

BILL ANALYSIS

C.S.S.B. 1411
By: West
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

On October 7, 2008, H.R. 6893, the federal Fostering Connections to Success and Increasing Adoptions Act became law. Part of that law requires states that do not already do so to notify all grandparents and other adult relatives of a child's removal and to provide these relatives with information on the option to become foster parents. The notification project will likely result in a cost to the state, not only for the additional outreach, but also for the additional foster care payment responsibilities the state will assume when notified relatives opt for those payments. The extension of benefits to children who achieve permanency after age 16 will encourage permanency for older youth, and the extension of foster care benefits will assist youth who age out of foster care at age 18 in transitioning to adulthood.

C.S.S.B. 1411 creates the permanency care assistance program and requires the Texas Department of Family and Protective Services (DFPS) to enter into a permanency care assistance agreement with a kinship provider who is eligible to receive permanency care assistance benefits and authorizes DFPS to enter into agreements with certain kinship providers only if such a kinship provider meets certain eligibility requirements. The bill requires DFPS to offer adoption assistance until the last day of the month of 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.

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, 2, 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.S.B. 1411 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.S.B. 1411 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.S.B. 1411 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 caregiver that 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.S.B. 1411 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.S.B. 1411 requires the executive commissioner of HHSC, not later than April 1, 2010, to adopt rules necessary to implement and administer 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.

C.S.S.B. 1411 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 to a foster care provider caring for the child for whom the kinship provider is caring.

C.S.S.B. 1411 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.

C.S.S.B. 1411 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 a permanency care assistance agreement entered into on or before that date, according to the terms of the agreement.

C.S.S.B. 1411 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.S.B. 1411 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 or DFPS 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.S.B. 1411 makes provisions relating to continued adoption assistance, continued payment of the cost of foster care, and continued eligibility for permanency care assistance benefits effective October 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1411 omits a provision in the original requiring DFPS to include training in trauma-informed programs and services in any training DFPS provides to foster parents, adoptive parents, kinship caregivers, and DFPS caseworkers and requiring DFPS to pay for the training with gifts, donations, and grants and any federal money available through the Fostering Connections to Success and Increasing Adoptions Act of 2008.

C.S.S.B. 1411 adds a provision not in the original prohibiting DFPS from entering into a permanency care assistance agreement after August 31, 2017, and requiring DFPS to continue to

make payments after that date under a permanency care assistance agreement entered into on or before that date, according to the terms of the agreement. The substitute differs from the original by requiring the executive commissioner of HHSC to adopt rules to implement and administer the permanency care assistance program, whereas the original requires the executive commissioner to adopt rules to implement and administer changes made to provisions relating to the continuation of adoption assistance payments after a child's 18th birthday and continued foster care payments, in addition to the permanency care assistance program. The substitute omits provisions in the original requiring the rules adopted by the executive commissioner to provide that no payment for adoption assistance or permanency care assistance can be paid on behalf of a child over the age of 17 for any month prior to October 1, 2010, and that no payment of foster care benefits can be made with respect to a child over the age of 17 for any month prior to October 1, 2010, unless the child was eligible for foster care benefits after age 17 under law and rules as they existed prior to the effective date of the bill.

C.S.S.B. 1411 omits a provision in the original establishing that the bill does not make an appropriation and that any provision that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision. The substitute differs from the original by making provisions relating to the continued adoption assistance, continued payment of the cost of foster care, and continued eligibility for permanency care assistance benefits effective October 1, 2010.