

By: Naishtat

H.B. No. 1361

A BILL TO BE ENTITLED

AN ACT

1
2 relating to privatization of child protective services and the
3 improvement of services for children and families provided by the
4 Department of Family and Protective Services.

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

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

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

10 SECTION 2. Sections 264.106(b), (e), and (g), Family Code,
11 are amended to read as follows:

12 (b) The department [~~shall, in accordance with Section~~
13 ~~45.004, Human Resources Code~~]:

14 (1) shall assess the need for substitute care and case
15 management services throughout the state;

16 (2) may [~~either~~] contract [~~directly~~] with private
17 agencies [~~as part of regional community-centered networks~~] for the
18 provision of all necessary substitute care services and case
19 management services other than court-related duties, as described
20 in Subsection (a)(1) [~~or use an independent administrator to~~
21 ~~contract for those services~~]; and

22 (3) shall [~~contract with an independent~~
23 ~~administrator, if cost beneficial, to coordinate and manage all~~
24 ~~services needed for children in the temporary or permanent managing~~

1 ~~conservatorship of the department in a designated geographic area,~~

2 ~~[(4) monitor the quality of services for which the~~
3 ~~department and each independent administrator contract under this~~
4 ~~section; and~~

5 ~~[(5)]~~ ensure that the services are provided in
6 accordance with federal law and the laws of this state, including
7 department rules and rules of the Department of State Health
8 Services and the Texas Commission on Environmental Quality.

9 (e) In addition to the requirements of Section 40.058(b),
10 Human Resources Code, a contract with a private agency [~~an~~
11 ~~independent administrator~~] must include provisions that:

12 (1) enable the department to monitor the effectiveness
13 of the services;

14 (2) specify performance outcomes;

15 (3) authorize the department to terminate the contract
16 or impose sanctions for a violation of a provision of the contract
17 that specifies performance criteria;

18 (4) ensure that a private agency [~~an independent~~
19 ~~administrator~~] may not refuse to accept a client who is referred for
20 services or reject a client who is receiving services unless the
21 department has reviewed the private agency's [~~independent~~
22 ~~administrator's~~] decision and approved the decision in writing;

23 (5) authorize the department, an agent of the
24 department, and the state auditor to inspect all books, records,
25 and files maintained by a private agency [~~an independent~~
26 ~~administrator~~] relating to the contract; and

27 (6) the department determines are necessary to ensure

1 accountability for the delivery of services and for the expenditure
2 of public funds.

3 (g) In determining whether to contract with a substitute
4 care provider or private agency [~~an independent administrator~~], the
5 department shall consider the provider's or agency's
6 [~~administrator's~~] performance under any previous contract between
7 the department and the provider or agency [~~administrator~~].

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

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

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

27 SECTION 4. Sections 264.107(c) through (f), Family Code,

1 are amended to read as follows:

2 (c) Not [~~The contract between the department and an~~
3 ~~independent administrator or other authorized entity must require,~~
4 ~~not~~] later than September 1, 2009, the department shall institute
5 the use of real-time technology in the department's [~~independent~~
6 ~~administrator's or other authorized entity's~~] placement system to
7 screen possible placement options for a child and match the child's
8 needs with the most qualified providers with vacancies.

9 (d) The department shall [~~institute a quality assurance~~
10 ~~system in monitoring the independent administrators or other~~
11 ~~authorized entities to~~] ensure that placement decisions are
12 reliable and are made in a consistent manner.

13 (e) In making placement decisions, [~~an independent~~
14 ~~administrator or other authorized entity shall use~~] clinical
15 protocols must be used to match a child to the most appropriate
16 placement resource.

17 (f) The department may create a regional advisory council in
18 a region to assist the department [~~and independent administrator or~~
19 ~~other authorized entity~~] in:

20 (1) assessing the need for resources in the region;

21 and

22 (2) locating substitute care services in the region
23 for hard-to-place children.

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

26 CHAPTER 45. ACCOUNTABILITY [~~PRIVATIZATION~~] OF SUBSTITUTE CARE AND

27 CASE MANAGEMENT SERVICES

1 SECTION 6. Section 45.001(1), Human Resources Code, is
2 amended to read as follows:

3 (1) "Case management services" means the provision of
4 case management services to a child for whom the department has been
5 appointed temporary or permanent managing conservator, including
6 caseworker-child visits, family visits, the convening of family
7 group conferences, the development and revision of the case plan,
8 and the coordination and monitoring of services needed by the child
9 and family[, and the assumption of court-related duties, including
10 preparing court reports, attending judicial hearings and
11 permanency hearings, and ensuring that the child is progressing
12 toward permanency within state and federal mandates].

