87R14445 TYPED

By:  Frank H.B. No. 3691

A BILL TO BE ENTITLED

AN ACT

relating to the statewide implementation of community-based foster care by the Department of Family and Protective Services.

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

SECTION 1.  Section 264.151, Family Code, is amended to read as follows:

Sec. 264.151.  LEGISLATIVE INTENT AND PURPOSE. (a) It is the intent of the legislature that the department contract with community-based nonprofit and local governmental entities that have the ability to provide child welfare services. The services provided by the entities must include direct case management to prevent entry into substitute care, reunify and preserve families, and ensure child safety, permanency, and well-being, in accordance with state and federal child welfare goals.

(b)  It is the intent of the legislature that the provision of community-based care for children be implemented with measurable goals relating to:

(1)  the safety of children in placements;

(2)  the placement of children in each child's home community;

(3)  the minimal amount of time that a child is placed in substitute care, foster care and is in conservatorship of the Department [~~provision of services to children in the least restrictive environment possible and, if possible, in a family home environment~~];

(4)  the provision of services to children in the least restrictive environment possible and with minimal placement changes [~~minimal placement changes for children~~];

(5)  the maintenance of contact between children and their families and other important persons;

(6)  the placement of children with siblings, when possible;

(7)  the provision of services that respect each child's culture;

(8)  the preparation of children and youth in foster care for adulthood;

(9)  the provision of opportunities, experiences, and activities for children and youth in foster care that are available to children and youth who are not in foster care; and

(10)  the participation by children and youth in making decisions relating to their own lives.

(11)  the reunification of children with the biological parents of the children when possible; [~~and~~]

(12)  the promotion of the placement of children with relative or kinship caregivers if reunification is not possible; and

(13)  the preservation of families to avoid the placement of children into foster care.

(c)  The department shall implement community-based care in a manner that, to the extent possible, achieves the following outcomes in order of priority:

(1)  ensures the safety of children placed in substitute care;

(2)  increases the number of children and youth placed with their siblings;

(3)  increases the placement of children and youth in their home communities;

(4)  increases the number of children and youth who are reunified with one or both parents;

(5)  increases the number of children and youth who are placed with or achieve permanency with relatives;

(6)  decreases the time children and youth spend in substitute care;

(7)  increases the number of children and youth placed in least restrictive, family-like settings;

(8)  decreases the number of placement changes that children and youth experience while in substitute care; and

(9)  decreases the number children and families referred to the department or the number of times that a child and the child's family re-enters services and care described in this subchapter.

SECTION 2.  Section 264.152, Family Code, is amended to read as follows:

(1)  "Alternative caregiver" means a person who is not the foster parent of the child and who provides temporary care for the child for more than 12 hours but less than 60 days.

(2)  "Case management" means the provision of case management services to a child for whom the department has been appointed temporary or permanent managing conservator or to the child's family, a young adult in extended foster care, a relative or kinship caregiver, or a child who has been placed in the catchment area through the Interstate Compact on the Placement of Children, and includes:

(A)  caseworker visits with the child;

(B)  family and caregiver visits;

(C)  convening and conducting permanency planning meetings;

(D)  placement and monitoring of children in substitute care with relative or kinship caregivers while in the conservatorship of the department as described in Section 264.107 [~~the development and revision of child and family plans of service, including a permanency plan and goals for a child or young adult in care~~];

(E)  the development and revision of child and family plans of service, including a permanency plan and goals for a child or young adult in care [~~coordination and monitoring of services required by the child and the child's family~~];

(F)  the coordination and monitoring of services required by the child and the child's family;

(G) [~~(F)~~]  the assumption of court-related duties regarding the child, including:

(i)  providing any required notifications or consultations;

(ii)  preparing court reports;

(iii)  attending judicial and permanency hearings, trials, and mediations;

(iv)  complying with applicable court orders; and

(v)  ensuring the child is progressing toward the goal of permanency within state and federally mandated guidelines; and

(H) [~~(G)~~]  any other function or service that the department determines or a single source continuum contractor proposes as necessary to allow a single source continuum contractor to assume responsibility for case management under the terms and conditions of a contract executed by both the department and a single source continuum contractor.

