

BILL ANALYSIS

Senate Research Center
87R12521 MCK-D

S.B. 1896
By: Kolkhorst
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not address the findings of the *M.D. vs. Abbott* child foster care lawsuit nor does current law require a quality placement for every child in foster care. Further, current law does not adequately address best contracting practices, procurement and performance measures for Community Based Care (CBC), expanded capacity needs, flexibility to build capacity, nor how to transition to Family First Prevention Services Act (FFPSA) services and supports.

S.B. 1896 requires the Department of Family and Protective Services (DFPS) to find a placement for every child, address needed improvements in CBC implementation, expand capacity for foster child placement, and improve the safety and quality of care for children in the foster care system. The bill also directs a transition for FFPSA services and supports.

As proposed, S.B. 1896 amends current law relating to the regulation of child-care facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 9 (Section 42.0538, Human Resources Code) and SECTION 12 (Section 42.256, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 264, Family Code, by adding Sections 264.1071 and 264.1073, as follows:

Sec. 264.1071. OFFICE STAYS PROHIBITED. Prohibits the Department of Family and Protective Services (DFPS) from allowing a child to stay overnight in a DFPS office.

Sec. 264.1073. THERAPEUTIC FOSTER CARE. Requires DFPS and single source continuum contractors to:

- (1) lessen employment restrictions to allow single parents to participate in therapeutic foster care, when quality care can be assured;
- (2) expand the eligible age for therapeutic foster care to include children 10 years of age or older;
- (3) prepare and plan for the subsequent placement not later than the 30th day after a child is placed in therapeutic foster care to assist in the transition to the least restrictive placement; and
- (4) extend the length of time for a therapeutic foster care placement.

SECTION 2. Amends Subchapter B, Chapter 264, Family Code, by adding Section 264.117, as follows:

Sec. 264.117. MENTORS FOR FOSTER CHILDREN. (a) Requires DFPS and each single source continuum contractor in this state, in collaboration with faith- and

community-based organizations, to examine the feasibility of designing a volunteer mentor and well-being monitor program for children in congregate care settings.

(b) Requires DFPS, not later than December 31, 2022, to report its findings and recommendations for establishing a mentor program to the legislature.

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

SECTION 3. (a) Amends Section 264.1261, Family Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Requires the Health and Human Services Commission (HHSC) in collaboration with DFPS, and each single source continuum contractor in this state, notwithstanding Section 264.0011 (Reference to Executive Commissioner or Commission), to develop a plan to increase the placement capacity in each catchment area of the state with the goal of eliminating the need to place a child outside of the child's community. Requires HHSC to consider whether contracting for additional capacity at residential treatment centers, facilities that provide mental inpatient or outpatient beds for children with behavioral health or mental health needs, and other potential temporary placement options provide the best methods for meeting capacity shortages.

(b-2) Requires that DFPS and each single source continuum contractor contract with facilities for reserve beds to ensure that DFPS is authorized to place each child in a facility if capacity is otherwise unavailable.

(b) Repealer: Section 264.1261(a) (relating to the definition of "community based care"), Family Code, as added by Chapter 822 (H.B. 1549), Acts of the 85th Legislature, Regular Session, 2017.

Repealer: Section 264.1261(b) (relating to requiring appropriate DFPS management personnel from a child protective services region in which community-based care has not been implemented, in collaboration with foster care providers, faith-based entities, and child advocates in that region, to use data collected by DFPS on foster care capacity needs and availability of each type of foster care and kinship placement in the region to create a plan to address the substitute care capacity needs in the region), Family Code, as added by Chapter 822 (H.B. 1549), Acts of the 85th Legislature, Regular Session, 2017.

SECTION 4. Amends Subchapter B-1, Chapter 264, Family Code, by adding Section 264.1511, as follows:

Sec. 264.1511. COMMISSION RESPONSIBILITIES; REFERENCE IN SUBCHAPTER. (a) Provides that, notwithstanding Section 264.0011 or any provision of Subchapter B-1 (Community-Based Care), HHSC has the powers and is required to perform duties assigned to DFPS under Subchapter B-1.

(b) Provides that, in Subchapter B-1, a reference to the department or DFPS means HHSC.

SECTION 5. (a) Amends Subchapter A, Chapter 533, Government Code, by adding Sections 533.00521 and 533.00522, as follows:

Sec. 533.00521. STAR HEALTH PROGRAM: HEALTH CARE FOR FOSTER CHILDREN. (a) Requires HHSC to annually evaluate the use of benefits under the Medicaid program in the STAR Health program offered to children in foster care and provide recommendations to DFPS and each single source continuum contractor in this state to better coordinate the provision of health care and use of those benefits for children in foster care.

(b) Requires HHSC to report its findings to the legislature.

Sec. 533.00522. STAR HEALTH PROGRAM: MENTAL HEALTH PROVIDERS. Requires that a contract between a Medicaid managed care organization and HHSC for the organization to provide health care services to recipients under the STAR Health program require the organization to ensure the organization maintains a network of mental and behavioral health providers, including child psychiatrists and other appropriate providers, in all DFPS catchment areas in the state.