13 SECTION 7. The heading to Subchapter C, Chapter 45, Human
14 Resources Code, is amended to read as follows:

15 SUBCHAPTER C. IMPROVEMENT [~~TRANSITION~~] PLAN

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

18 Sec. 45.101. GOALS FOR CHILD PROTECTIVE SERVICES
19 [~~PRIVATIZATION~~]. The department [~~transition plan adopted under~~
20 ~~Section 45.053~~] must provide [~~for a new structural model for the~~
21 ~~community-centered delivery of~~] substitute care and case
22 management services that are [~~is~~] based on a goal of improving
23 protective services, achieving timely permanency for children in
24 substitute care, including family reunification, placement with a
25 relative, or adoption, and improving the overall well-being of
26 children in substitute care consistent with federal and state
27 mandates.

1 SECTION 9. Section 45.102, Human Resources Code, is amended
2 to read as follows:

3 Sec. 45.102. IMPROVEMENT [~~TRANSITION~~] PLAN REQUIREMENTS.

4 (a) The [~~transition plan developed by the~~] department and the
5 commission shall develop an improvement plan that [~~must~~]:

6 (1) identifies [~~identify barriers to privatization,~~
7 ~~including~~] regional disparities in resources, provider capacity,
8 and population, and proposes [~~propose~~] solutions to stimulate
9 capacity and adjust program delivery;

10 (2) provides [~~provide~~] details regarding the target
11 population and services by region that will be part of the
12 improvement plan [~~system redesign~~], including the number of
13 children and families, historic caseload trends and service
14 utilization information, and projected caseloads;

15 (3) provides [~~provide~~] details regarding the roles,
16 responsibilities, and authority assigned to the public and private
17 entities, including the department [~~, independent administrators,~~]
18 and substitute care and case management providers, in making key
19 decisions throughout the child and family case;

20 (4) specifies [~~include an implementation plan to~~
21 ~~transfer all foster homes certified by the department to private~~
22 ~~child-placing agencies, ensuring minimum disruption to the~~
23 ~~children in foster care and to current foster parents,~~

24 [~~(5) specify~~] the [~~limited~~] circumstances under which
25 a foster home verified by the department may continue to be verified
26 by the department when continuation would be in the best interest of
27 a child in the care of the foster home;

1 (5) includes [~~(6) include~~] a process for assessing
2 each child who is transferred to a private substitute care provider
3 to verify the child's service needs;

4 (6) describes [~~(7) include an implementation plan to~~
5 ~~transfer all adoption services to private agencies, including~~
6 ~~details of how and when cases will be transferred and how adoption~~
7 ~~provider contracts and reimbursements methods will be structured,~~

8 [~~(8) describe the process to transfer the duties of case~~
9 ~~management and family reunification services from department staff~~
10 ~~to private agency staff, including the integration of family group~~
11 ~~conferencing into private agency case management,~~

12 [~~(9) describe~~] the manner in which the department will
13 procure and contract for kinship services that are funded by the
14 state;

15 (7) provides [~~(10) provide~~] details regarding
16 financial arrangements and performance expectations for
17 [~~independent administrators and~~] substitute care [~~and case~~
18 ~~management~~] providers that:

19 (A) provide incentives for desired results and
20 explicit contract performance and outcome indicators;

21 (B) describe how various risk-based arrangements
22 will be weighed and realistically assessed using sound actuarial
23 data and risk modeling and how mechanisms will be selected to limit
24 uncontrollable risks that could threaten provider stability and
25 quality;

26 (C) describe how financing options will increase
27 flexibility to promote innovation and efficiency in service

1 delivery; and

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

4 (8) requires [~~(11) require~~] the executive
5 commissioner to evaluate whether existing rate structures are
6 appropriate to compensate substitute care providers [~~who enter into~~
7 ~~contracts with an independent administrator under Section 264.106,~~
8 ~~Family Code~~], considering new functions to be served by the
9 providers, and, if necessary, requires [~~require~~] the executive
10 commissioner to adjust the rates accordingly;

11 (9) describes the manner in which [~~(12) require~~] the
12 department will [~~to~~] enter into any contracts for the provision of
13 substitute care [~~and case management~~] services [~~as required by~~
14 ~~Section 264.106, Family Code,~~] and describes [~~describe~~] the
15 procurement and contracting process, including[+]

16 [~~(A) stating how the department will shift from~~
17 ~~an open-enrollment system to a competitive procurement system,~~

18 [~~(B)~~] identifying the services that will be
19 procured and contracted for directly with the department [~~and the~~
20 ~~services that will be procured by an independent administrator,~~
21 ~~and~~

