

## **BILL ANALYSIS**

C.S.H.B. 2860  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Congress passed the Fostering Connections to Success Act in October 2008. It requires the state to notify all relatives of a child's removal from the home and to provide those relatives with information on becoming a foster parent. This generates a cost to the state in terms of the additional outreach required and for every new foster parent. However, the federal bill provides the option of creating a subsidized guardianship program. Creating such a program for caring for children who would have otherwise remained in foster care will result in savings.

C.S.H.B. 2860 creates the permanency care assistance program at the Texas Department of Family and Protective Services (DFPS). The bill provides for permanency care assistance agreements between DFPS and kinship providers who meet federal and state eligibility requirements and become the child's permanent managing conservator. Those requirements include the child living with the prospective relative guardian for at least six months after the kinship provider becomes licensed to provide foster care. The executive commissioner of the Texas Health and Human Services Commission is authorized to set the maximum amount of permanency care assistance payments, not to exceed the amount the child would have received in a foster care home. The bill also authorizes adoption assistance to be extended to a youth's 21st birthday if the youth's adoption assistance agreement was entered into after the youth's 16th birthday and the youth is pursuing certain educational goals or is unable to do so due to a disability. The bill authorizes extended payments for foster care under the same conditions. The bill establishes a deadline after which DFPS is prohibited from entering into a permanency care assistance agreement.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1, 5, and 6 of this bill.

### **ANALYSIS**

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practicable, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 2860 amends the Family Code to require the Department of Family and Protective Services (DFPS), if DFPS first entered into an adoption assistance agreement with a child's

adoptive parents after the child's 16th birthday, to offer adoption assistance after a child's 18th birthday, in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC), to the child's adoptive parents under an existing adoption agreement until the last day of the month of the child's 21st birthday. The bill requires the child to be regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate; regularly attending an institution of higher education or a postsecondary vocational or technical program; participating in a program or activity that promotes, or removes barriers to, employment; employed for at least 80 hours a month; or incapable of doing any of those activities due to a documented medical condition. The bill establishes that DFPS is not required to provide extended adoption assistance benefits unless DFPS is specifically appropriated funds for that purpose.

C.S.H.B. 2860 changes the date until which DFPS is required to continue to pay the cost of foster care for a child for whom DFPS provides care from the later of the date the child attains the age of 18 or the date the child graduates from high school or ceases to be enrolled in a secondary school in a program leading toward a high school diploma to the last day of the month in which the child attains the age of 18 years. The bill requires DFPS to continue to pay the cost of foster care for a child after the month in which the child attains the age of 18 years as long as the child is regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate; regularly attending an institution of higher education or a postsecondary vocational or technical program; participating in a program or activity that promotes, or removes barriers to, employment; employed for at least 80 hours per month; or incapable of performing those activities due to a documented medical condition. The bill specifies that DFPS is required to continue to pay the cost of foster care for a child regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate until the last day of the month in which the child attains the age of 22 years. The bill specifies that, until the last day of the month the child attains the age of 21 years, DFPS is required to continue to pay the cost of foster care for a child regularly attending an institution of higher education or a postsecondary vocational or technical program; participating in a program or activity that promotes, or removes barriers to, employment; employed for at least 80 hours a month; or incapable of performing those activities due to a documented medical condition.

C.S.H.B. 2860 authorizes a relative or other designated caregiver who becomes licensed by DFPS or verified by a licensed child-placing agency or DFPS to operate a foster home, foster group home, agency foster home, or agency foster group home to receive foster care payments in lieu of the benefits provided by the relative and other designated caregiver placement program, beginning with the first month in which the relative or other designated caregiver becomes licensed or is verified. The bill clarifies the meaning of the terms "designated caregiver" and "relative caregiver" to include a substitute care giver who is not verified by a licensed child-placing agency or DFPS, rather than not certified, to operate a foster home, foster group home, agency foster home, or agency foster group home.

C.S.H.B. 2860 creates the permanency care assistance program. The bill requires DFPS to enter into a permanency care assistance agreement with a kinship provider who is eligible to receive permanency care assistance benefits. The bill authorizes DFPS to enter into a permanency care assistance agreement with a kinship provider who is the prospective managing conservator of a foster child only if the kinship provider meets eligibility criteria under federal and state law and DFPS rule. The bill prohibits a court from ordering DFPS to enter into a permanency care assistance agreement with a kinship provider unless the kinship provider meets eligibility criteria under federal and state law and DFPS rule, including requirements relating to the criminal history background check of a kinship provider. The bill authorizes a permanency care assistance agreement to provide for reimbursement of the nonrecurring expenses a kinship provider incurs in obtaining permanent managing conservatorship of a foster child, including attorney's fees and court costs. The bill limits the amount of the reimbursement to \$2,000.

