

By: Dukes

H.B. No. 3431

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures in certain suits affecting the parent-child
3 relationship and the operation of the child protective services and
4 foster care systems.

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

6 SECTION 1. Section 107.002, Family Code, is amended by
7 adding Subsection (j) to read as follows:

8 (j) This subsection applies to a guardian ad litem who is
9 appointed to represent a child in the managing conservatorship of
10 the Department of Family and Protective Services unless the court
11 renders an order exempting the guardian ad litem from compliance
12 with this subsection. Before each scheduled hearing, the guardian
13 ad litem must notify the court of any court-ordered foster care
14 services that have not been provided to the child or the child's
15 family in a reasonable time or the time specified by the court. A
16 court requiring notice under this subsection shall establish the
17 procedures that the guardian ad litem must follow to provide the
18 notice.

19 SECTION 2. Subtitle D, Title 2, Human Resources Code, is
20 amended by adding Chapter 41 to read as follows:

21 CHAPTER 41. SINGLE SOURCE CONTINUUM CONTRACTS

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 41.001. DEFINITION. In this chapter, "single source
24 continuum" means a range of foster care services specified by the

1 department that is provided by one foster care service provider and
2 its subcontractors.

3 Sec. 41.002. RULES. The executive commissioner shall adopt
4 rules necessary to implement this chapter.

5 SUBCHAPTER B. SINGLE SOURCE CONTINUUM CONTRACT REQUIREMENTS

6 Sec. 41.051. SINGLE SOURCE CONTINUUM CONTRACTORS. The
7 department may contract with a single source continuum contractor
8 to provide foster care services in a designated geographic region
9 of this state. Subject to Section 41.053, the contractor may
10 provide the services directly or through a network of
11 subcontractors.

12 Sec. 41.052. CONTRACT MONITORING SYSTEM; ANNUAL REPORT.

13 (a) The department shall establish a system to monitor each single
14 source continuum contractor's performance under a contract to
15 provide foster care services in a designated geographic region of
16 this state. The system must require the contractor to provide to
17 the department, in the manner prescribed by the department,
18 information related to the contractor, contract, and services
19 provided under the contract.

20 (b) The information provided under Subsection (a) at a
21 minimum must allow for:

22 (1) early identification of any potential problems
23 with the single source continuum contractor's delivery of foster
24 care services;

25 (2) an evaluation of the contractor's foster care
26 program operations, financial accountability for the operations,
27 and continued viability to provide foster care services;

1 (3) a comparison of the contractor's actual expenses
2 with the contractor's budgeted expenses and an analysis of any
3 variances between those amounts;

4 (4) an evaluation of the contractor's adherence to
5 approved cost allocation plans; and

6 (5) an evaluation of the contractor's cash flow and
7 cash balances.

8 (c) The monitoring system must require each single source
9 continuum contractor to submit to the department:

10 (1) documentation on the accuracy and timeliness of
11 invoices submitted by the contractor to the department;

12 (2) documentation on the timeliness of payments to
13 subcontractors with whom the contractor contracts to provide foster
14 care services;

15 (3) documentation on the composition of the
16 contractor's management, administrative, direct care, and other
17 foster care program staff and on the ratio of administrative staff
18 to direct care staff;

19 (4) quarterly documentation on the number of
20 contractor staff vacancies, the percentage of contractor staff
21 positions filled compared to the total number of budgeted
22 positions, and any apparent trend in the number of vacant staff
23 positions, including identification of any known reasons for the
24 vacancies; and

25 (5) documentation on and an analysis of the
26 contractor's foster care program, including:

27 (A) the size of the contractor's caseload;

1 (B) the average time that a child receives foster
2 care services from the contractor or a subcontractor, including
3 residential services;

4 (C) the ages of children receiving foster care
5 services;

6 (D) the percentage of children receiving in-home
7 foster care services and the percentage of children receiving
8 foster care services outside the home;

9 (E) the support services available to the
10 families of the children receiving foster care services from the
11 contractor;

12 (F) the prevention and diversion services
13 available to the children and their families; and

14 (G) the percentage of the contractor's corporate
15 net worth represented by the contractor's contract with the
16 department.

17 (d) Not later than October 1 of each year, the department,
18 in the manner prescribed by the Legislative Budget Board, shall
19 submit to the governor and the Legislative Budget Board a report on
20 the viability and performance of each single source continuum
21 contractor with which the department has contracted under this
22 subchapter.

23 Sec. 41.053. SERVICE PERCENTAGE LIMITATION ON SINGLE SOURCE
24 CONTINUUM CONTRACTS. (a) In this section, "core foster care
25 services" includes case management services, placement services,
26 residential and shelter services, foster and adoptive home
27 recruitment and retention services, adoption services, independent

1 living services, service coordination, behavioral health services,
2 assessment services, and any other service central to the foster
3 care system specified by the department.

