

By: Naishtat

H.B. No. 363

A BILL TO BE ENTITLED

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AN ACT

relating to the provision of case management services for children by the Department of Family and Protective Services.

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

SECTION 1. The heading to Section 264.106, Family Code, is amended to read as follows:

Sec. 264.106. REQUIRED CONTRACTS FOR SUBSTITUTE CARE [~~AND CASE MANAGEMENT~~] SERVICES.

SECTION 2. Sections 264.106(a)(2) and (3), Family Code, are amended to read as follows:

(2) "Independent administrator" means an independent agency selected through a competitive procurement process to:

(A) secure, coordinate, and manage substitute care services [~~and case management services~~] in a geographically designated area of the state; and

(B) ensure continuity of care for a child referred to the administrator by the department and the child's family from the day a child enters the child protective services system until the child leaves the system.

(3) "Permanency services" means services, other than family-based safety services, provided to secure a child's safety, permanency, and well-being, including substitute care services, family reunification services, adoption and postadoption services, and preparation for adult living services[~~, and case management~~

1 ~~services]~~.

2 SECTION 3. Sections 264.106(b), (c), (d), (f), (i), (j),  
3 and (k), Family Code, are amended to read as follows:

4 (b) The department shall, in accordance with Section  
5 45.004, Human Resources Code:

6 (1) assess the need for substitute care [~~and case~~  
7 ~~management]~~ services throughout the state;

8 (2) either contract directly with private agencies as  
9 part of regional community-centered networks for the provision of  
10 all necessary substitute care [~~and case management]~~ services or use  
11 an independent administrator to contract for those services;

12 (3) contract with an independent administrator, if  
13 cost beneficial, to coordinate and manage all substitute care  
14 services needed for children in the temporary or permanent managing  
15 conservatorship of the department in a designated geographic area;

16 (4) monitor the quality of services for which the  
17 department and each independent administrator contract under this  
18 section; and

19 (5) ensure that the services are provided in  
20 accordance with federal law and the laws of this state, including  
21 department rules and rules of the Department of State Health  
22 Services and the Texas Commission on Environmental Quality.

23 (c) An independent administrator may not:

24 (1) directly provide substitute care services; or

25 (2) be governed by a board that has a member who has a  
26 financial interest in a substitute care [~~or case management]~~  
27 provider with whom the independent administrator subcontracts.

1 (d) Administrative services to be provided by an  
2 independent administrator include:

3 (1) recruiting and subcontracting with  
4 community-based substitute care [~~and case management~~] providers to  
5 ensure a full array of services in defined geographic areas;

6 (2) managing placements and making referrals for  
7 placement based on department-approved protocols;

8 (3) monitoring services delivered by subcontractors;

9 (4) providing training and technical assistance to  
10 contract providers;

11 (5) maintaining data systems that support tracking and  
12 reporting key performance and outcome data; and

13 (6) ensuring accountability for achieving defined  
14 client and system outcomes.

15 (f) A contract with an independent administrator for  
16 substitute care [~~and case management~~] services under Subsection  
17 (b)(2) must include department-approved provisions that:

18 (1) enable the independent administrator and the  
19 department to:

20 (A) monitor the effectiveness of substitute care  
21 [~~and case management~~] services; and

22 (B) specify performance standards and authorize  
23 termination of the contract for cause;

24 (2) describe how performance is linked to  
25 reimbursement amounts or schedules to provide incentives for  
26 desired results;

27 (3) require all independent administrators and

1 private contractors to disclose to the department any information  
2 that may indicate an actual or potential conflict of interest with  
3 the commission, the department, or another health and human  
4 services agency, including information regarding actual or  
5 potential related-party transactions, relationships, interests, or  
6 business history, and any other factor that may indicate an actual  
7 or potential conflict of interest;

8 (4) authorize the independent administrator, an agent  
9 of the independent administrator, the department, an agent of the  
10 department, and the state auditor to inspect all books, records,  
11 and files maintained by a contractor relating to the contract; and

12 (5) the department determines are necessary to ensure  
13 accountability for the delivery of services and for the expenditure  
14 of public funds.

15 (i) Except as provided by Subsections (j) and (k) and  
16 notwithstanding any other law, on and after September 1, 2011, the  
17 department may not directly provide substitute care [~~and case~~  
18 ~~management~~] services for children for whom the department has been  
19 appointed temporary or permanent managing conservator.

20 (j) On and after September 1, 2011, the department may  
21 provide substitute care [~~and case management~~] services in an  
22 emergency. The executive commissioner shall adopt rules describing  
23 the circumstances in which the department may provide those  
24 services.