(b) Provides that the changes in law made by this section apply only to a contract for the provision of health care services under the STAR Health program between HHSC and a Medicaid managed care organization under Chapter 533 (Medicaid Manged Care Program), Government Code, that is entered into, renewed, or extended on or after the effective date of this section.

(c) Provides that, if before implementing Section 533.00522, Government Code, as added by this section, HHSC determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the health and human services agency affected by the provision is required to request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 6. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.05291, as follows:

Sec. 40.05291. ELECTRONIC CASE MANAGEMENT SYSTEM. (a) Requires DFPS to develop a plan to eliminate DFPS's use of paper case files and fully transition to an electronic case management system.

(b) Requires DFPS to implement a fully electronic case management system not later than September 1, 2023.

(c) Provides that this section expires September 1, 2025.

SECTION 7. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.0583, as follows:

Sec. 40.0583. STATE AUDITOR REVIEW OF CONTRACTS. Requires the state auditor to annually review each department performance-based contract to determine whether DFPS is properly enforcing contract provisions with providers and to provide recommendations for improving DFPS oversight and execution of contracts.

SECTION 8. Amends Subchapter B, Chapter 42, Human Resources Code, by adding Section 42.026, as follows:

Sec. 42.026. ACCESS TO DATABASE. (a) Requires HHSC to make the child-care licensing division's searchable database accessible to HHSC and DFPS investigators.

(b) Requires DFPS to make DFPS's searchable database accessible to HHSC and DFPS investigators.

SECTION 9. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Sections 42.0538 and 42.0583, as follows:

Sec. 42.0538. PROVISIONAL LICENSE FOR KINSHIP PROVIDER. Requires HHSC to develop standards for and provide a provisional license for a kinship provider, as defined by Section 264.851 (Definitions), Family Code, who meets the basic safety requirements. Requires a kinship provider issued a provisional license under this section to complete all licensing requirements within the time set by the executive commissioner of HHSC (executive commissioner) by rule.

Sec. 42.0583. IDENTIFYING AT-RISK PROVIDERS. Requires DFPS to use data analytics collected from providers, including general residential operations providing treatment services to young adults with emotional disorders, to develop an early warning system to identify at-risk providers most in need of technical support and to promote corrective actions and minimize standard violations.

SECTION 10. Amends Subchapter D, Chapter 42, Human Resources Code, by adding Section 42.0711, as follows:

Sec. 42.0711. INSPECTION OF FACILITY ON PROBATION; PLACEMENT LIMITS. (a) Requires HHSC to inspect each week a general residential operation that is placed on probation for continued violations of Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies That Provide Child-Care Services).

(b) Prohibits DFPS or a single source continuum contractor from placing a child in a facility whose license HHSC has placed on probation.

(c) Requires DFPS and each single source continuum contractor to develop a contingency plan to ensure adequate capacity in other facilities to meet the placement needs of DFPS in the event a facility is placed on probation.

SECTION 11. Amends Subchapter D, Chapter 42, Human Resources Code, by adding Section 42.080, as follows:

Sec. 42.080. DISCIPLINARY ACTION PROHIBITED. Prohibits HHSC from issuing a citation to or taking any other disciplinary action against a general residential operation or a child-placing agency for failing to employ a licensed child-care administrator or licensed child-placing administrator, as appropriate, if the operation or agency has been without an administrator for less than 60 days, and made substantial efforts to hire a qualified administrator.

SECTION 12. Amends Subchapter H, Chapter 42, Human Resources Code, by adding Sections 42.2541, 42.256, 42.257, 42.258, 42.259, 42.260, and 42.261, as follows:

Sec. 42.2541. IMPROVING EDUCATION SERVICES FOR CHILDREN. (a) Requires HHSC to develop a strategic plan for improving the provision of educational services to children placed in a general residential operation.

(b) Requires DFPS to report to the Texas Education Agency (TEA) the educational outcomes for children placed in a general residential operation.

(c) Requires DFPS and TEA to annually evaluate the educational outcomes for children placed in a general residential operation and adopt strategies and policies to improve the outcomes and standards.

Sec. 42.256. TREATMENT MODEL. (a) Requires each general residential operation providing treatment services to adopt a treatment model that is an evidence-based model or a recognized promising practice with continuous quality improvement model.

(b) Requires the operation to annually evaluate the overall effectiveness of the model adopted under this section.

(c) Requires that the treatment model address all aspects related to children's care, including children's therapeutic needs. Requires that the model include:

(1) the manner in which treatment goals will be individualized and identified for each child;

(2) the method the operation will use to measure the effectiveness of each treatment goal for the child;

(3) the actions the operation will take if the treatment goals are not met; and

(4) the method the operation will use to monitor and evaluate the effectiveness of the treatment model.

(d) Authorizes a general residential operation to change a treatment model adopted under this section after notifying HHSC of the change and submitting the new treatment model to HHSC.

(e) Authorizes the executive commissioner to adopt rules to implement this section.

(f) Requires the general residential operation to adopt policies and procedures to implement the treatment model.

