Health program offered to children in foster care and provide recommendations to the Department of Family and Protective Services and each single source continuum contractor in this state to better coordinate the provision of health care and use of those benefits for children in foster care.

(b)  In conducting the evaluation required under Subsection (a), the commission shall collaborate with residential child-care providers regarding any unmet needs of children in foster care and the development of capacity for providing quality medical, behavioral health, and other services for children in foster care.

(c)  The commission shall report its findings to the legislature.

Sec. 533.00522.  STAR HEALTH PROGRAM: MENTAL HEALTH PROVIDERS. A contract between a Medicaid managed care organization and the commission for the organization to provide health care services to recipients under the STAR Health program must require the organization to ensure the organization maintains a network of mental and behavioral health providers, including child psychiatrists and other appropriate providers, in all Department of Family and Protective Services regions in this state, regardless of whether community-based care has been implemented in any region.

(b)  The changes in law made by this section apply only to a contract for the provision of health care services under the STAR Health program between the Health and Human Services Commission and a Medicaid managed care organization under Chapter 533, Government Code, that is entered into, renewed, or extended on or after the effective date of this section.

(c)  If before implementing Section 533.00522, Government Code, as added by this section, the Health and Human Services Commission determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the health and human services agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 7.  Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.05291 to read as follows:

Sec. 40.05291.  ELECTRONIC CASE MANAGEMENT SYSTEM. (a) The department shall develop a plan to eliminate the department's use of paper case files and fully transition to an electronic case management system.

(b)  The department shall implement a fully electronic case management system not later than September 1, 2023.

(c)  This section expires September 1, 2025.

SECTION 8.  Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.0583 to read as follows:

Sec. 40.0583.  STATE AUDITOR REVIEW OF CONTRACTS. The state auditor shall annually review the department's performance-based contract to determine whether the department is properly enforcing contract provisions with providers and to provide recommendations for improving department oversight and execution of contracts.

SECTION 9.  Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.081 to read as follows:

Sec. 40.081.  IMPLEMENTATION OF FEDERAL LAW. (a) In furtherance of department duties under Section 40.002(d), the department shall to the greatest extent possible develop capacity for placement settings that are eligible for federal financial participation under 42 U.S.C. Section 672, including settings:

(1)  specializing in providing prenatal, postpartum, or parenting support for youth;

(2)  providing high-quality residential care and supportive services to children and youth who this state has reasonable cause to believe are, or who are at risk of being, sex trafficking victims in accordance with 42 U.S.C. Section 671(a)(9)(C);

(3)  providing supervised independent living for young adults;

(4)  offering residential family-based substance abuse treatment as described by 42 U.S.C. Section 672(j); and

(5)  serving as a qualified residential treatment program.

(b)  In developing capacity for settings described by Subsection (a)(2), the department shall promote the use of nationally recognized tools such as the Commercial Sexual Exploitation-Identification Tool and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization.

SECTION 10.  Subchapter B, Chapter 42, Human Resources Code, is amended by adding Section 42.026 to read as follows:

Sec. 42.026.  ACCESS TO DATABASE. (a) The commission shall make the child-care licensing division's searchable database accessible to commission and department investigators.

(b)  The department shall make the department's searchable database accessible to commission and department investigators.

SECTION 11.  Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.0538 and 42.0583 to read as follows:

Sec. 42.0538.  PROVISIONAL LICENSE FOR KINSHIP PROVIDER. (a) The executive commissioner by rule shall allow a child-placing agency to issue a provisional license for a kinship provider, as defined by Section 264.851, Family Code, who meets the basic safety requirements provided by commission rule. A kinship provider issued a provisional license under this section shall complete all licensing requirements within the time provided by rule.

(b)  The executive commissioner shall ensure that the implementation of this section does not reduce the amount of federal money available to this state.

Sec. 42.0583.  IDENTIFYING AT-RISK PROVIDERS. The department shall use data analytics collected regarding residential child-care providers, including general residential operations providing treatment services to young adults with emotional disorders, to develop an early warning system to identify at-risk providers most in need of technical support and to promote corrective actions and minimize standard violations.

SECTION 12.  Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.0711 to read as follows:

Sec. 42.0711.  INSPECTION OF FACILITY ON PROBATION; PLACEMENT LIMITS. (a) The commission shall inspect each week a general residential operation that is placed on probation for continued violations of this chapter.

