

BILL ANALYSIS

Senate Research Center
79R12783 KLA-D

H.B. 2579
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Health & Human Services
5/6/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Texas has approximately 1,500 children in institutions such as nursing homes and intermediate care facilities for the mentally retarded (ICF-MR). Although the state has assumed financial responsibility for these children, parents and guardians retain their legal rights. Under such circumstances, it is logical for the state to expect the parents and guardians to continue to assume a parental role. Parents and guardians should be encouraged and enabled to participate in planning and decision-making for their institutionalized children to the maximum extent possible for the duration of the children's stay in the institution. This should start before the children are admitted and continue through their stay and discharge from the facility.

In many cases, the parents of institutionalized children are involved and active in the children's lives. In some cases, however, the children are placed in the institution and parents or guardians fail to remain involved. The state has not fully developed processes which engage the parents or guardians in important decision-making regarding the children. This issue becomes especially critical when emergency medical or permanency decisions need to be made.

The purpose of H.B. 2579 is to encourage parental participation in the lives of their institutionalized children. It will empower parents and guardians in their relationships with their institutionalized children. It will facilitate their participation in planning activities and decision-making for their children. The bill delineates the roles of parents and facilities with regard to staying involved in the lives of the children and the decision-making process and puts in place protections for institutionalized children when the parents or guardians cannot be found.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 531.1521, 531.1591, and 531.166, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D-1, Chapter 531, Government Code, by adding Sections 531.1521, 531.1532, 531.1591, and 531.164-531.167, as follows:

Sec. 531.1521. PREADMISSION INFORMATION. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to develop and implement a system by which the Department of Aging and Disability Services (DADS) ensures that, for each child with respect to whom the department or a local mental retardation authority is notified of a request for placement in an institution, the child's parent or guardian is fully informed before the child is placed in the institution of all community-based services and any other service and support options for which the child is eligible. Requires the system to be designed to ensure that DADS provides the information through a local mental retardation authority, any private entity that has knowledge and expertise regarding the needs of and full spectrum of care options available to children with disabilities as well as the philosophy and purpose of permanency planning, or a DADS employee.

(b) Authorizes an institution in which a child's parent or guardian is considering placing the child to provide information required under Subsection (a), but

requires the information to also be provided by a local mental retardation authority, private entity, or employee of DADS as required by Subsection (a).

(c) Requires DADS to develop comprehensive information consistent with the policy stated in Section 531.152 (Policy Statement) to explain certain information to a parent or guardian considering placing a child in an institution.

(d) Requires DADS, except as otherwise provided by this subsection and Subsection (e), to ensure that, not later than the 14th working day after the date DADS is notified of a request for the placement of a child in an institution, the child's parent or guardian is provided the information described by Subsections (a) and (c). Authorizes DADS to provide the information after the 14th working day after the date DADS is notified of the request if the child's parent or guardian waives the requirement that the information be provided within the period otherwise required by this subsection.

(e) Provides that the requirements of this section do not apply to a request for the placement of a child in an institution if the child is involved in an emergency situation or has been committed to an institution under certain provisions.

Sec. 531.1532. REQUIREMENTS ON ADMISSIONS OF CHILDREN TO CERTAIN INSTITUTIONS. Requires DADS, on the admission of a child to a certain type of institution, to require the child's parent or guardian to submit an admission form that contains certain information and a signed acknowledgment of responsibility stating that the parent or guardian agrees to notify the institution in which the child is placed of any changes to the parent or guardian's personal information and make every effort to participate in the child's life and in planning activities for the child.

Sec. 531.1591. ANNUAL REAUTHORIZATION OF PLANS OF CARE FOR CERTAIN CHILDREN. (a) Requires the executive commissioner to adopt rules under which DADS requires a nursing facility in which a child resides to request from the child's parent or guardian a written reauthorization of the child's plan of care.

(b) Requires the rules adopted under this section to require that the written reauthorization be requested annually.

Sec. 531.164. DUTIES OF CERTAIN INSTITUTIONS. (a) Sets forth the institutions to which this section applies.

(b) Requires an intermediate care facility for persons with mental retardation (ICF-MR) or group home to notify the local mental retardation authority for the region in which the institution is located of a request for placement of a child in the institution. Requires a nursing facility to notify DADS of a request for placement of a child in the institution.

(c) Requires an institution to make reasonable accommodations to promote the participation of the parent or guardian of a child residing in the institution in all planning and decision-making regarding the child's care, including participation in certain events and activities.

(d) Sets forth reasonable accommodations for the parent or guardian that an institution is required to make under this section.

