

BILL ANALYSIS

C.S.S.B. 813
By: Janek
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

If privatization of substitute care and case management services is implemented in Harris County as required by S.B. 6, 79th Legislature, Regular Session, the assumed biennial loss of nearly \$15 million in local funds would reduce the capacity of that county to serve the current caseloads and provide the current level of services. Current law requires the outsourcing of case management and substitute care services to private entities without exception. Ambiguity and conflicting provisions of the law enacted by S.B. 6 have resulted in delays in terminating parental rights and finalizing the permanent placement of children.

Certain procedures in cases that impact the parent-child relationship are difficult to implement or are absent. After a parent claims indigency and requests the appointment of an attorney, there are no specific guidelines for a court to follow other than a requirement that a hearing be held on the issue upon the request of a party. The time period for which the court is required to grant a new trial and for which a request can be made for a new trial is the same – 30 days after the final order is signed. Under certain circumstances compliance with both deadlines is almost impossible. A hearing to grant a new trial or assess the validity of an appeal appears to be required whether or not a party timely filed a request for new trial or a statement providing which point or points the party intends to appeal. The relationship between attorneys and the duties of attorneys appointed at the trial and appellate levels, and the obligation of parties to pay costs are not defined.

C.S.S.B. 813 makes certain procedural changes relative to a parent filing a claim of indigency, the time frame to request a new trial, a hearing to grant a new trial, the duties of attorneys appointed to represent an indigent party, and who is required to pay appellate costs when an appeal is determined to be frivolous. In addition, this bill creates a grandfather exception which would allow Harris County and the Harris County Children's Assessment Center to continue to provide case management and substitute care services and to contribute more than \$15 million in local funding per biennium to serve abused and neglected children.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 107.013, Family Code, by adding Subsection (d), as follows:

(d) Requires a parent who claims indigence under Subsection (a) to file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court can conduct a hearing to determine the parent's indigence under this section.

SECTION 2. Amends Section 263.405, Family Code, by amending Subsection (b), and adding Subsection (b-1), as follows:

(b) Requires a party who intends to request a new trial or to appeal a final order, to file with the court, not later than the 15th day after the date the final order is signed by the trial judge, a request for a new trial, or, if an appeal is sought, a statement of the point or points on which the party intends to appeal.

(b-1) Creates this subsection from existing text. Authorizes the statement under Subsection (b)(2) to be combined with a motion for a new trial.

SECTION 3. Amends Section 264.106, Family Code, by adding Subsection (1), as follows:

(1) Authorizes the Department of Family and Protective Services (DFPS) or an independent administrator, notwithstanding any other law, to contract with a child welfare board established under Section 264.005 (County Child Welfare Boards), a local governmental board granted the powers and duties of a child welfare board under state law, or a children's advocacy center established under Section 264.402 (Establishment of Children's Advocacy Center) for the provision of substitute care and case management services in this state if the board or center provided direct substitute care or case management services under a contract with the DFPS before September 1, 2006.

SECTION 4. Amends Section 265.004(a), Family Code, to authorize the evidence-based programs funded under this subsection to be offered by a child welfare board established under Section 264.005, a local governmental board granted the powers and duties of a child welfare board under state law, or a children's advocacy center established under Section 264.402.

SECTION 5. Amends Subchapter A, Chapter 45, Human Resources Code, by adding Sections 45.005 and 45.006, as follows:

Sec. 45.005. PROVISION OF SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES BY CERTAIN PERSONS. Authorizes DFPS or an independent administrator, notwithstanding any other law, to contract with a child welfare board established under Section 264.005, Family Code, a local governmental board granted the powers and duties of a child welfare board under state law, or a children's advocacy center established under Section 264.402, Family Code, for the provision of substitute care and case management services in this state if the board or center provided substitute care or case management services under a contract with DFPS before September 1, 2006.

Sec. 45.006. VALUE-ADDED SERVICES. Authorizes a substitute care or case management services provider that contracts with DFPS or an independent administrator to provide substitute care or case management service to provide value-added services that supplement the substitute care or case management services required to be provided under the contract.

SECTION 6. Makes the changes in law made by Section 107.013(d), Family Code, as added by this Act, and Section 263.405, Family Code, as amended by this Act, prospective.

SECTION 7. Provides that the authority provided by Section 45.005, Human Resources Code, and Section 264.106(1), Family Code, as added by this Act, applies to a contract described by those sections, regardless of whether the contract is executed before or after September 1, 2011, and provides that the authority does not expire on September 1, 2012, notwithstanding the expiration of Chapter 45 (Privatization of Substitute Care and Case Management Services), Human Resources Code.

SECTION 8. Effective date: upon passage or September 1, 2007.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 813 modifies the original bill by removing subsections (d), (e), and (j) in SECTION 2 of the original bill that read as follows:

(d) Deletes existing text relating to the requirement that the court, not later than the 30th day after the date the final order is signed, hold a hearing to determine whether a party's claim of indigence, if any, should be sustained.

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(e) Requires an attorney ad litem appointed to represent an indigent parent under Section 107.013 to continue to represent that parent in any postjudgment or appellate matter unless the parent fails to establish indigence as provided by Rule 20.1, Texas Rules of Appellate Procedure. Prohibits the trial court from ordering substitution of an attorney ad litem unless the court finds good cause to order the substitution. Prohibits a parent who fails to file an affidavit of indigence on or before the date the notice of appeal is due from claiming indigency for purposes of appellate costs or representation by an attorney ad litem. Deletes existing text relating to the affidavit requirement set forth by the court on a person claiming indigency and requesting an attorney.

(j) Provides that a party whose appeal is determined to be frivolous is liable for all appellate costs.