(3)  "Catchment area" means a geographic service area for providing child protective services that is identified as part of community-based care.

(4)  "Community-based care" means the provision of child welfare services by a community-based nonprofit or a local governmental entity under a contract that includes direct case management to prevent entry into foster care, reunify and preserve families, ensure child safety, permanency, and well-being, and reduce future referrals of children or parents to the department in accordance with state and federal child welfare goals. [~~foster care redesign required by Chapter 598 (S.B. 218), Acts of the 82nd Legislature, Regular Session, 2011, as designed and implemented in accordance with the plan required by Section 264.153.~~]

(5)  "Child who is a candidate for foster care" means a child who is at imminent risk of being removed from the child's home and placed into the conservatorship of the department because of a continuing danger to the child's physical health or safety caused by an act or failure to act of a person entitled to possession of the child but for whom a court of competent jurisdiction has issued an order allowing the child to remain safely in the child's home or in a kinship placement with the provision of family preservation services.

(6)  "Family preservation services" means time-limited services subject to the Family First Prevention Services Act (42 U.S.C. 671, et seq.) provided to the family of a child who is a candidate for foster care to prevent or eliminate the need for removing the child and make it possible for the child to remain safely in the child’s home.

(7)  "Family preservation services plan" means a written plan, based on a professional assessment and subject to the Family First Prevention Services Act (Title VII, Div. E., Pub. L. No. 115-123), listing the family preservation services to be provided to the family of a child who is a candidate for foster care.

(8)  "Foster care services" means substitute care as defined by 263.001 and includes the assessment and referral of children into a residential placement outside the child's home in the least restrictive setting through a network of residential providers or the assessment and referral of a child for adoption in the most appropriate adoptive home within a network of licensed providers or with a qualified relative or kinship caregiver.

SECTION 3.  Section 264.153, Family Code, is amended to read as follows:

Sec. 264.153.  COMMUNITY-BASED CARE IMPLEMENTATION PLAN. (a) The department shall develop and maintain a plan for implementing community-based care. The plan must:

(1)  define and report [~~describe~~] the department's expectations, goals, and cost and finance methodologies, and statewide strategic plan for [~~approach to~~] implementing community-based care;

(2)  include a timeline for implementing community-based care throughout this state, identify the order and rationale of implementation for all specific catchment areas of the state where community-based care will expand, any limitations related to the implementation, and a progressive intervention plan and a contingency plan to provide continuity of the delivery of foster care services and services for relative and kinship caregivers if a contract with a single source continuum contractor ends prematurely;

(3)  delineate and define the case management roles and responsibilities of the department and the department's contractors and the duties, employees, and related funding, including calculations for the transfer of state- and catchment-level resources, that will be transferred to the contractor by the department;

(4)  identify any training needs and include long-range and continuous plans for training and cross-training staff, including plans to train caseworkers using the standardized curriculum created by the human trafficking prevention task force under Section 402.035(d)(6), Government Code, as that section existed on August 31, 2017;

(5)  include a plan for evaluating the costs of and tasks associated with each contract procurement, including the initial and ongoing contract costs for the department and contractor;

(6)  include [~~the department's contract monitoring approach and~~] a detailed plan that describes how the department will monitor contracts and conduct an evaluation that is performed by an entity that is independent of the department to assess [~~for evaluating~~] the transfer of responsibilities to each contractor, the performance and contract outcomes of each contractor and the contractor's community-based care catchment area or areas compared to their performance before community-based care and to other regions of the state directly served by the department workforce. [~~system as a whole that includes an independent evaluation of each contractor's processes and fiscal and qualitative outcomes~~];

(7)  include a report on [~~transition~~] issues that impede transition to community-based care; [~~resulting from implementation of community-based care.~~]

(8)  include an evaluation of each contractor's processes and fiscal and qualitative outcomes concerning the children and families in its care conducted by an entity based in Texas that is independent of the department and has demonstrated expertise in statistical, financial, actuarial, logistical, and operational analysis; and

(9)  transmit all reports and evaluations required under this subsection immediately upon their receipt by department to the relevant oversight committees of the Texas Legislature and the Office of the Governor.

