By:  Frank, Gates, Minjarez H.B. No. 3691

     (Senate Sponsor - Kolkhorst)

(In the Senate - Received from the House May 17, 2021; May 17, 2021, read first time and referred to Committee on Health & Human Services; May 21, 2021, reported favorably by the following vote: Yeas 9, Nays 0; May 21, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham        X

Campbell          X

Hall              X

Miles             X

Powell            X

Seliger           X

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. (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 provision of services to children in the least restrictive environment possible and with [~~, if possible, in a family home environment;~~

[~~(4)~~] minimal placement changes [~~for children~~];

(4)  the reduction of the time a child is in the conservatorship of the department and placed in substitute care;

(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;

(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 placing children in foster care.

SECTION 2.  Section 264.152, Family Code, is amended by amending Subdivisions (2) and (4) and adding Subdivisions (5), (6), (7), and (8) to read as follows:

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

(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~~]

(G)  the placement of children in the conservatorship of the department with relative or kinship caregivers as described by Section 264.107 and the monitoring of those placements; and

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

(4)  "Community-based care" means the provision of child welfare services in accordance with state and federal child welfare goals by a community-based nonprofit or a local governmental entity under a contract that includes direct case management to:

(A)  prevent entry into foster care;

(B)  reunify and preserve families;

(C)  ensure child safety, permanency, and well-being; and

(D)  reduce future referrals of children or parents to the department [~~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 service" means a time-limited, family-focused service, including a service subject to the Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123), provided to the family of a child who is:

(A)  a candidate for foster care to prevent or eliminate the need to remove the child and to allow the child to remain safely with the child's family; or

(B)  a pregnant or parenting foster youth.

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

(A)  a candidate for foster care; or

(B)  a pregnant or parenting foster youth.

(8)  "Foster care services" means substitute care as defined by Section 263.001 and includes the assessment and referral of children into a residential placement outside the child's home and the assessment and referral of a child for adoption.

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 [~~describe~~] the department's expectations, goals, and statewide strategic plan for [~~approach to~~] implementing community-based care and the method the department uses to determine the cost of implementing community-based care, including the department resources used to provide community-based care;

(2)  include a timeline for implementing community-based care throughout this state, the specific order and rationale for implementing community-based care in the catchment areas of this 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 that will be transferred to the contractor by the department, and the method for determining the state-level and catchment-level resources to be transferred;

(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 the department's method of monitoring contracts and includes an evaluation of each contractor conducted by an entity based in this state independent of the department that:

(A)  assesses the effectiveness of the transfer of responsibilities to each contractor;

(B)  measures [~~for evaluating~~] the performance and contract outcomes of each contractor; and

(C)  compares the outcomes in the contractor's catchment area to the outcomes in:

(i)  that same catchment area before community-based care was implemented;

(ii)  other catchment areas in which community-based care has been implemented; and

(iii)  other department regions in which the department is providing services [~~system as a whole that includes an independent evaluation of each contractor's processes and fiscal and qualitative outcomes~~]; [~~and~~]

(7)  include a report on [~~transition~~] issues that impede transition to 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 this state that is independent of the department and has demonstrated expertise in statistical, financial, actuarial, logistical, and operational analysis;

(9)  require the department to transmit immediately on receipt all reports and evaluations required under this subsection immediately to the relevant standing committees of the legislature and the office of the governor; and

(10)  include 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 by Section 264.155 developed after consulting with local stakeholders, as appropriate, including stakeholders listed in Section 264.155(a)(8) and other stakeholders identified as significant in a particular catchment area [~~resulting from implementation of community-based care~~].

(b)  Not later than August 31 each year, the [~~The~~] department shall [~~annually~~]:

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

(2)  provide a copy of the plan to the governor, lieutenant governor, speaker of the house of representatives, and presiding officer of each standing committee of the legislature with jurisdiction over matters involving the department [~~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 by amending Subsection (a) and adding Subsection (c) 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 services under this subchapter [~~foster care service delivery~~], an entity must be:

(1)  a nonprofit entity that has:

(A)  an organizational mission focused on child welfare; and

(B)  a majority of the entity's board members residing in this state; or

(2)  a governmental entity.