(e) Requires an ICF-MR, except as otherwise provided by Subsection (f), to attempt to notify the parent or guardian of a child who resides in the ICF-MR in writing of a periodic permanency planning meeting or annual service plan review and reauthorization meeting not later than the 21st day before the date the meeting is scheduled to be held and request a response from the parent or guardian. Requires a nursing facility, except as otherwise provided by Subsection (f), to attempt to notify the parent or guardian of a child who resides in the facility in writing of an annual service plan review and reauthorization meeting not later

than the 21st day before the date the meeting is scheduled to be held and request a response from the parent or guardian.

(f) Requires an ICF-MR or a nursing facility, as applicable, if an emergency situation involving a child residing in an ICF-MR or nursing facility occurs, to attempt to notify the child's parent or guardian as soon as possible and request a response from the parent or guardian.

(g) Requires the ICF-MR or nursing facility, as applicable, if a child's parent or guardian does not respond to a notice under Subsection (e) or (f), to attempt to locate the parent or guardian by contacting another person whose information was provided by the parent or guardian on the admission form.

(h) Requires the ICF-MR or nursing facility, not later than the 30th day after the date an ICF-MR or nursing facility determines that it is unable to locate a child's parent or guardian for participation in certain meetings or reviews, to notify DADS of that determination and request that DADS initiate a search for the child's parent or guardian.

Sec. 531.165. SEARCH FOR PARENT OR GUARDIAN OF A CHILD. (a) Requires DADS to develop and implement a process by which DADS, on receipt of notification under Section 531.164(h) that a child's parent or guardian cannot be located, conducts a search for the parent or guardian. Requires DADS, if, on the first anniversary of the date DADS receives the notification under Section 531.164(h), DADS has been unsuccessful in locating the parent or guardian, to refer the case to the child protective services division of the Department of Family and Protective Services (DFPS) if the child is 17 years of age or younger or the adult protective services division of DFPS if the child is 18 years of age or older.

(b) Requires the child protective services division of DFPS, on receipt of a referral, to exercise intense due diligence in attempting to locate the child's parent or guardian. Requires DFPS, if the division is unable to locate the child's parent or guardian, to file a suit affecting the parent-child relationship requesting an order appointing DFPS as the child's temporary managing conservator.

(c) Provides that a child is considered abandoned for purposes of the Family Code if the child's parent or guardian cannot be located following the exercise of intense due diligence in attempting to locate the parent or guardian by DFPS under Subsection (b).

(d) Requires the adult protective services division of DFPS, on receipt of a referral, to notify the court that appointed the child's guardian that the guardian cannot be located.

Sec. 531.166. TRANSFER OF CHILD BETWEEN INSTITUTIONS. (a) Sets forth the residential institutions to which this section applies.

(b) Requires the institution in which the child resides, before transferring a child who is 17 years of age or younger, or a child who is at least 18 years of age and for whom a guardian has been appointed, from one institution to another institution, to attempt to obtain consent for the transfer from the child's parent or guardian unless the transfer is in response to an emergency situation.

Sec. 531.167. COLLECTION OF INFORMATION REGARDING INVOLVEMENT OF CERTAIN PARENTS AND GUARDIANS. (a) Requires DADS to collect and maintain aggregate information regarding the involvement of parents and guardians of children residing in certain institutions in the lives of and planning activities relating to those children. Requires DADS to obtain input from stakeholders concerning the types of information that are most useful in assessing the involvement of those parents and guardians.

(b) Requires DADS to make the aggregate information available to the public on request.

SECTION 2. Requires the executive commissioner of the Health and Human Services Commission to adopt the rules required by Sections 531.1521(a) and (e) and 531.166(b), Government Code, as added by this Act, not later than September 1, 2006. Requires DADS to develop the information required by Section 531.1521(c), Government Code, as added by this Act, and develop and implement the process for conducting a search for a child's parent or guardian required by Section 531.165, Government Code, as added by this Act, not later than September 1, 2006.

SECTION 3. Makes application of Section 531.1521, Government Code, as added by this Act, prospective to a child for whom DADS or a local mental retardation authority is notified of a request for placement in an institution on or after September 1, 2006.

SECTION 4. (a) Makes application of Sections 531.1532, 531.1591, and 531.164-531.166, Government Code, as added by this Act, prospective to a child who is admitted to an institution on or after September 1, 2006.

(b) Requires an institution in which a child resides, notwithstanding Subsection (a), as part of the annual service plan meeting regarding the child, to encourage the child's parent or guardian to provide the personal information required on an admission form and a signed acknowledgment of responsibility under Section 531.1532, Government Code, as added by this Act. Provides that, notwithstanding Subsection (a) of this section, if the parent or guardian of a child for whom DADS is required to develop a permanency plan provides the information and acknowledgment of responsibility as a result of the annual service plan meeting as provided by this subsection, Sections 531.164-531.166, Government Code, as added by this Act, apply with respect to the child, regardless of the date on which the child was admitted to an institution.

SECTION 5. Effective date: September 1, 2005.