(10)  create a specific implementation plan for each catchment area identified for expansion of community-based care that includes a timeline for the transfer of services as described in Section 264.155 in coordination with local stakeholders, including any of the following:

(A)  community and faith-based entities;

(B)  the judiciary;

(C)  court-appointed special advocates;

(D)  child advocacy centers;

(E)  service providers;

(F)  foster families;

(G)  biological parents;

(H)  foster youth and former foster youth;

(I)  relative or kinship caregivers;

(J)  child welfare boards, if applicable;

(K)  attorneys ad litem; and

(L)  attorneys that represent parents involved in suits filed by the department;

(b)  The department shall annually by the end of the fiscal year[~~:~~]

[~~(1)~~]  update the implementation plan developed under this section and post the updated plan on the department's Internet website. [~~and;~~]

[~~(2)  post on the department's Internet website the progress the department has made toward its goals for implementing community-based care.~~]

SECTION 4.  Section 264.154, Family Code, is amended to read as follows:

(a)  To enter into a contract with the commission or department to serve as a single source continuum contractor to provide [~~foster care~~] service delivery under this subchapter, an entity must be a nonprofit entity with a majority of its board members residing in Texas that has an organizational mission focused on child welfare or a governmental entity.

(b)  In selecting a single source continuum contractor, the department shall consider whether a prospective contractor for a catchment area has demonstrated experience in providing services to children and families in the catchment area.

(c)  The department shall involve local stakeholders in the catchment area in the selection of a single source continuum contractor, including any of the following:

(A)  community and faith-based entities;

(B)  the judiciary;

(C)  court-appointed special advocates;

(D)  child advocacy centers;

(E)  service providers;

(F)  foster families;

(G)  biological parents;

(H)  foster youth and former foster youth;

(I)  relative or kinship caregivers;

(J)  child welfare boards, if applicable;

(K)  attorneys ad litem; and

(L)  attorneys that represent parents involved in suits filed by the department.

SECTION 5.  Section 264.155, Family Code, is amended to read as follows:

Sec. 264.155.  REQUIRED CONTRACT PROVISIONS. (a) A contract with a single source continuum contractor to provide [~~community-based care~~] services as described under this subchapter in a catchment area must include provisions that:

(1)  establish a timeline for the implementation of community-based care in the catchment area, including a timeline for implementing:

(A)  case management services for children, families, and relative and kinship caregivers receiving services in the catchment area; [~~and~~]

(B)  family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family; and

(C)  family preservation services as defined under this subchapter;

(2)  establish conditions for the single source continuum contractor's access to [~~relevant~~] department data and require the participation of the contractor in the data access and standards governance council created under Section 264.159;

(3)  require the single source continuum contractor to create a single process for the training and use of alternative caregivers for all child-placing agencies in the catchment area to facilitate reciprocity of licenses for alternative caregivers between agencies, including respite and overnight care providers, as those terms are defined by department rule;

(4)  require the single source continuum contractor to maintain a diverse network of service providers that offer a range of foster capacity options and that can accommodate children from diverse cultural backgrounds;

(5)  allow the department to conduct a performance review of the contractor beginning 18 months after the contractor has begun providing case management and family reunification support services to all children and families in the catchment area and determine if the contractor has achieved any performance outcomes specified in the contract;

(6)  following the review under Subdivision (5), allow the department to:

(A)  impose financial penalties on the contractor for failing to meet any specified performance outcomes; or

(B)  award financial incentives to the contractor for exceeding any specified performance outcomes;

(7)  require the contractor to give preference for employment to employees of the department:

(A)  whose position at the department is impacted by the implementation of community-based care; and

(B)  who are considered by the department to be employees in good standing;

(8)  require the contractor to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area, including any of the following:

(A)  community faith-based entities;

(B)  the judiciary;

(C)  court-appointed special advocates;

(D)  child advocacy centers;

(E)  service providers;

(F)  foster families;