25 (k) The department may provide substitute care [~~and case~~  
26 ~~management~~] services as a provider of last resort in any region of  
27 the state in which the department or an independent administrator

1 contracting with the department is unable to contract with a  
2 private agency to provide those services.

3 SECTION 4. Section 264.1063, Family Code, is amended to  
4 read as follows:

5 Sec. 264.1063. MONITORING PERFORMANCE OF SUBSTITUTE CARE  
6 [~~AND CASE MANAGEMENT~~] PROVIDERS. (a) The department, in  
7 consultation with private entities under contract with either an  
8 independent administrator or the department to provide substitute  
9 care [~~or case management~~] services, shall establish a quality  
10 assurance program that uses comprehensive, multitiered assurance  
11 and improvement systems based, subject to the availability of  
12 funds, on real-time data to evaluate performance.

13 (b) The contract performance outcomes specified in a  
14 contract under Section 264.106 must be consistent with the fiscal  
15 goals of privatizing substitute care [~~and case management~~] services  
16 and must be within the contractor's authority to deliver. The  
17 contract must clearly define the manner in which the substitute  
18 care [~~or case management~~] provider's performance will be measured  
19 and identify the information sources the department and, if  
20 applicable, the independent administrator will use to evaluate the  
21 performance.

22 SECTION 5. The heading to Chapter 45, Human Resources Code,  
23 is amended to read as follows:

24 CHAPTER 45. PRIVATIZATION OF SUBSTITUTE CARE [~~AND CASE~~  
25 ~~MANAGEMENT~~] SERVICES

26 SECTION 6. Sections 45.001(6) and (8), Human Resources  
27 Code, are amended to read as follows:

1           (6) "Independent administrator" means an independent  
2 agency selected through a competitive procurement process to:

3           (A) secure, coordinate, and manage substitute  
4 care services [~~and case management services~~] in a geographically  
5 designated area of the state; and

6           (B) ensure continuity of care for a child  
7 referred to the administrator by the department and the child's  
8 family from the day a child enters the child protective services  
9 system until the child leaves the system.

10          (8) "Permanency services" means services, other than  
11 family-based safety services, provided to secure a child's safety,  
12 permanency, and well-being, including substitute care services,  
13 family reunification services, adoption and postadoption services,  
14 and preparation for adult living services[~~, and case management~~  
15 ~~services~~].

16          SECTION 7. The heading to Section 45.002, Human Resources  
17 Code, is amended to read as follows:

18          Sec. 45.002. PRIVATIZING SUBSTITUTE CARE [~~AND CASE~~  
19 ~~MANAGEMENT~~] SERVICES; DEPARTMENT DUTIES.

20          SECTION 8. Sections 45.002(a), (b), (d), and (e), Human  
21 Resources Code, are amended to read as follows:

22          (a) Not later than September 1, 2011, the department shall  
23 complete the statewide privatization of the provision of substitute  
24 care [~~and case management~~] services in this state.

25          (b) On and after September 1, 2011:

26           (1) all substitute care [~~and case management~~] services  
27 for children for whom the department has been appointed temporary

1 or permanent managing conservator must be provided by child-care  
2 institutions and child-placing agencies;

3 (2) all substitute care [~~and case management~~] service  
4 providers shall, to the best extent possible, honor the cultural  
5 and religious affiliations of a child placed in the service  
6 provider's care, regardless of the religious affiliation of the  
7 service provider; and

8 (3) except as provided by Subsections (d) and (e) and  
9 notwithstanding any other law, the department may not directly  
10 provide substitute care [~~and case management~~] services.

11 (d) On and after September 1, 2011, the department may  
12 provide substitute care [~~and case management~~] services in an  
13 emergency. The executive commissioner shall adopt rules describing  
14 the circumstances in which the department may provide those  
15 services.

16 (e) The department may provide substitute care [~~and case~~  
17 ~~management~~] services as a provider of last resort as provided by  
18 Section 264.106(k), Family Code.

19 SECTION 9. Section 45.003, Human Resources Code, is amended  
20 to read as follows:

21 Sec. 45.003. HIRING PREFERENCE. A substitute care [~~or case~~  
22 ~~management~~] services provider that contracts with the department to  
23 provide substitute care [~~or case management~~] services shall:

24 (1) give a preference in hiring to qualified  
25 department employees in good standing with the department who  
26 provide substitute care [~~or case management~~] services and whose  
27 positions with the department may be eliminated as a result of the

1 privatization of substitute care [~~and case management~~] services;  
2 and

3 (2) ensure that each subcontractor with whom the  
4 substitute care [~~or case management~~] services provider contracts  
5 for the provision of substitute care [~~or case management~~] services  
6 also gives a preference in hiring to current and former qualified  
7 department employees whose positions with the department may be or  
8 were eliminated as a result of the privatization of substitute care  
9 [~~and case management~~] services.

