

BILL ANALYSIS

C.S.S.B. 44
By: Zaffirini
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Parents of children with severe behavioral or mental disorders face a large financial burden in securing the necessary medical care for their child. Although Medicaid waiver programs generally cover mental and behavioral health services for eligible children, some private insurers offer only limited coverage for such services. Some parents who do not have adequate health insurance or the financial means to obtain treatment for their child may have to make the decision to place their child in the custody of child protective services in order to obtain the mental health services or treatment the child needs. In doing so, parents are deemed as having refused to accept parental responsibility and are placed on the state's abuse and neglect registry, which can affect the parent's ability to find employment in certain job fields requiring contact with children.

Interested parties contend that parents who have given up custody of their children for the sole purpose of gaining better behavioral or mental health services for their children do not pose a threat to the safety of children and should not be entered into the abuse and neglect registry. Such cases also place a costly and perhaps needless burden on the state in terms of ongoing child welfare case supervision and court procedures. C.S.S.B. 44 seeks to address these issues by amending current law relating to maintaining and reporting certain information regarding certain child abuse or neglect cases and the provision of mental health services for children in those cases.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.S.B. 44 amends the Family Code to define "severe emotional disturbance," for purposes of provisions relating to the investigation of reports of child abuse or neglect, as a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities. The bill requires the Department of Family and Protective Services (DFPS) to report the number of children who suffer from a severe emotional disturbance and for whom DFPS is appointed managing conservator because a person voluntarily relinquished custody of the child solely to obtain mental health services for the child in DFPS's required annual report on DFPS's child protection activities. The bill requires DFPS, before a person relinquishes custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, to discuss with the person relinquishing custody the option of seeking a court order for joint managing conservatorship of the child with DFPS, if it is in the child's best interest.

C.S.S.B. 44 requires DFPS and the Department of State Health Services (DSHS) to jointly study and develop recommendations to prevent the practice of parents relinquishing custody of

children with a severe emotional disturbance and placement of children in the conservatorship of DFPS solely to obtain mental health services for the child. The bill requires DFPS and DSHS, as part of the study, to consider the advantages of providing mental health services using temporary residential treatment and intensive community-based services options. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC) to review such recommendations and authorizes the executive commissioner to direct the implementation of any recommendation that can be implemented with DFPS's current resources. The bill requires DFPS and DSHS, not later than September 30, 2014, to file a report with the legislature and the Council on Children and Families on the results of the study and sets out the content requirements for the report. The bill requires DFPS and DSHS to update the report not later than September 30 of each even-numbered year after the date the initial report is filed and to include the implementation status of each recommended option in the updated report.

C.S.S.B. 44 amends the Government Code to expand the duties of the Council on Children and Families to include identifying and developing methods and strategies to coordinate and enhance prevention services for children and their families and making recommendations to the executive commissioner of HHSC regarding options for improving the system for serving families who relinquish, or are at risk of relinquishing, custody of a child solely to obtain mental health services for the child, after considering whether it would be appropriate to serve those families without a finding of abuse or neglect or without including the finding of abuse or neglect in the central registry of reported cases of child abuse or neglect. The bill requires the executive commissioner to review the council's recommendations regarding options for improving the system serving those families and to direct the implementation of any policy changes the executive commissioner determines necessary that can be implemented using existing resources.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 44 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

No equivalent provision.

SECTION 1. Subsection (b), Section 261.004, Family Code, is amended to read as follows:

(b) The department shall report the following information:

(1) the number of initial phone calls received by the department alleging abuse and neglect;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 261.001, Family Code, is amended by adding Subdivision (9) to read as follows:

(9) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

SECTION 2. Subsection (b), Section 261.004, Family Code, is amended to read as follows:

(b) The department shall report the following information:

(1) the number of initial phone calls received by the department alleging abuse and neglect;

(2) the number of children reported to the department as having been abused and neglected;

(3) the number of reports received by the department alleging abuse or neglect and assigned by the department for investigation;

(4) of the children to whom Subdivision (2) applies:

(A) the number for whom the report was substantiated;

(B) the number for whom the report was unsubstantiated;

(C) the number for whom the report was determined to be false;

(D) the number who did not receive services from the department under a state or federal program;

(E) the number who received services, including preventative services, from the department under a state or federal program; and

(F) the number who were removed from the child's home during the preceding year;

(5) the number of families in which the child was not removed, but the child or family received services from the department;

(6) the number of children who died during the preceding year as a result of child abuse or neglect;

(7) of the children to whom Subdivision (6) applies, the number who were in foster care at the time of death;

(8) the number of child protective services workers responsible for report intake, assessment, or investigation;

(9) the response time by the department with respect to conducting an initial investigation of a report of child abuse or neglect;

(10) the response time by the department with respect to commencing services to families and children for whom an allegation of abuse or neglect has been made;

(11) the number of children who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child;