Sec. 42.257. EVALUATION OF PLACEMENTS. Requires a general residential operation that considers accepting a child's placement with the operation to evaluate the proposed placement on the following criteria:

(1) whether the child meets the operation's admission criteria;

(2) whether the child would benefit from the treatment model implemented at the operation; and

(3) whether the operation has the staff and resources to meet the child's needs considering the other children at the operation and the other children's needs.

Sec. 42.258. LIMIT ON PLACEMENTS FOR NEW FACILITY. Requires that, if DFPS or a single source continuum contractor contracts with a general residential operation providing treatment services to place children with the operation before the operation is licensed, the contract limit the number of children that are authorized to be placed at the operation each month and limit the number of children with a service level of specialized, intense, or intense plus until the operation exhibits sustained compliance with the licensing standards.

Sec. 42.259. TRANSITION PLANS. Requires a general residential operation to develop a transition plan for each child who has been placed at the operation for longer than six months.

Sec. 42.260. TELEHEALTH PILOT PROGRAM. Requires DFPS in coordination with the single source continuum contractors to establish a pilot program to use telehealth services to provide mental health and behavioral health care for children placed in a residential treatment center.

Sec. 42.261. HUMAN TRAFFICKING VICTIMS. Requires a general residential operation that provides treatment services to children who are victims of human trafficking to use the Commercial Sexual Exploitation-Identification Tool, an evidence-based screening tool, as part of the operation's screening of children placed in the operation to systematically recognize the indicators of child sex trafficking. Requires the general residential operation to develop protocols to provide clear guidance to operation staff on the conduct of screenings and response to youth who have indicators of sex trafficking.

SECTION 13. Amends Section 43.0081, Human Resources Code, as follows:

Sec. 43.0081. PROVISIONAL LICENSE. (a) Authorizes HHSC, rather than DFPS, to issue a provisional child-care administrator's license to:

(1) an applicant licensed in another state who applies for a license in this state, if the applicant:

(A)-(C) makes conforming and nonsubstantive changes to these paragraphs; and

(2) an applicant who otherwise qualifies for a license but does not meet the experience requirement in Section 43.004(a)(4) (relating to providing that to be eligible for a child-care administrator's license a person is required to have one year of full-time experience in management or supervision of child-care personnel and programs).

(b) Authorizes HHSC to waive the requirement of Subsection (a)(1)(C) for an applicant if HHSC determines that compliance with that paragraph constitutes a hardship to the applicant, rather than authorizes DFPS to waive the requirement of Subsection (a)(3) for an applicant if DFPS determines that compliance with that subsection constitutes a hardship to the applicant.

(c) Provides that a provisional license under Subsection (a)(1) is valid until the date HHSC, rather than the date DFPS, approves or denies the provisional license holder's application for a license. Requires HHSC, rather than DFPS, to issue a license under Chapter 43 (Regulation of Child-Care and Child-Placing Agency Administrators) to the provisional license holder described by Subsection (a)(1) if:

(1) makes no changes to this subdivision;

(2) makes a conforming change to this subdivision; and

(3) makes no changes to this subdivision.

(d) Requires HHSC, rather than requires DFPS, for a provisional license holder described by Subsection (a)(1), to complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. Makes conforming changes.

(e) Requires a person issued a provisional license under Subsection (a)(2) to sign an agreement with HHSC agreeing to obtain the experience required by Section 43.004(a)(4) as soon as possible after the license is issued. Prohibits the person from being issued a child-care administrator license until the person obtains the required experience.

SECTION 14. (a) Requires DFPS to study extending permanency care assistance benefits to individuals who are not relatives of a foster child and who do not have a longstanding and significant relationship with the foster child, and to assess the potential impact and favorable permanency outcomes for children who might otherwise remain in foster care for long periods or have managing conservatorship of the child transferred without any benefits to the caregiver.

(b) Requires DFPS, not later than December 31, 2022, to submit a report to the legislature on the results of the study and assessment conducted under this section and recommendations for further action based on the study and assessment.

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

SECTION 15. Requires DFPS, not later than January 1, 2023, to transition the family-based safety services program to evidenced-based programs under the Family First Prevention Services

Act (Title VII, Div. E, Pub. L. No. 115-123), and develop community referrals to existing prevention and early intervention programs.

SECTION 16. Requires the executive commissioner to adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes as provided by Section 42.042, Human Resources Code, as amended by Chapter 317 (H.B. 7), Acts of the 85th Legislature, Regular Session, 2017, as soon as practicable after the effective date of this Act.

SECTION 17. Requires HHSC and DFPS to jointly evaluate the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), to determine methods for maximizing this state's receipt of federal funds to provide foster youth transition planning to adulthood and additional services for foster youth and young adults in extended foster care.

SECTION 18. (a) Requires DFPS, on the effective date of this Act, to abolish the prevention and early intervention division of DFPS.

(b) Requires DFPS to transfer any DFPS funds and resources, including DFPS employees, allocated to the prevention and early intervention division to HHSC.

SECTION 19. Effective date: September 1, 2021.