(G)  biological parents;

(H)  foster youth and former foster youth;

(I)  relative or kinship caregivers;

(J)  child welfare boards, if applicable;

(K)  attorneys ad litem;

(L)  attorneys that represent parents involved in suits filed by the department; and

(M)  any other stakeholders, as determined by the contractor; ~~and~~

(9)  require that the contractor comply with any applicable court order issued by a court of competent jurisdiction in the case of a child for whom the contractor has assumed case management responsibilities or an order imposing a requirement on the department that relates to functions assumed by the contractor;

(10)  specify state and catchment-level FTEs and other resources to be transferred to the contractor for the purpose of providing necessary implementation, case management, operational, and administrative functions, and outlining the methodology for calculating the transfers;

(11)  include a risk-sharing funding model that strategically and explicitly balances financial risk between the state and the contractor and mitigates the financial effects of significant unforeseen changes in the contractor’s duties and responsibilities or its contract population; and

(12)  review and adjust funding annually based on updated cost and finance methodologies including changes in policy, foster care rates, and regional service utilization.

(b)  Contracts entered into by the department pursuant to this section shall be consistent with the requirements of applicable law and may only include terms authorized by Texas statute or the Texas administrative code.

(c)  In regions identified for the implementation of community-based care or in regions where community-based care currently operates, a contractor may apply to the department for a waiver from statutory and regulatory requirements to increase innovation and flexibility for achieving contractual performance outcomes.

SECTION 6.  Sections 264.156(a),(b) and (d), Family Code, are amended to read as follows:

(a)  The department shall develop and apply standard criteria [~~a formal review process~~] to assess the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering services as identified under this subchapter [~~foster care services and services for relative and kinship caregivers~~], including the contractor's ability to provide:

(1)  case management services for children and families;

(2)  evidence-based, promising practice, or evidence-informed services [~~supports~~] for children and families; and

(3)  sufficient available capacity for inpatient and outpatient services and supports for children at all service levels who have previously been placed in the catchment area.

(b)  As part of the readiness review process, the single source continuum contractor must prepare a report that defines: [~~plan detailing the methods by which the contractor will avoid or eliminate conflicts of interest. The department may not transfer services to the contractor until the department has determined the plan is adequate~~]

(1)  the practice model and process by which it will meet contractual performance outcomes and requirements; and

(2)  the methods by which the contractor will eliminate conflicts of interest including financial incentives for a single source continuum contractor that refers a child for foster care services to itself or to a subcontractor in which that contractor has a majority financial stake.

(d)  If after conducting the review process developed under Subsection (a) the department determines that a single source continuum contractor is able to adequately deliver services described under this subchapter [~~foster care services and services for relative and kinship caregivers~~] in advance of the projected dates stated in the timeline included in the contract with the contractor, the department may adjust the timeline to allow for an earlier transition of service delivery to the contractor.

SECTION 7.  Sections 264.157(a),(b), and (c), Family Code, are amended to read as follows:

(a)  Not later than the last day of the fiscal biennium [~~December 31, 2019~~], the department shall:

(1)  identify [~~not more than eight~~] catchment areas in the state where it will expand [~~that are best suited to implement~~] community-based care; and

(2)  following the implementation of community-based care services in those catchment areas, engage an entity based in Texas that is independent of the department to conduct an evaluation of [~~evaluate~~] the implementation process and single source continuum contractor performance in each catchment area.

(b)  Notwithstanding the process for the expansion of community-based care described in Subsection (a), [~~and in accordance with the community-based care implementation plan developed under Section 264.153, beginning September 1, 2017,~~] the department shall accept and evaluate unsolicited proposals [~~begin accepting applications~~] from entities based in Texas to provide community-based care services in a geographic service [~~designated catchment]~~ area where the department has not expanded community-based care. An entity that submits a proposal to provide community-based care services must ensure that it meets all criteria outlined in this subchapter and it must demonstrate established connections to the area that it proposes serving. The Texas Health and Human Services Commission in concert with the department shall create rules to ensure that proposals submitted under this subsection are not in violation of procurement regulations.