(b)  The department or a single source continuum contractor may not place a child in a facility whose license the commission has placed on probation.

SECTION 13.  Subchapter D, Chapter 42, Human Resources Code, is amended by adding Section 42.080 to read as follows:

Sec. 42.080.  DISCIPLINARY ACTION PROHIBITED. The commission may not issue a citation to or take any other disciplinary action against a general residential operation or a child-placing agency for failing to employ a licensed child-care administrator or licensed child-placing administrator, as appropriate, if the operation or agency has:

(1)  been without an administrator for less than 60 days; and

(2)  made substantial efforts to hire a qualified administrator.

SECTION 14.  Subchapter H, Chapter 42, Human Resources Code, is amended by adding Sections 42.2541, 42.256, 42.257, 42.258, 42.259, and 42.260 to read as follows:

Sec. 42.2541.  IMPROVING EDUCATION SERVICES FOR CHILDREN. (a) The department shall develop a strategic plan for improving the provision of educational services to children placed in a general residential operation.

(b)  The department shall report to the Texas Education Agency the educational outcomes for children placed in a general residential operation.

(c)  The department and the Texas Education Agency shall annually evaluate the educational outcomes for children placed in a general residential operation and adopt strategies and policies to improve the outcomes and standards.

Sec. 42.256.  TREATMENT MODEL. (a) Each general residential operation providing treatment services shall, on issuance of an initial or renewal license under this chapter, submit to the commission information on the operation's treatment model. A general residential operation that contracts with the department to provide residential care for children in foster care shall submit information on the operation's treatment model to the department on execution and renewal of a contract.

(b)  The operation shall annually assess the overall effectiveness of the model adopted under this section.

(c)  The treatment model must address all aspects related to children's care, including children's therapeutic needs. The model shall include:

(1)  the manner in which treatment goals will be individualized and identified for each child;

(2)  the method the operation will use to measure the effectiveness of each treatment goal for the child;

(3)  the actions the operation will take if the treatment goals are not met; and

(4)  the method the operation will use to monitor and evaluate the effectiveness of the treatment model.

(d)  A general residential operation may change a treatment model adopted under this section after notifying the commission of the change and submitting the new treatment model to the commission.

(e)  The executive commissioner may adopt rules to implement this section.

(f)  The general residential operation shall adopt policies and procedures to implement the treatment model.

Sec. 42.257.  EVALUATION OF PLACEMENTS. (a) A general residential operation that considers accepting a child's placement with the operation shall evaluate the proposed placement on the following criteria:

(1)  whether the child meets the operation's admission criteria;

(2)  whether the child would benefit from the treatment model implemented at the operation; and

(3)  whether the operation has the staff and resources to meet the child's needs considering the other children at the operation and the other children's needs.

(b)  A general residential operation shall ensure that the evaluation under Subsection (a) does not delay the timely placement of a child.

Sec. 42.258.  LIMIT ON PLACEMENTS FOR NEW FACILITY. If the department or a single source continuum contractor contracts with a general residential operation providing treatment services to place children with the operation before the operation is licensed, the contract must limit the number of children that may be placed at the operation each month and limit the number of children with a service level of specialized, intense, or intense plus until the operation exhibits sustained compliance with the licensing standards.

Sec. 42.259.  TRANSITION PLANS. A general residential operation shall develop a transition plan for each child who has been placed at the operation for longer than six months.

Sec. 42.260.  TELEHEALTH PILOT PROGRAM. The commission in coordination with the department and single source continuum contractors shall establish guidelines in the STAR Health program to improve the use of telehealth services to provide and enhance mental health and behavioral health care for children placed in the managing conservatorship of the state.

SECTION 15.  Section 43.0081, Human Resources Code, is amended to read as follows:

Sec. 43.0081.  PROVISIONAL LICENSE. (a) The commission [~~department~~] may issue a provisional child-care administrator's license to:

(1)  an applicant licensed in another state who applies for a license in this state if the applicant[~~. An applicant for a provisional license under this section must~~]:

(A)  is [~~(1) be~~] licensed in good standing as a child-care administrator for at least two years in another state, the District of Columbia, a foreign country, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(B)  has [~~(2) have~~] passed a national or other examination recognized by the commission [~~department~~] that demonstrates competence in the field of child-care administration; and

(C)  is [~~(3) be~~] sponsored by a person licensed by the commission [~~department~~] under this chapter with whom the provisional license holder may practice under this section; and

(2)  an applicant who:

(A)  otherwise qualifies for a license but does not meet the experience requirement in Section 43.004(a)(4); and

(B)  complies with any additional requirement established by rule under Subsection (e).

