

BILL ANALYSIS

Senate Research Center
87R20055 MCK-D

C.S.S.B. 1896
By: Kolkhorst
Health & Human Services
4/19/2021
Committee Report (Substituted)

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.

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

C.S.S.B. 1896 amends current law relating to the regulation of child-care facilities and foster care placements and services and the creation of the Office of Community-Based Care Transition.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 11 (Section 42.0538, Human Resources Code), SECTION 14 (Section 42.256, Human Resources Code), and SECTION 15 (Section 43.0081, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter E, Chapter 263, Family Code, by adding Section 263.409, as follows:

Sec. 263.409. FINAL NOTIFICATION OF BENEFITS RELATED TO KINSHIP VERIFICATION. Requires a court, before the court enters a final order naming a relative or another adult with a longstanding and significant relationship with a foster child as the permanent managing conservator for the child, to verify that:

- (1) the individual was offered the opportunity to become verified by a licensed child-placing agency to qualify for permanency care assistance benefits under Subchapter K (Permanency Care Assistance Program), Chapter 264 (Child Welfare Services), and the individual declined the verification process and the permanency care assistance benefits; and
- (2) the child-placing agency conducting the verification for the individual's permanency care assistance benefits has been notified of the individual's decision to decline the permanency care assistance benefits.

SECTION 2. 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. TREATMENT FOSTER CARE. Requires DFPS and single source continuum contractors to:

- (1) lessen employment restrictions to allow single parents to participate in treatment foster care, when quality care is assured;
- (2) expand the eligible age for treatment 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 treatment foster care to assist in the transition to the least restrictive placement; and
- (4) extend the length of time for a treatment foster care placement.

SECTION 3. 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 local governmental entities and faith- and community-based organizations, to examine the feasibility of designing a volunteer mentor 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 4. (a) Amends Section 264.1261, Family Code, by adding Subsections (b-1), (b-2), and (b-3), 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 the plan required by Subsection (b-1) include information and contingency plans to ensure adequate capacity in other facilities to meet placement needs when a facility is placed on probation.

(b-3) Requires DFPS and each single source continuum contractor to 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 5. Amends Subchapter B-1, Chapter 264, Family Code, by adding Sections 264.171 and 264.172, as follows:

Sec. 264.171. JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON COMMUNITY-BASED CARE TRANSITION. (a) Defines, notwithstanding Section 264.0011, "commission," "committee," and "department."

(b) Provides that the committee is composed of is composed of six voting members as follows:

(1) three members of the senate, appointed by the lieutenant governor; and

(2) three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) Requires the lieutenant governor and speaker of the house of representatives each to appoint a member described by Subsection (b)(1) or (2), respectively, to serve as joint chairs of the committee.

(d) Requires the committee to meet at the call of the joint chairs and authorizes the committee to consider public testimony.

(e) Authorizes the committee to employ persons necessary to carry out this section through funds made available by the legislature.

(f) Requires the committee to monitor and report to the legislature on the following related to the implementation of community-based care:

(1) the funding of community-based care;

(2) the performance and outcomes of community-based care statewide and by region;

(3) statutory or regulatory barriers to the successful implementation of community-based care; and

(4) other challenges to the successful implementation of community-based care.

(g) Authorizes the committee to request any relevant information from HHSC, DFPS, or another relevant state agency, and requires HHSC, DFPS, or the agency to comply with the request, unless the provision of the information is prohibited by state or federal law.

(h) Requires the committee, not later than January 1 of each odd-numbered year, to submit a written report of the committee's findings and recommendations to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the standing committees of the senate and house of representatives having primary jurisdiction over child welfare issues.

(i) Requires the committee to monitor the continued implementation of community-based care and hold public hearings to receive comments from the public on the implementation of community-based care.

Sec. 264.172. OFFICE OF COMMUNITY-BASED CARE TRANSITION. (a) Defines "department" and "office."

(b) Provides that the office is a state agency independent of but administratively attached to DFPS.

(c) Requires the office to:

(1) assess catchment areas in this state where community-based care services may be implemented;

(2) develop a plan for implementing community-based care in each catchment area in this state, including the order in which community-based care will be implemented in each catchment area and a timeline for implementation;

(3) evaluate community-based care providers;

(4) contract with community-based care providers to provide services in each catchment area in this state;

(5) measure contract performance of community-based care providers;

(6) provide contract oversight of community-based care providers; and

(7) report outcomes of community-based care providers.

(d) Requires DFPS to provide any administrative support the office needs, and DFPS and HHSC to provide access to any information and legal counsel the office requires to implement community-based care.

(e) Requires the governor to appoint the director of the office to serve in that capacity at the pleasure of the governor. Provides that the director reports directly to the governor.

(f) Requires the office to report to the legislature at least once each calendar quarter regarding the implementation of community-based care in the state.

(g) Provides that the office is abolished and this section expires January 1, 2027.

SECTION 6. (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, in conducting the evaluation required under Subsection (a), to collaborate with residential child-care providers regarding any unmet needs of children in foster care and the development of capacity for providing quality medical, behavioral health, and other services for children in foster care.