(c)  The department shall request local stakeholders in a catchment area, including those listed in Section 264.155(a)(8), to provide any necessary information about the catchment area that will assist the department in:

(1)  preparing the department's request for bids, proposals, or other applicable expressions of interest to provide community-based care in the catchment area; and

(2)  selecting a single source continuum contractor to provide community-based care in the catchment area.

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 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;

(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)  identify the employees and other resources to be transferred to the contractor for the purpose of providing necessary implementation, case management, operational, and administrative functions and outline the methodology for determining the resources to be transferred;

(11)  create 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)  require the annual review and adjustment of the funding based on updated cost and finance methodologies, including changes in policy, foster care rates, and regional service usage.

(b)  A contract with a single source continuum contractor under this subchapter must be consistent with the requirements of applicable law and may only include terms authorized by the laws or rules of this state.

(c)  In regions identified for implementing community-based care and in regions where community-based care has been implemented, a contractor may apply to the department for a waiver from any statutory and regulatory requirement 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 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:

(1)  the practice model and process the contractor will use to meet contractual performance outcomes and requirements; and

(2)  the methods the contractor will use to 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 [~~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~~].

(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 by 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 state fiscal biennium [~~December 31, 2019~~], the department shall:

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

(2)  following the implementation of community-based care services in those catchment areas, retain an entity based in this state that is independent of the department to conduct an evaluation of [~~evaluate~~] the implementation process and the 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 this state to provide community-based care services in a geographic service [~~designated catchment~~] area where the department has not implemented community-based care. An entity that submits a proposal to provide community-based care services must ensure that it meets all criteria outlined by this subchapter and must demonstrate established connections to the area the entity proposes to serve. The Health and Human Services Commission in conjunction with the department shall adopt rules to ensure that proposals submitted under this subsection comply with state procurement laws and rules.

(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 Subsection (d) to read as follows:

(a)  In each [~~initial~~] catchment area where community-based care has been 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)  the case management of children, relative and kinship caregivers, and families receiving services from that contractor; [~~and~~]

(2)  foster care services; and

(3)  family preservation services [~~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~~].

(d)  A single source continuum contractor may implement its own procedures to execute the department's statutory duties the contractor assumes and is not required to follow the department's procedures to execute the department duties the contractor assumes.

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 an independent entity retained to conduct the independent evaluations required under this subchapter. The protocols shall ensure the entity has full, unrestricted access to all relevant data necessary to perform an evaluation.

(d)  The council consists of single source continuum contractors with active contracts and department employees who provide data, legal, information technology, and child protective services. The council shall meet at least quarterly during each calendar year.

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 the services described by 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. The department shall enumerate in its contract with a single source continuum contractor all duties the single source continuum contractor will assume.

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 by Section 264.151. The contract must allow the contractor operational discretion in meeting performance outcomes.

(c)  The department shall regularly report on the department's and each single source continuum contractor's performance in providing services based on the performance outcomes described by Subsection (b). The report must:

(1)  be readily accessible to and understandable by a member of the public and include the following information:

(A)  a comparison of the single source continuum contractor's performance in a catchment area with the department's performance in that same area during the 10 years preceding the date the contractor began providing services in the area; and

(B)  a comparison of the performances of service providers for each region of this state for the time covered by the report;

(2)  include information provided by single source continuum contractors;

(3)  to the greatest extent feasible, be prepared using existing data sources and department resources; and

(4)  be published on the schedule determined appropriate by the department but not less than annually.

(d)  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 will use to evaluate the performance.

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

SECTION 14.  Not later than October 1, 2022, the Department of Family and Protective Services shall publish the initial report required by Section 264.162(c), Family Code, as added by this Act.

SECTION 15.  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 16.  This Act takes effect September 1, 2021.

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