4 (b) Except as provided by Section 41.054, a single source
5 continuum contractor may not directly provide more than 35 percent
6 of the foster care services in a geographic region of the state paid
7 under contracts with the department. The percentage must be
8 calculated based on the total amount paid in each state fiscal year
9 for all core foster care services directly provided by the
10 contractor and not on the category of service provided by the
11 contractor to allow the contractor flexibility in structuring the
12 provision of services under the contract.

13 Sec. 41.054. TEMPORARY EXEMPTION FROM SERVICE PERCENTAGE
14 LIMITATION. (a) The department may temporarily exempt a single
15 source continuum contractor from the service percentage limitation
16 provided by Section 41.053 in a region that does not have enough
17 foster care service providers to manage the number of child
18 protective services cases in the region.

19 (b) An exemption granted under this section may not exceed
20 six months.

21 (c) A single source continuum contractor may apply for a
22 temporary exemption by submitting to the department in the manner
23 prescribed by the department:

24 (1) documentation of the shortage of available foster
25 care service providers in the region; and

26 (2) a plan, developed by the contractor in
27 consultation with county child welfare boards and other appropriate

1 local interested parties in the region, to increase the number of
2 foster care service providers in the region or the capacity of those
3 providers before the temporary exemption expires.

4 (d) The commissioner shall approve or disapprove a request
5 for a temporary exemption under this section based on the
6 documentation and plan submitted by the single source continuum
7 contractor.

8 (e) The department shall consult with the county child
9 welfare boards and other appropriate local interested parties in a
10 region in which a temporary exemption has been granted to:

11 (1) establish criteria for documenting the shortage of
12 available foster care service providers in the region and
13 determining when the shortage has been alleviated; and

14 (2) determine the actions necessary to increase the
15 number of available foster care service providers in the area or the
16 capacity of those providers before the temporary exemption expires.

17 Sec. 41.055. TRANSFER OF RESPONSIBILITY FOR FOSTER CARE
18 SERVICE TO CONTRACTOR. The department may not transfer to a single
19 source continuum contractor the responsibility of providing foster
20 care services under a contract with the department until:

21 (1) the department and the readiness assessment team
22 complete a readiness assessment of the contractor under Section
23 41.056;

24 (2) the readiness assessment team determines and
25 certifies in writing to the commissioner that the department is
26 prepared to transfer the responsibility for providing foster care
27 services to the contractor and the contractor is ready to deliver

1 and be held accountable for the services; and

2 (3) based on the results of the readiness assessment,
3 the commissioner determines that the contractor is sufficiently
4 ready for the department to transfer responsibility for the
5 provision of foster care services to the contractor.

6 Sec. 41.056. READINESS ASSESSMENT. (a) The department
7 shall conduct a readiness assessment on a single source continuum
8 contractor to:

9 (1) based on criteria developed under Subsection (c),
10 evaluate the contractor's readiness to provide foster care services
11 in a geographic region of this state under a contract with the
12 department and to be held accountable for delivery of the services
13 in that region; and

14 (2) identify any weakness that would adversely affect
15 the contractor's delivery of foster care services in the region and
16 allow the contractor to take corrective actions to address the
17 weakness before the contractor accepts clients under the contract.

18 (b) The department, in consultation with single source
19 continuum contractors, shall develop a readiness assessment
20 process that includes:

21 (1) the preparation of a draft readiness assessment
22 report;

23 (2) a review of the draft report by a readiness
24 assessment team appointment under Section 41.057;

25 (3) an on-site visit of the contractor's business and
26 other service locations by the readiness assessment team not later
27 than the 120th day after the date the contract is signed by the

1 contractor and the department;

2 (4) a review of the contractor's finalized operational
3 plan by the team and department; and

4 (5) a subsequent on-site visit of the contractor's
5 business and other service locations not earlier than the 45th day
6 or later than the 30th day before the date the contractor is
7 scheduled to begin accepting clients.

8 (c) The department shall develop a set of uniform criteria
9 for conducting the readiness assessment. The criteria at a minimum
10 must:

11 (1) reflect applicable national accreditation
12 standards considered appropriate by the department;

13 (2) consider local criteria that reflect the
14 geographic region in which the single source continuum contractor
15 will be providing services;

16 (3) realistically assess the contractor's readiness to
17 begin foster care service delivery and accept clients;

18 (4) require specific evidence of the contractor's
19 readiness on each element specified in the assessment, including
20 each element identified as needing improvement and actions taken to
21 address elements needing improvement; and

22 (5) allow the department to evaluate:

23 (A) the contractor's obligations under the
24 contract;

25 (B) the contractor's foster care program
26 operations, including financial competency, data collection and
27 information technology security, technical assistance competency,

1 program organization, staffing levels, personnel training,
2 procedures for monitoring foster care service provider
3 subcontractors, and consumer complaint procedures; and

4 (C) any other factor the department determines
5 useful.

6 (d) The department shall provide detailed instructions on,
7 and examples of, the information a readiness assessment team and
8 single source continuum contractor are required to submit under
9 this section.

10 Sec. 41.057. READINESS ASSESSMENT TEAM. (a) The
11 department shall appoint a readiness assessment team to assess a
12 single source continuum contractor's readiness to deliver foster
13 care services and accept clients before the responsibility of
14 providing the services is transferred to the contractor.