(b)  The commission [~~department~~] may waive the requirement of Subsection (a)(1)(C) [~~(a)(3)~~] for an applicant if the commission [~~department~~] determines that compliance with that paragraph [~~subsection~~] constitutes a hardship to the applicant.

(c)  A provisional license under Subsection (a)(1) is valid until the date the commission [~~department~~] approves or denies the provisional license holder's application for a license. The commission [~~department~~] shall issue a license under this chapter to the provisional license holder described by Subsection (a)(1) if:

(1)  the provisional license holder passes the examination required by Section 43.004;

(2)  the commission [~~department~~] verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and

(3)  the provisional license holder satisfies any other license requirements under this chapter.

(d)  For a provisional license holder described by Subsection (a)(1), the commission shall [~~The department must~~] complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The commission [~~department~~] may extend the 180-day limit if the results of the license holder's examination have not been received by the commission [~~department~~].

(e)  The executive commissioner by rule may establish additional requirements for the issuance of a provisional child-care administrator's license under Subsection (a)(2)(A) as the executive commissioner determines appropriate.

SECTION 16.  Section 264.169, Family Code, and Section 40.0581(f), Human Resources Code, are repealed.

SECTION 17.  (a) The Health and Human Services Commission, in collaboration with the Department of Family and Protective Services, shall review the Centers for Medicare and Medicaid Services' Integrated Care for Kids (InCK) Model to determine whether implementing the model could benefit children in this state, including children enrolled in the STAR Health Medicaid managed care program.

(b)  Not later than December 1, 2022, the Health and Human Services Commission shall report its findings to the governor and legislature.

(c)  This section expires September 1, 2023.

SECTION 18.  Not later than December 1, 2022, the Department of Family and Protective Services shall provide the legislature with options for conducting:

(1)  independent administrative reviews of department investigations of licensed residential child-care facilities; and

(2)  independent appeals of determinations from those investigations.

SECTION 19.  (a) The Department of Family and Protective Services shall:

(1)  study extending permanency care assistance benefits to individuals who are not relatives of a foster child and who do not have a longstanding and significant relationship with the foster child before the child enters foster care; and

(2)  assess the potential impact and favorable permanency outcomes for children who might otherwise remain in foster care for long periods or have managing conservatorship of the child transferred without any benefits to the caregiver.

(b)  Not later than December 31, 2022, the Department of Family and Protective Services shall submit a report to the legislature on the results of the study and assessment conducted under this section and recommendations for further action based on the study and assessment.

(c)  This section expires September 1, 2023.

SECTION 20.  Not later than January 1, 2025, the Department of Family and Protective Services shall:

(1)  transition the family-based safety services program to evidenced-based programs under the Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(2)  develop an implementation plan for the transition of services; and

(3)  develop community referrals to existing prevention and early intervention programs.

SECTION 21.  The executive commissioner of the Health and Human Services Commission shall adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes as provided by Section 42.042, Human Resources Code, as amended by Chapter 317 (H.B. 7), Acts of the 85th Legislature, Regular Session, 2017, as soon as practicable after the effective date of this Act but not later than January 1, 2024.

SECTION 22.  (a) The Health and Human Services Commission and the Department of Family and Protective Services shall jointly evaluate the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), to determine methods for maximizing this state's receipt of federal funds to provide foster youth transition planning to adulthood and additional services for foster youth and young adults in extended foster care.

(b)  This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2021.

SECTION 23.  (a)  As soon as practicable after the effective date of this Act but not later than October 15, 2021, the governor shall appoint the director of the Office of Community-Based Care Transition as required by Section 264.172, Family Code, as added by this Act.

(b)  As soon as practicable after the effective date of this Act, the Department of Family and Protective Services shall transfer all money, contracts, leases, property, and obligations related to the powers and duties of the Office of Community-Based Care Transition to that office.

SECTION 24.  The Office of Community-Based Care Transition, the Department of Family and Protective Services, and the Health and Human Services Commission are required to implement this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Office of Community-Based Care Transition, the Department of Family and Protective Services, and the Health and Human Services Commission may, but are not required to, implement this Act using other appropriations available for the purpose.

SECTION 25.  Except as otherwise provided by this Act, this Act takes effect September 1, 2021.

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