C.S.H.B. 2860 requires the executive commissioner of HHSC, not later than April 1, 2010, to adopt rules necessary to implement the permanency care assistance program and specifies that the rules must establish eligibility requirements to receive permanency care assistance benefits under the program and ensure that the program conforms to the requirements for federal assistance as required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The bill requires the executive commissioner to set the maximum monthly amount of assistance payments under a permanency care assistance agreement in an amount that does not exceed the amount of the monthly foster care maintenance payment DFPS would pay a foster care provider caring for the child for whom the kinship provider is caring.

C.S.H.B. 2860 authorizes DFPS, if DFPS first entered into a permanency care assistance agreement with a foster child's kinship provider after the child's 16th birthday, to continue to provide permanency care assistance payments until the last day of the month of the child's 21st birthday. The bill requires the child to be regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate; regularly attending an institution of higher education or a postsecondary vocational or technical program; participating in a program or activity that promotes, or removes barriers to, employment; employed for at least 80 hours a month; or incapable of any of those activities due to a documented medical condition. The bill establishes that DFPS is not required to provide permanency care assistance benefits under the permanency care assistance benefits program unless DFPS is specifically appropriated money for such purposes. The bill prohibits DFPS from entering into a permanency care assistance agreement after August 31, 2017, and requires DFPS to continue to make payments after that date under an agreement entered into on or before that date, according to the terms of the agreement.

C.S.H.B. 2860 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

C.S.H.B. 2860 defines "kinship provider" to mean a relative of a foster child or another adult with a longstanding and significant relationship with a foster child before the child was placed with the person by DFPS with whom the child resides for at least six consecutive months after the person becomes licensed by DFPS or verified by a licensed child-placing agency to provide foster care. The bill defines "permanency care assistance agreement" to mean a written agreement between DFPS and a kinship provider for the payment of permanency care assistance benefits. The bill defines "foster child," "permanency care assistance benefits," and "relative."

C.S.H.B. 2860 makes provisions relating to continued adoption assistance and continued payment of the cost of foster care effective October 1, 2010.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2860 differs from the original by changing the day until which the Department of Family and Protective Services (DFPS) is required to continue to offer adoption assistance, provide permanency care assistance payments, or continue to pay the cost of foster care from the first day of the month of a child's applicable birthday to the last day of that month.

C.S.H.B. 2860 adds a provision not in the original to clarify that "designated caregiver" and "relative caregiver" include a substitute caregiver who is not verified by DFPS and makes related conforming changes.

C.S.H.B. 2860 specifies that a "kinship provider" is an eligible person with whom a foster child resides for at least six consecutive months after the person becomes licensed or verified, rather than a person with whom a foster child resides for six consecutive months while the person becomes licensed or verified as in the original.

C.S.H.B. 2860 differs from the original by defining a "relative" to mean a person related to a foster child by consanguinity or affinity, whereas the original defines "relative" to mean a person related to a child by consanguinity.

C.S.H.B. 2860 differs from the original by specifying that the expenses a permanency care assistance agreement is authorized to provide for reimbursement to a kinship provider for expenses incurred in obtaining permanent managing conservatorship of a foster child are nonrecurring expenses.

C.S.H.B. 2860 differs from the original by requiring the executive commissioner to set a maximum monthly amount of assistance payments under a permanency care agreement in an amount that does not exceed the amount of the monthly foster care maintenance payment DFPS would pay to a foster care provider caring for the child to whom the kinship provider is caring, whereas the original requires the executive commissioner, in adopting rules regarding permanency care assistance payments, to ensure that such payments do not exceed the monetary assistance available for such a foster care provider and makes a related conforming change.

C.S.H.B. 2860 adds provisions not in the original to prohibit DFPS from entering into a permanency care assistance agreement after August 31, 2017, and to require DFPS to continue payments after that date for agreements entered into on or before that date.

C.S.H.B. 2860 differs from the original by changing the date by which the executive commissioner is required to adopt rules to implement and administer the permanency care assistance program from not later than December 1, 2009, to not later than April 1, 2010.

C.S.H.B. 2860 differs from the original by making provisions relating to continued adoption assistance and continued payment of the cost of foster care effective October 1, 2010.