(c)  In expanding community-based care, the department may change the geographic boundaries of catchment areas as necessary to align with specific communities or to enable satisfactory unsolicited proposals for community-based care services to be accepted and implemented.

SECTION 8.  The heading to Section 264.158, Family Code, is amended to read as follows:

Sec. 264.158.  TRANSFER OF [~~CASE MANAGEMENT~~] SERVICES TO SINGLE SOURCE CONTINUUM CONTRACTOR.

SECTION 9.  Section 264.158, Family Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a)  In [~~each initial~~] catchment areas [~~area~~] where community-based care has been or will be implemented [~~or a contract with a single source continuum contractor has been executed before September 1, 2017~~], the department shall transfer to the single source continuum contractor [~~providing foster care services in that area~~]:

(1)  foster care services as defined under this subchapter [~~the case management of children, relative and kinship caregivers, and families receiving services from that contractor~~]; [~~and~~]

(2)  the case management of children, relative and kinship caregivers, and families receiving services from that contractor; and [~~family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family for the period of time ordered by the court~~]

(3)  family preservation services as defined under this subchapter.

(d)  Except as provided by Section 264.163, a single source continuum contractor providing services under this subchapter in a catchment area must, either directly or through subcontractors, assume the statutory duties of the department as defined in Section 264.161 in connection with the delivery of foster care services, family preservation services, and services for relative and kinship caregivers, and case management services in that catchment area. The department shall enumerate all duties as such in its contract with a single source continuum provider.

(e)  A single source continuum provider may implement its own model to execute its statutory duties and is not required to follow the policy and procedures that the department employs to carry out statutory duties.

SECTION 10.  Section 264.159, Family Code, is amended to read as follows:

Sec. 264.159.  DATA ACCESS AND STANDARDS GOVERNANCE COUNCIL. (a) The department shall create a data access and standards governance council to develop protocols for the interoperable electronic transfer of data from single source continuum contractors to the department to allow the contractors to perform case management functions and additional contracted services by the department.

(b)  The council shall develop protocols for the access, management, and security of case data that is electronically shared between [~~by~~] a single source continuum contractor and [~~with~~] the department.

(c)  The council shall develop protocols for the access, management, and security of data shared with the independent entity engaged to conduct the independent evaluations required under this subchapter. The protocols shall ensure that the entity has full, unrestricted access to all relevant data necessary for performing a transparent evaluation.

(d)  The council shall be comprised of single source continuum contractors with active contracts with the department and representatives from the department's data, legal, and information technology staff and from Child Protective Services. The council shall meet at least quarterly within each year with its membership.

SECTION 11.  Section 264.161, Family Code, is amended to read as follows:

Sec. 264.161.  STATUTORY DUTIES ASSUMED BY CONTRACTOR. Except as provided by Section 264.163, a single source continuum contractor providing services as described in this subchapter [~~foster care services and services for relative and kinship caregivers~~] in a catchment area must, either directly or through subcontractors, assume the statutory duties of the department in connection with the delivery of [~~foster care~~] services [~~and services for relative and kinship caregivers~~] in that catchment area.

SECTION 12.  Section 264.162, Family Code, is amended to read as follows:

Sec. 264.162.  REVIEW AND MONITORING OF CONTRACTOR PERFORMANCE. (a) The department shall implement [~~develop~~] a [~~formal review~~] process to monitor and evaluate a single source continuum contractor's performance in achieving contract outcomes [~~implementation of placement services and case management services~~] in a catchment area.

(b)  The contract performance outcomes specified in a contract under this subchapter must be consistent with the purposes described under Section 264.151. The contract must permit the contractor operational discretion in meeting performance outcomes. The contract must clearly define the manner in which the contractor's performance will be measured and identify the information sources the department and, if applicable, the independent evaluator administrator will use to evaluate the performance.

SECTION 13.  Section 264.156(c), Family Code, is repealed.

SECTION 14.  The changes in law made by this Act apply only to a contract for foster care services entered into or renewed on or after the effective date of this Act.

SECTION 15.  This Act takes effect September 1, 2021.