15 (b) A readiness assessment team consists of the following
16 four members:

17 (1) one representative of the department from the
18 department's central office;

19 (2) one representative of the department from the
20 department's office in the geographic region in which the
21 contractor has contracted to provide foster care services; and

22 (3) two members appointed by the commissioner who
23 represent interested parties in the area.

24 (c) The commissioner shall select the assessment team
25 members appointed under Subsection (b)(3) from individuals
26 nominated by court-appointed special advocates serving in the
27 region in which the contractor has contracted to provide foster

1 care services, the department's regional advisory council serving
2 in that region, or a child welfare board in the region.

3 (d) A member appointed under Subsection (b)(3) may not be an
4 employee of the single source continuum contractor or of a foster
5 care service provider in the region and may not have a conflict of
6 interest that the commissioner determines disqualifies the member
7 from serving on the assessment team.

8 Sec. 41.058. PROGRESSIVE INTERVENTION PLAN. (a) The
9 department shall develop a progressive intervention plan to ensure
10 the continuity of foster care services in a geographic region
11 served by a single source continuum contractor.

12 (b) A progressive intervention plan must include a plan for
13 a range of potential problems that do not qualify as crisis events
14 under Section 41.059 but that may affect the ability of a single
15 source continuum contractor to provide foster care services under a
16 contract if the problems are not resolved.

17 (c) A progressive intervention plan must:

18 (1) detail the actions department and contractor staff
19 must take to correct any identified problem and include a schedule
20 for completing the actions; and

21 (2) provide consequences if the contractor fails to
22 correct an identified problem.

23 Sec. 41.059. CONTINGENCY PLAN. (a) The department shall
24 develop a contingency plan that details specific actions to be
25 taken by department staff and a single source continuum contractor
26 to address specific crisis events that may affect the delivery of
27 foster care services in the geographic region served by the

1 contractor and to ensure the continuity of those services.

2 (b) The contingency plan must include specific actions to
3 address the following crisis events:

4 (1) a financial emergency with a contractor or with
5 two or more contractors simultaneously;

6 (2) an incident of abuse or death of a child in the
7 care of a contractor;

8 (3) a serious violation of state or federal law;

9 (4) a security breach of electronic or other
10 information held by a contractor or a subcontractor; and

11 (5) any other foreseeable event identified by the
12 department.

13 (c) A contingency plan must:

14 (1) contain details sufficient for affected
15 department staff to know their responsibilities and who to contact
16 during a crisis event;

17 (2) contain a communication plan for distributing
18 information concerning the event to children receiving foster care
19 services and their families, caseworkers, local interested
20 parties, state officials, media, and other relevant parties;

21 (3) provide schedules for the transfer of foster care
22 operations, materials, staff, records, and money; and

23 (4) for a crisis event in which a contractor is unable
24 to continue to provide services, detail actions for department
25 staff to take to assist with the contractor's daily operations
26 until a new single source continuum contractor is available to
27 provide those services.

1 (d) A copy of each contingency plan and any update to the
2 plan should be provided to the Legislative Budget Board, the
3 governor, the department's advisory council, and the executive
4 commissioner not later than December 1 of each odd-numbered year.

5 SECTION 3. Section 2155.1442, Government Code, is amended
6 by amending Subsections (b) and (c) and adding Subsection (f) to
7 read as follows:

8 (b) The Health and Human Services Commission shall contract
9 with the state auditor to perform as necessary on-site financial
10 audits of selected residential contractors and on-site financial
11 and program audits of single source continuum contractors [~~as~~
12 ~~necessary~~]. The state auditor, in consultation with the
13 commission, shall select the contractors to audit based on the
14 contract's risk assessment rating, allegations of fraud or misuse
15 of state or other contract funds, or other appropriate audit
16 selection criteria. The [~~residential~~] contractors selected to be
17 audited must be included in the audit plan and approved by the
18 legislative audit committee under Section 321.013.

19 (c) The Department of Family and Protective Services shall
20 require that all files related to contracts for residential care of
21 foster children and to single source continuum contracts:

22 (1) be complete and accurately reflect the
23 contractor's actual updated contract performance; and

24 (2) be maintained in accordance with the department's
25 record retention procedures and made available to the state auditor
26 when requested.

27 (f) In this section, "single source continuum" has the

1 meaning assigned by Section 41.001, Human Resources Code.

2 SECTION 4. (a) Not later than December 1, 2013, the
3 executive commissioner of the Health and Human Services Commission
4 shall adopt rules necessary to implement Chapter 41, Human
5 Resources Code, as added by this Act.

6 (b) As soon as practicable after the effective date of this
7 Act, but not later than December 1, 2013, the Department of Family
8 and Protective Services shall develop the contract monitoring
9 system, the temporary exemption process, the readiness assessment
10 process, the progressive intervention plan, and the contingency
11 plan as required by Chapter 41, Human Resources Code, as added by
12 this Act.

13 SECTION 5. This Act takes effect September 1, 2013.