10 SECTION 10. Sections 45.004(a) and (b), Human Resources  
11 Code, are amended to read as follows:

12 (a) The department shall research and develop a  
13 comprehensive strategy for contracting for management support  
14 services from independent administrators on a regional basis. If  
15 the department determines that an independent administrator could  
16 manage and procure substitute care [~~and case management~~] services  
17 contracts with private agencies and conduct placement assessments  
18 in a more cost-beneficial manner, the department shall implement a  
19 transition plan to transfer the procurement, management, and  
20 oversight of substitute care [~~and case management~~] services from  
21 the department to an independent administrator, as well as  
22 responsibility for placement assessments. If the department  
23 determines that contracting for management support from an  
24 independent administrator is not cost beneficial, the  
25 privatization of substitute care [~~and case management~~] services  
26 will occur as provided by Section 45.002(b).

27 (b) The comprehensive strategy, at a minimum, must:



1           (1) use competitively procured independent  
2 administrators to procure and manage substitute care [~~and case~~  
3 ~~management~~] providers in a geographic region designated by the  
4 department;

5           (2) require independent administrators to contract  
6 with private agencies that will:

7                 (A) increase local foster and adoptive placement  
8 options for all children, especially teenagers, sibling groups,  
9 children whose race or ethnicity is disproportionately represented  
10 in foster care, children with severe or multiple disabilities, and  
11 other children who are difficult to place; and

12                 (B) expand efforts to recruit foster families,  
13 adoptive families, and alternative care providers through  
14 faith-based and other targeted recruitment programs; and

15           (3) allow permanency services providers to enter  
16 client, service, and outcome information into the department's  
17 client data system.

18           SECTION 11. Section 45.052, Human Resources Code, is  
19 amended to read as follows:

20           Sec. 45.052. FINANCING. The department shall create  
21 financing and payment arrangements that provide incentives for an  
22 independent administrator and substitute care [~~and case~~  
23 ~~management~~] providers to achieve safety, permanency, and  
24 well-being outcomes and improved system performance. In developing  
25 this financing arrangement, the department shall examine:

26                 (1) the use of case rates or performance-based  
27 fee-for-service contracts that include incentive payments or

1 payment schedules that link reimbursement to results; and

2 (2) ways to reduce a contractor's financial risk that  
3 could jeopardize the solvency of the contractor, including the use  
4 of a risk-reward corridor that limits risk of loss and potential  
5 profits or the establishment of a statewide risk pool.

6 SECTION 12. Sections 45.053(b) and (c), Human Resources  
7 Code, are amended to read as follows:

8 (b) Not later than March 1, 2006, the commission and the  
9 department shall, in consultation with private entities under  
10 contract to provide substitute care services for the department,  
11 including members of the boards of directors of the private  
12 entities and other community stakeholders, develop and adopt a  
13 substitute care [~~and case management~~] services transition plan  
14 consistent with the requirements of Subchapter C.

15 (c) The executive commissioner shall adopt rules to  
16 implement the privatization of substitute care [~~and case~~  
17 ~~management~~] services in this state.

18 SECTION 13. Sections 45.054(a), (b), (c), (e), and (g),  
19 Human Resources Code, are amended to read as follows:

20 (a) The department shall implement the privatization of  
21 substitute care [~~and case management~~] services on a regional basis  
22 in accordance with the transition plan. The transition plan must  
23 include a schedule with deadlines for implementation of the plan.  
24 Subject to the requirements of Subsections (c), (d), and (e),  
25 statewide implementation of the plan shall be completed not later  
26 than September 1, 2011. The commission shall propose the first  
27 three regions of the state for implementation of privatization

1 based on state demographics and shall consider including a rural  
2 region, a metropolitan region, and a region including border areas  
3 of the state.