(12) the number of cases pursued by the department in each stage of the judicial

(2) the number of children reported to the department as having been abused and neglected;

(3) the number of reports received by the department alleging abuse or neglect and assigned by the department for investigation;

(4) of the children to whom Subdivision (2) applies:

(A) the number for whom the report was substantiated;

(B) the number for whom the report was unsubstantiated;

(C) the number for whom the report was determined to be false;

(D) the number who did not receive services from the department under a state or federal program;

(E) the number who received services, including preventative services, from the department under a state or federal program; and

(F) the number who were removed from the child's home during the preceding year;

(5) the number of families in which the child was not removed, but the child or family received services from the department;

(6) the number of children who died during the preceding year as a result of child abuse or neglect;

(7) of the children to whom Subdivision (6) applies, the number who were in foster care at the time of death;

(8) the number of child protective services workers responsible for report intake, assessment, or investigation;

(9) the response time by the department with respect to conducting an initial investigation of a report of child abuse or neglect;

(10) the response time by the department with respect to commencing services to families and children for whom an allegation of abuse or neglect has been made;

(11) the number of children who were returned to their families or who received family preservation services and who, before the fifth anniversary of the date of return or receipt, were the victims of substantiated reports of child abuse or neglect, including abuse or neglect resulting in the death of the child;

(12) the number of cases pursued by the department in each stage of the judicial

process, including civil and criminal proceedings and the results of each proceeding; ~~and~~

(13) the number of children for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child; and

(14) the number of children who suffer from a mental illness, as defined by Section 571.003, Health and Safety Code, and for whom the department is appointed managing conservator because a person voluntarily relinquished possession of the child solely to obtain mental health services for the child.

SECTION 2. Chapter 262, Family Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. RELINQUISHING CHILD TO OBTAIN CERTAIN SERVICES

Sec. 262.351. JOINT MANAGING CONSERVATORSHIP OF CHILD. Before a person relinquishes possession of a child who suffers from a serious mental illness in order to obtain mental health services for the child, the Department of Family and Protective Services must notify the person relinquishing possession of the child of the option of seeking a court order for joint managing conservatorship of the child with the department if that arrangement is in the best interest of the child.

Sec. 262.352. STUDY TO DEVELOP ALTERNATIVES TO RELINQUISHMENT OF PARENTAL RIGHTS TO OBTAIN MENTAL HEALTH SERVICES. (a) The Department of Family and Protective Services and the Department of State Health Services shall jointly study, develop, and implement changes necessary to prevent the practice of parents relinquishing parental rights of children with serious mental illness and placement in the conservatorship of the Department of Family and Protective Services solely to obtain mental health services for the child.

process, including civil and criminal proceedings and the results of each proceeding; ~~and~~

(13) the number of children for whom a person was appointed by the court to represent the best interests of the child and the average number of out-of-court contacts between the person and the child; and

(14) the number of children who suffer from a severe emotional disturbance and for whom the department is appointed managing conservator because a person voluntarily relinquished custody of the child solely to obtain mental health services for the child.

SECTION 3. Chapter 262, Family Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. RELINQUISHING CHILD TO OBTAIN CERTAIN SERVICES

Sec. 262.351. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Severe emotional disturbance" has the meaning assigned by Section 261.001.

Sec. 262.352. JOINT MANAGING CONSERVATORSHIP OF CHILD. Before a person relinquishes custody of a child who suffers from a severe emotional disturbance in order to obtain mental health services for the child, the department must, if it is in the best interest of the child, discuss with the person relinquishing custody of the child the option of seeking a court order for joint managing conservatorship of the child with the department.

Sec. 262.353. STUDY TO DEVELOP ALTERNATIVES TO RELINQUISHMENT OF CUSTODY TO OBTAIN MENTAL HEALTH SERVICES. (a) The department and the Department of State Health Services shall jointly study and develop recommendations to prevent the practice of parents relinquishing custody of children with a severe emotional disturbance and placement of children in the conservatorship of the department solely to obtain mental health services for the child.

(b) As part of the study under Subsection (a), the Department of Family and Protective Services and the Department of State Health Services shall consider the advantages of providing mental health services using temporary residential treatment and intensive community-based services options, including:

- (1) joint managing conservatorship of the child by the Department of Family and Protective Services and the child's parent;
- (2) the Youth Empowerment Services waiver program;
- (3) systems of care services;
- (4) emergency respite services; and
- (5) diversion residential treatment center services.

(c) Not later than September 30, 2014, the Department of Family and Protective Services and the Department of State Health Services shall file a report with the legislature and the Council on Children and Families on the results of the study required by Subsection (b). The report must include:

- (1) any statutory changes needed to prevent the relinquishment of parental rights;
- (2) each option to prevent relinquishment of parental rights that was considered during the study;

- (3) each option that was selected for implementation;
- (4) the implementation status of each option; and

- (5) the number of children and families that are affected by the implementation of each option.

