

BILL ANALYSIS

Senate Research Center

S.B. 1578
By: Kolkhorst
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 6, 79R, directed the creation of the Forensic Assessment Center Network (FACN). The network was implemented as a joint project of the Department of Family and Protective Services (DFPS) and The University of Texas Health Science Center. FACN physicians provide medical determinations and consultations for caseworkers in cases of suspected child abuse and neglect. FACN physicians also provide expert testimony on child abuse and neglect diagnoses in DFPS cases.

S.B. 1578 seeks to better ensure that individuals against whom a protective order is sought are afforded the same rights to provide medical determinations/testimony in court as DFPS. Further, S.B. 1578 prohibits removal based solely on the opinion of a medical professional under contract with DFPS. S.B. 1578 also directs an assessment of FACN by DFPS with the assistance of the Supreme Court of Texas Children's Commission.

(Original Author's / Sponsor's Statement of Intent)

S.B. 1578 amends current law relating to the use of opinions from medical professionals in making certain determinations relating to the abuse or neglect of a child.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.3017, Family Code, by amending Subsections (b) and (c) and adding Subsections (c-1), (c-2), and (e), as follows:

(b) Requires that any agreement between the Department of Family and Protective Services (DFPS) and the Forensic Assessment Center Network (network) or between the Department of State Health Services and the entities that receive grants under the Texas Medical Child Abuse Resources and Education System (system) to provide assistance in connection with abuse and neglect investigations conducted by DFPS require the network and the system to have the ability to obtain consultations with certain physicians licensed to practice medicine in this state and board certified in the relevant field or specialty, including orthopedists, to diagnose and treat, rather than who specialize in identifying, certain unique health conditions, including other medical conditions that mimic child maltreatment or increase the risk of misdiagnosis of child maltreatment, rather than other similar metabolic bone diseases or connective tissue disorders.

(c) Requires DFPS, during an abuse or neglect investigation authorized by Subchapter D (Investigations) or an assessment provided under Subsection (b), to refer the child's case for a specialty consultation if:

(1) DFPS determines the child requires a specialty consultation with a physician;

(2) the child's primary care physician or other primary health care provider who provided health care or treatment or otherwise evaluated the child recommends a specialty consultation; or

(3) the child's parent or legal guardian or, if represented by an attorney, the attorney of the parent or legal guardian requests a specialty consultation.

Deletes existing text requiring DFPS or a physician in the network, if, during an abuse or neglect investigation or an assessment provided under Subsection (b), DFPS or the physician determines that a child requires a specialty consultation with a physician, to refer the child's case to the system for the consultation, if the system has available capacity to take the child's case.

(c-1) Requires DFPS, for a case in which a specialty consultation is required by Subsection (c), to refer the case to a physician who:

(1) is licensed to practice medicine in this state under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code;

(2) is board certified in a field or specialty relevant to diagnosing and treating the conditions described by Subsection (b); and

(3) was not involved with the report of suspected abuse or neglect.

(c-2) Requires DFPS, before referring a child's case under Subsection (c), to provide to the child's parent or legal guardian or, if represented by an attorney, the attorney of the parent or legal guardian written notice of the name, contact information, and credentials of the specialist. Authorizes the parent, legal guardian, or attorney, as applicable, to object to the proposed referral and request referral to another specialist. Requires DFPS and the parent, legal guardian, or attorney, as applicable, to collaborate in good faith to select an acceptable specialist from the proposed specialists; however DFPS is authorized to refer the child's case to a specialist over the objection of the parent, legal guardian, or attorney.

(e) Prohibits Section 261.3017 (Consultation With Physician Networks and Systems Regarding Certain Medical Conditions) from being construed to prohibit a child's parent or legal guardian or, if represented by an attorney, the attorney of the parent or legal guardian from otherwise obtaining an alternative opinion at the parent's, legal guardian's, or attorney's, as applicable, own initiative and expense. Requires DFPS to accept and consider an alternative opinion obtained and provided under Section 261.3017 and to document its analysis and determinations regarding the opinion.

SECTION 2. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.30171, as follows:

Sec. 261.30171. FORENSIC ASSESSMENT CENTER NETWORK EVALUATION. (a) Defines "network."

(b) Requires DFPS, with the assistance of the Supreme Court of Texas Children's Commission, to:

(1) evaluate DFPS's use of the network; and

(2) develop joint recommendations to improve:

(A) the evaluation of agreements between DFPS and the network; and

(B) the best practices for using assessments provided by the network in connection with abuse and neglect investigations conducted by DFPS.

(c) Requires DFPS, not later than September 1, 2022, to prepare and submit to the legislature a written report containing DFPS's findings and recommendations under Subsection (b) and any recommendations for legislative or other action.

(d) Provides that this section expires September 1, 2023.

SECTION 3. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.30175, as follows:

Sec. 261.30175. MITIGATION OF PROVIDER CONFLICTS IN ABUSE OR NEGLECT INVESTIGATION CONSULTATIONS. (a) Defines "forensic assessment," "health care practitioner," "network," and "system."

(b) Prohibits a health care practitioner who reports suspected abuse or neglect of a child from providing forensic assessment services in connection with an investigation resulting from the report. Provides that this subsection applies regardless of whether the practitioner is a member of the network or system.

(c) Requires DFPS, when referring a case for forensic assessment, to refer the case to a physician authorized to practice medicine in this state under Subtitle B, Title 3, Occupations Code, who was not involved with the report of suspected abuse or neglect.

(d) Prohibits this section from being construed to:

(1) prohibit DFPS from interviewing the health care practitioner in the practitioner's capacity as a principal or collateral source; or

(2) otherwise restrict DFPS's ability to conduct an investigation as provided by Subchapter D.

SECTION 4. Amends Section 261.504, Family Code, by adding Subsection (a-1), to require the court, in making a determination whether the child is or has been a victim of abuse or neglect, to consider the opinion of a medical professional obtained by an individual against whom a protective order is sought.

SECTION 5. Amends Section 262.102, Family Code, by adding Subsection (b-1), to prohibit a determination under Section 262.102 (Emergency Order Authorizing Possession of Child) that there is an immediate danger to the physical health or safety of a child or that the child has been a victim of neglect or sexual abuse from being based solely on the opinion of a medical professional under contract with DFPS who did not conduct a physical examination of the child.

SECTION 6. Amends Section 262.104, Family Code, by adding Subsection (c), to prohibit an authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer from taking possession of a child under Subsection (a) (relating to authorizing certain officials to take possession of a child without a court order only under certain conditions) based solely on the opinion of a medical professional under contract with DFPS who did not conduct a physical examination of the child.

SECTION 7. Amends Section 262.201, Family Code, by adding Subsection (i-1), to require the court, in making a determination whether there is an immediate danger to the physical health or safety of a child, to consider the opinion of a medical professional obtained by the child's parent, managing conservator, possessory conservator, guardian, caretaker, or custodian.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2021.