22 [~~(C) developing a procurement and contracting~~
23 ~~schedule to ensure full implementation not later than September 1,~~
24 ~~2011~~];

25 (10) provides [~~(13) provide~~] for the implementation of
26 Section [~~Sections 264.1062 and~~] 264.107, Family Code, by describing
27 each party's responsibility and ensuring that the department

1 retains the legal authority to effectively provide oversight;

2 (11) describes [~~(14) describe~~] formal training
3 required for department staff[~~, independent administrators,~~] and
4 substitute care [~~and case management~~] providers;

5 (12) defines [~~(15) define~~] roles and expectations
6 related to reporting and managing data required to ensure quality
7 services and meet state and federal requirements, including data
8 collection responsibilities for the department [~~an independent~~
9 ~~administrator~~] and a service provider;

10 (13) describes [~~(16) describe~~] how the improvement
11 plan [~~transition~~] will impact the state's ability to obtain federal
12 funding and examines [~~examine~~] options to further maximize federal
13 funding opportunities and increased flexibility; and

14 (14) describes [~~(17) describe~~] the costs of the
15 improvement plan [~~transition~~], the initial start-up costs, and
16 mechanisms to periodically assess the overall adequacy of funds and
17 the fiscal impact of the change.

18 (b) The improvement plan must ensure that the department:

19 (1) improves quality and accountability in services
20 delivered directly by the department;

21 (2) improves quality and accountability in services
22 delivered by providers under contract with the department;

23 (3) expands substitute care quality and capacity in
24 local communities;

25 (4) provides family preservation services to enable
26 families to allow children to remain safely in their own homes,
27 including services that:

1 (A) use family group decision-making to prevent
2 removal of children;

3 (B) reduce family-based safety services
4 caseloads; and

5 (C) address poverty-related factors to assist
6 families in staying together;

7 (5) expands the availability of services to children
8 and families through contracts, including protective daycare,
9 homemaker services, and other early intervention services;

10 (6) reduces the length of time that children remain in
11 state care by:

12 (A) using family group decision-making at the
13 time of removal to increase placements with relatives;

14 (B) contracting for additional reunification
15 services, including counseling, therapy, and substance abuse
16 treatment services;

17 (C) reducing substitute care caseloads; and

18 (D) achieving permanency in a timely manner by
19 increasing kinship care and adoption services and by improving
20 court-related services; and

21 (7) improves the recruitment, support, and retention
22 of department caseworkers by:

23 (A) conducting a staff turnover study to
24 determine the reasons that caseworkers leave employment with the
25 department, and using that information to develop caseworker
26 recruitment and retention plans;

27 (B) developing competent, visionary, and

1 committed organizational leaders who are capable of providing a
2 supportive organizational environment for caseworkers;

3 (C) maintaining caseworker caseloads and staff
4 workloads at manageable levels;

5 (D) providing effective supervision and
6 mentoring for caseworkers to increase job satisfaction and improve
7 outcomes for children and families;

8 (E) developing and enhancing automated data
9 management systems to ensure the collection of timely and accurate
10 information to guide the department in providing staff training and
11 supervision and making policy and other decisions;

12 (F) developing effective quality assurance and
13 accountability mechanisms to support an effective workforce and
14 ensure positive outcomes for children, youth, and families;

15 (G) providing caseworkers with technological
16 resources and support staff to assist caseworkers in meeting their
17 professional responsibilities and tracking the children and
18 families served; and

19 (H) conducting salary studies to enable the
20 development of more equitable pay scales and creation of employment
21 incentives.

22 (c) Not later than December 31, 2008, the commission and
23 department shall jointly report to the House Human Services
24 Committee, or its successor, and the Senate Health and Human
25 Services Committee, or its successor, on the status of the
26 improvement plan.

27 (d) The executive commissioner shall adopt rules necessary

1 to implement the improvement plan.

2 SECTION 10. Section 45.151(d), Human Resources Code, is
3 amended to read as follows:

4 (d) If the department determines that an individual or
5 business entity holding a contract under this chapter was
6 ineligible to have the contract accepted or awarded under
7 Subsection (a) or [7] (b), [~~or (c)~~], the department may immediately
8 terminate the contract without further obligation to the vendor.

9 SECTION 11. The following provisions are repealed:

10 (1) Sections 264.106(a)(2), (c), (d), (f), (i), (j),
11 and (k), Family Code;

12 (2) Section 264.1062, Family Code;

13 (3) Sections 45.001(6), (9), (10), and (11), Human
14 Resources Code;

15 (4) Sections 45.002, 45.003, 45.004, and 45.151(c),
16 Human Resources Code; and

17 (5) Subchapter B, Chapter 45, Human Resources Code.

18 SECTION 12. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2007.