4 (b) The transition plan must include a schedule with the  
5 following deadlines for implementation of the plan:

6 (1) completion of the transition plan, not later than  
7 March 1, 2006;

8 (2) release of a request for proposal for a geographic  
9 region of the state designated by the department, not later than  
10 April 30, 2006;

11 (3) the awarding of the contract described by  
12 Subdivision (2), not later than September 30, 2006;

13 (4) establishment of the multidisciplinary team and  
14 necessary processes, evaluation criteria, and monitoring tools to  
15 be used to monitor and evaluate the performance of the contractor,  
16 not later than September 30, 2006;

17 (5) completion of the transition of substitute care  
18 [~~and case management~~] services in the first region, not later than  
19 December 31, 2007;

20 (6) the review and evaluation of the multidisciplinary  
21 team's reports pertaining to the contractor's achievement of  
22 performance-based milestones and the effect on the quality of  
23 permanency services provided, annually beginning December 31,  
24 2007;

25 (7) completion of the transition of substitute care  
26 [~~and case management~~] services in the second and third regions, not  
27 later than December 1, 2009; and

1           (8) completion of the statewide implementation of  
2 contracted substitute care [~~and case management~~] services for  
3 additional geographic regions, not later than September 1, 2011.

4           (c) Not later than the first anniversary of the date the  
5 department enters into the first contract for substitute care [~~and~~  
6 ~~case management~~] services under this section, the department shall  
7 contract with a qualified, independent third party to evaluate each  
8 phase of the privatization of substitute care [~~and case management~~]  
9 services. Each evaluation must:

10           (1) assess the performance of substitute care [~~and~~  
11 ~~case management~~] services based on compliance with defined quality  
12 outcomes for children;

13           (2) assess the achievement of performance measures;

14           (3) compare for quality the performance of substitute  
15 care [~~and case management~~] services provided by contractors to  
16 substitute care [~~and case management~~] services provided by the  
17 department in similar regions;

18           (4) determine if contracted services are cost  
19 beneficial; and

20           (5) assess the private sector's ability to meet the  
21 performance measures, including service capacity, for the  
22 remaining regions.

23           (e) The department shall continue to implement the  
24 transition plan for the second and third regions only after:

25           (1) the commission reports to the House Human Services  
26 Committee, or its successor, and the Senate Health and Human  
27 Services Committee, or its successor, the status of the initial

1 transition of services to a contractor in the first region not later  
2 than December 31, 2006;

3 (2) the independent third party with whom the  
4 department contracts under Subsection (c) evaluates and reports to  
5 the House Human Services Committee, or its successor, and the  
6 Senate Health and Human Services Committee, or its successor, on  
7 the performance of contracted substitute care [~~and case management~~]  
8 services in the first region not later than December 31, 2008; and

9 (3) the commission determines, based on the report  
10 prepared under Subdivision (2) or information obtained by the  
11 review required under Subsection (b)(6), whether material  
12 modifications to the model for privatization of substitute care  
13 [~~and case management~~] services are necessary and submits a report  
14 and recommendations to the House Human Services Committee, or its  
15 successor, and the Senate Health and Human Services Committee, or  
16 its successor, not later than December 31, 2008.

17 (g) The department shall continue to implement the  
18 transition plan for the remaining regions of the state only after:

19 (1) the independent third party with whom the  
20 department contracts under Subsection (c) evaluates and reports to  
21 the House Human Services Committee, or its successor, and the  
22 Senate Health and Human Services Committee, or its successor, on  
23 the performance of contracted substitute care [~~and case management~~]  
24 services in the second and third regions not later than September 1,  
25 2010; and

26 (2) the commission determines, based on the report  
27 prepared under Subdivision (1) or information obtained by the

1 review required under Subsection (b)(6), whether material  
2 modifications to the model for privatization of substitute care  
3 [~~and case management~~] services are necessary and submits a report  
4 and recommendations to the House Human Services Committee, or its  
5 successor, and the Senate Health and Human Services Committee, or  
6 its successor, not later than December 31, 2010.

7 SECTION 14. Section 45.101, Human Resources Code, is  
8 amended to read as follows:

9 Sec. 45.101. GOALS FOR PRIVATIZATION. The transition plan  
10 adopted under Section 45.053 must provide for a new structural  
11 model for the community-centered delivery of substitute care [~~and~~  
12 ~~case management~~] services that is based on a goal of improving  
13 protective services, achieving timely permanency for children in  
14 substitute care, including family reunification, placement with a  
15 relative, or adoption, and improving the overall well-being of  
16 children in substitute care consistent with federal and state  
17 mandates.