(c) 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, in all DFPS regions in this state, regardless of whether community-based care has been implemented in any region.

(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 7. 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 8. 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 9. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.081, as follows:

Sec. 40.081. IMPLEMENTATION OF FEDERAL LAW. (a) Requires DFPS, in furtherance of DFPS duties under Section 40.002(d) (relating to requiring DFPS to cooperate with the United States DSHS and other federal and state agencies in a reasonable manner and in conformity with the provisions of federal law and to the extent necessary to qualify for federal assistance in the delivery of services), to the greatest extent possible develop capacity for placement settings that are eligible for federal financial participation under 42 U.S.C. Section 672, including settings:

(1) specializing in providing prenatal, postpartum, or parenting support for youth;

(2) providing high-quality residential care and supportive services to children and youth who this state has reasonable cause to believe are, or who are at risk of being, sex trafficking victims in accordance with 42 U.S.C. Section 671(a)(9)(C);

(3) providing supervised independent living for young adults;

(4) offering residential family-based substance abuse treatment as described by 42 U.S.C. Section 672(j); and

(5) serving as a qualified residential treatment program.

(b) Requires DFPS, in developing capacity for settings described by Subsection (a)(2), to promote the use of nationally recognized tools such as the Commercial Sexual Exploitation-Identification Tool and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization.

SECTION 10. 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 11. 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. (a) Requires the executive commissioner of HHSC (executive commissioner) by rule to allow a child-placing agency to issue a provisional license for a kinship provider, as defined by Section 264.851 (Definitions), Family Code, who meets the basic safety requirements provided by HHSC rule. Requires a kinship provider issued a provisional license under this section to complete all licensing requirements within the time provided by rule.

(b) Requires the executive commissioner to ensure that the implementation of this section does not reduce the amount of federal money available to this state.

Sec. 42.0583. IDENTIFYING AT-RISK PROVIDERS. Requires DFPS to use data analytics collected regarding residential child-care 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 12. 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.

SECTION 13. 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 14. Amends Subchapter H, Chapter 42, Human Resources Code, by adding Sections 42.2541, 42.256, 42.257, 42.258, 42.259, and 42.260, 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, on issuance of an initial or renewal license under Chapter 42, to submit to HHSC information on the operation's treatment model. Requires a general residential operation that contracts with the department to provide residential care for children in foster care to submit information on the operation's treatment model to DFPS on execution and renewal of a contract.

(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. (a) 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.

(b) Requires a general residential operation to ensure that the evaluation under Subsection (a) does not delay the timely placement of a child.

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 HHSC in coordination with DFPS and single source continuum contractors to establish guidelines in the STAR Health program to improve the use of telehealth services to provide and enhance mental health and behavioral health care for children placed in the managing conservatorship of the state.

SECTION 15. 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) and complies with an additional requirement established by rule under Subsection (e).

(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) Authorizes the executive commissioner by rule to establish additional requirements for the issuance of a provisional child-care administrator's license under Subsection (a)(2)(A) as the executive commissioner determines appropriate.

SECTION 16. Repealer: Section 264.169 (Pilot Program for Family-Based Safety Services), Family Code,

Repealer: Section 40.0581(f) (relating to providing that this section does not apply to a provider that has entered into a contract with HHSC to provide family-based safety services), Human Resources Code.

SECTION 17. (a) Requires HHSC, in collaboration with DFPS, to review the Centers for Medicare and Medicaid Services' Integrated Care for Kids (InCK) Model to determine whether implementing the model could benefit children in this state, including children enrolled in the STAR Health Medicaid managed care program.

(b) Requires HHSC, not later than December 1, 2022, to report its findings to the governor and legislature.

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

SECTION 18. Requires DFPS, not later than December 1, 2022, to provide the legislature with options for conducting independent administrative reviews of DFPS investigations of licensed residential child-care facilities, and independent appeals of determinations from those investigations.

SECTION 19. (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 before the child enters foster care, 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 20. Requires DFPS, not later than January 1, 2025, 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), develop an implementation plan for the transition of services, and develop community referrals to existing prevention and early intervention programs.

SECTION 21. 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 but not later than January 1, 2024.

SECTION 22. (a) 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.

(b) Effective date, this section: upon passage or September 1, 2021.

SECTION 23. (a) Requires the governor, as soon as practicable after the effective date of this Act but not later than October 15, 2021, to appoint the director of the Office of Community-Based Care Transition as required by Section 264.172, Family Code, as added by this Act.

(b) Requires DFPS, as soon as practicable after the effective date of this Act, to transfer all money, contracts, leases, property, and obligations related to the powers and duties of the office to that office.

SECTION 24. Provides that the office, DFPS, and HHSC are required to implement this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, the office, DFPS, and HHSC, if the legislature does not appropriate money specifically for that purpose, to implement this Act using other appropriations available for the purpose.

SECTION 25. Provides that, except as otherwise provided by this Act, this Act takes effect September 1, 2021.