(d) Not later than September 30 of each even-numbered year after the date the report is filed under Subsection (c), the Department of Family and Protective

(b) As part of the study under Subsection (a), the department and the Department of State Health Services shall consider the advantages of providing mental health services using temporary residential treatment and intensive community-based services options, including:

- (1) joint managing conservatorship of the child by the department and the child's parent;
- (2) the Youth Empowerment Services waiver program;
- (3) systems of care services;
- (4) emergency respite services; and
- (5) diversion residential treatment center services.

(c) The executive commissioner of the Health and Human Services Commission shall review the recommendations developed under Subsection (a) and may direct the implementation of any recommendation that can be implemented with the department's current resources.

(d) Not later than September 30, 2014, the department and the Department of State Health Services shall file a report with the legislature and the Council on Children and Families on the results of the study required by Subsection (a). The report must include:

- (1) each option to prevent relinquishment of parental custody that was considered during the study;

- (2) each option recommended for implementation, if any;

- (3) each option that is implemented using existing resources;

- (4) any policy or statutory change needed to implement a recommended option;

- (5) the fiscal impact of implementing each option, if any;

- (6) the estimated number of children and families that may be affected by the implementation of each option; and

- (7) any other significant information relating to the study.

(e) Not later than September 30 of each even-numbered year after the date the initial report is filed under Subsection (d), the department and the Department of State

Services and the Department of State Health Services shall update the report.

SECTION 3. Section 531.803, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The council shall:

- (1) analyze the biennial legislative appropriations requests of members of the council for services provided to children and their families and identify appropriations that, through the coordination of members of the council, could be modified in the next legislative appropriation request to eliminate waste or increase available services and, not later than May 1 of each even-numbered year, prepare a report recommending those modifications for consideration during the development of the next biennial legislative appropriations request;
- (2) investigate opportunities to increase flexible funding for health, education, and human services provided to children and their families;
- (3) identify methods to remove barriers to local coordination of health, education, and human services provided to children and their families;
- (4) identify methods to ensure that children and youth receive appropriate assessment, diagnoses, and intervention services;

(5) develop methods to prevent unnecessary parental relinquishment of custody of children;

(6) prioritize assisting children in family settings rather than institutional settings;

(7) make recommendations to the executive commissioner to eliminate the practice of including in the central registry of reported cases of child abuse or neglect the name of a person who relinquishes possession of the person's child to the state solely for the purpose of obtaining mental health services for the child;

Health Services shall update the report. The updated report must include the implementation status of each recommended option under Subsection (d).

SECTION 4. Section 531.803, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The council shall:

- (1) analyze the biennial legislative appropriations requests of members of the council for services provided to children and their families and identify appropriations that, through the coordination of members of the council, could be modified in the next legislative appropriation request to eliminate waste or increase available services and, not later than May 1 of each even-numbered year, prepare a report recommending those modifications for consideration during the development of the next biennial legislative appropriations request;
- (2) investigate opportunities to increase flexible funding for health, education, and human services provided to children and their families;
- (3) identify methods to remove barriers to local coordination of health, education, and human services provided to children and their families;
- (4) identify methods to ensure that children and youth receive appropriate assessment, diagnoses, and intervention services;

(5) identify and develop methods and strategies to coordinate and enhance prevention services for children and their families;

(6) develop methods to prevent unnecessary parental relinquishment of custody of children and make recommendations to the executive commissioner regarding options for improving the system for serving families who relinquish, or are at risk of relinquishing, custody of a child solely to obtain mental health services for the child, after considering whether it would be appropriate to serve those families without a finding of abuse or neglect or without including the finding of abuse or neglect in the central registry of reported cases of child abuse or neglect;

(7) [(6)] prioritize assisting children in family settings rather than institutional settings;

(8) make recommendations about family involvement in the provision and planning of health, education, and human services for a child, including family partner and liaison models; and

(9) [(8)] identify technological methods to ensure the efficient and timely transfer of information among state agencies providing health, education, and human services to children and their families.

(a-1) The executive commissioner shall review the council's recommendations under Subsection (a)(7) and implement any changes necessary to ensure that the central registry of reported cases of child abuse or neglect does not include the name of a person who relinquishes possession of the person's child to the state solely for the purpose of obtaining mental health services for the child.

SECTION 4. This Act takes effect September 1, 2013.

(8) [(7)] make recommendations about family involvement in the provision and planning of health, education, and human services for a child, including family partner and liaison models; and

(9) [(8)] identify technological methods to ensure the efficient and timely transfer of information among state agencies providing health, education, and human services to children and their families.

(a-1) The executive commissioner shall review the council's recommendations under Subsection (a)(6) and direct the implementation of any policy changes the executive commissioner determines necessary that can be implemented using existing resources.

SECTION 5. Same as engrossed version.