18 SECTION 15. Section 45.102, Human Resources Code, is  
19 amended to read as follows:

20 Sec. 45.102. TRANSITION PLAN REQUIREMENTS. The transition  
21 plan developed by the department and the commission must:

22 (1) identify barriers to privatization, including  
23 regional disparities in resources, provider capacity, and  
24 population, and propose solutions to stimulate capacity and adjust  
25 program delivery;

26 (2) provide details regarding the target population  
27 and services by region that will be part of the system redesign,

1 including the number of children and families, historic caseload  
2 trends and service utilization information, and projected  
3 caseloads;

4 (3) provide details regarding the roles,  
5 responsibilities, and authority assigned to the public and private  
6 entities, including the department, independent administrators,  
7 and substitute care [~~and case management~~] providers, in making key  
8 decisions throughout the child and family case;

9 (4) include an implementation plan to transfer all  
10 foster homes certified by the department to private child-placing  
11 agencies, ensuring minimum disruption to the children in foster  
12 care and to current foster parents;

13 (5) specify the limited circumstances under which a  
14 foster home verified by the department may continue to be verified  
15 by the department when continuation would be in the best interest of  
16 a child in the care of the foster home;

17 (6) include a process for assessing each child who is  
18 transferred to a private substitute care provider to verify the  
19 child's service needs;

20 (7) include an implementation plan to transfer all  
21 adoption services to private agencies, including details of how and  
22 when cases will be transferred and how adoption provider contracts  
23 and reimbursements methods will be structured;

24 (8) describe the process to transfer the duties of  
25 [~~case management and~~] family reunification services from  
26 department staff to private agency staff[, ~~including the~~  
27 ~~integration of family group conferencing into private agency case~~

1 ~~management~~];

2 (9) describe the manner in which the department will  
3 procure and contract for kinship services that are funded by the  
4 state;

5 (10) provide details regarding financial arrangements  
6 and performance expectations for independent administrators and  
7 substitute care [~~and case management~~] providers that:

8 (A) provide incentives for desired results and  
9 explicit contract performance and outcome indicators;

10 (B) describe how various risk-based arrangements  
11 will be weighed and realistically assessed using sound actuarial  
12 data and risk modeling and how mechanisms will be selected to limit  
13 uncontrollable risks that could threaten provider stability and  
14 quality;

15 (C) describe how financing options will increase  
16 flexibility to promote innovation and efficiency in service  
17 delivery; and

18 (D) provide balance between control over key  
19 decisions and the level of risk the contractor assumes;

20 (11) require the executive commissioner to evaluate  
21 whether existing rate structures are appropriate to compensate  
22 substitute care providers who enter into contracts with an  
23 independent administrator under Section 264.106, Family Code,  
24 considering new functions to be served by the providers, and, if  
25 necessary, require the executive commissioner to adjust the rates  
26 accordingly;

27 (12) require the department to enter into contracts



1 for the provision of substitute care [~~and case management~~] services  
2 as required by Section 264.106, Family Code, and describe the  
3 procurement and contracting process, including:

4 (A) stating how the department will shift from an  
5 open-enrollment system to a competitive procurement system;

6 (B) identifying the services that will be  
7 procured and contracted for directly with the department and the  
8 services that will be procured by an independent administrator;  
9 and

10 (C) developing a procurement and contracting  
11 schedule to ensure full implementation not later than September 1,  
12 2011;

13 (13) provide for the implementation of Sections  
14 264.1062 and 264.107, Family Code, by describing each party's  
15 responsibility and ensuring that the department retains the legal  
16 authority to effectively provide oversight;

17 (14) describe formal training required for department  
18 staff, independent administrators, and substitute care [~~and case  
19 management~~] providers;

20 (15) define roles and expectations related to  
21 reporting and managing data required to ensure quality services and  
22 meet state and federal requirements, including data collection  
23 responsibilities for an independent administrator and service  
24 provider;

25 (16) describe how the transition will impact the  
26 state's ability to obtain federal funding and examine options to  
27 further maximize federal funding opportunities and increased

1 flexibility; and

2 (17) describe the costs of the transition, the initial  
3 start-up costs, and mechanisms to periodically assess the overall  
4 adequacy of funds and the fiscal impact of the change.

5 SECTION 16. Section 264.106(a)(1), Family Code, and Section  
6 45.001(1), Human Resources Code, are repealed.

7 SECTION 17. As soon as possible after the effective date of  
8 this Act, the Health and Human Services Commission and the  
9 Department of Family and Protective Services shall make any  
10 modifications to the transition plan adopted in accordance with  
11 Section 45.053(b), Human Resources Code, as that section existed  
12 before amendment by this Act, necessary to reflect the changes in  
13 law made by this Act.

14 SECTION 18. This Act takes effect immediately if it  
15 receives a vote of two-thirds of all the members elected to each  
16 house, as provided by Section 39, Article III, Texas Constitution.  
17 If this Act does not receive the vote necessary for immediate  
18 effect, this Act takes effect September 1, 2007.