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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. (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~~];~~

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

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

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

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

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

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

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

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

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

21 (13) the preservation of families to avoid placing
22 children in foster care.

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

26 (2) "Case management" means the provision of case
27 management services to a child for whom the department has been

1 appointed temporary or permanent managing conservator or to the
2 child's family, a young adult in extended foster care, a relative or
3 kinship caregiver, or a child who has been placed in the catchment
4 area through the Interstate Compact on the Placement of Children,
5 and includes:

6 (A) caseworker visits with the child;

7 (B) family and caregiver visits;

8 (C) convening and conducting permanency planning
9 meetings;

10 (D) the development and revision of child and
11 family plans of service, including a permanency plan and goals for a
12 child or young adult in care;

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

15 (F) the assumption of court-related duties
16 regarding the child, including:

17 (i) providing any required notifications or
18 consultations;

19 (ii) preparing court reports;

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

22 (iv) complying with applicable court
23 orders; and

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

27 (G) the placement of children in the

1 conservatorship of the department with relative or kinship
2 caregivers as described by Section 264.107 and the monitoring of
3 those placements; and

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

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

14 (A) prevent entry into foster care;

15 (B) reunify and preserve families;

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

18 (D) reduce future referrals of children or
19 parents to the department [~~foster care redesign required by Chapter~~
20 598 (S.B. 218), Acts of the 82nd Legislature, Regular Session,
21 2011, as designed and implemented in accordance with the plan
22 required by Section 264.153].

23 (5) "Child who is a candidate for foster care" means a
24 child who is at imminent risk of being removed from the child's home
25 and placed into the conservatorship of the department because of a
26 continuing danger to the child's physical health or safety caused
27 by an act or failure to act of a person entitled to possession of the

1 child but for whom a court of competent jurisdiction has issued an
2 order allowing the child to remain safely in the child's home or in
3 a kinship placement with the provision of family preservation
4 services.

5 (6) "Family preservation service" means a
6 time-limited, family-focused service, including a service subject
7 to the Family First Prevention Services Act (Title VII, Div. E, Pub.
8 L. No. 115-123), provided to the family of a child who is:

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

12 (B) a pregnant or parenting foster youth.

13 (7) "Family preservation services plan" means a
14 written plan, based on a professional assessment, listing the
15 family preservation services, including services subject to the
16 Family First Prevention Services Act (Title VII, Div. E, Pub. L. No.
17 115-123), to be provided to the family of a child who is:

18 (A) a candidate for foster care; or

19 (B) a pregnant or parenting foster youth.

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

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

26 Sec. 264.153. COMMUNITY-BASED CARE IMPLEMENTATION PLAN.

27 (a) The department shall develop and maintain a plan for

1 implementing community-based care. The plan must:

2 (1) define [~~describe~~] the department's expectations,
3 goals, and statewide strategic plan for [~~approach to~~] implementing
4 community-based care and the method the department uses to
5 determine the cost of implementing community-based care, including
6 the department resources used to provide community-based care;

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

16 (3) delineate and define the case management roles and
17 responsibilities of the department and the department's
18 contractors, [~~and~~] the duties, employees, and related funding that
19 will be transferred to the contractor by the department, and the
20 method for determining the state-level and catchment-level
21 resources to be transferred;

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

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

5 (6) include ~~[the department's contract monitoring~~
6 ~~approach and]~~ a detailed plan that describes the department's
7 method of monitoring contracts and includes an evaluation of each
8 contractor conducted by an entity based in this state independent
9 of the department that:

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

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

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

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

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

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

24 (7) include a report on ~~[transition]~~ issues that
25 impede transition to community-based care;

26 (8) include an evaluation of each contractor's
27 processes and fiscal and qualitative outcomes concerning the

1 children and families in its care conducted by an entity based in
2 this state that is independent of the department and has
3 demonstrated expertise in statistical, financial, actuarial,
4 logistical, and operational analysis;

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

9 (10) include a specific implementation plan for each
10 catchment area identified for expansion of community-based care
11 that includes a timeline for the transfer of services as described
12 by Section 264.155 developed after consulting with local
13 stakeholders, as appropriate, including stakeholders listed in
14 Section 264.155(a)(8) and other stakeholders identified as
15 significant in a particular catchment area [~~resulting from~~
16 ~~implementation of community-based care~~].

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

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

22 (2) provide a copy of the plan to the governor,
23 lieutenant governor, speaker of the house of representatives, and
24 presiding officer of each standing committee of the legislature
25 with jurisdiction over matters involving the department [~~post on~~
26 ~~the department's Internet website the progress the department has~~
27 ~~made toward its goals for implementing community-based care~~].

1 SECTION 4. Section 264.154, Family Code, is amended by
2 amending Subsection (a) and adding Subsection (c) to read as
3 follows:

4 (a) To enter into a contract with the commission or
5 department to serve as a single source continuum contractor to
6 provide services under this subchapter [~~foster care service~~
7 ~~delivery~~], an entity must be:

8 (1) a nonprofit entity that has:

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

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

13 (2) a governmental entity.

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

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

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

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

25 Sec. 264.155. REQUIRED CONTRACT PROVISIONS. (a) A
26 contract with a single source continuum contractor to provide
27 [~~community-based care~~] services under this subchapter in a

1 catchment area must include provisions that:

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

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

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

11 (C) family preservation services;

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

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

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

26 (5) allow the department to conduct a performance
27 review of the contractor beginning 18 months after the contractor

1 has begun providing case management and family reunification
2 support services to all children and families in the catchment area
3 and determine if the contractor has achieved any performance
4 outcomes specified in the contract;

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

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

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

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

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

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

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

21 (A) community faith-based entities;

22 (B) the judiciary;

23 (C) court-appointed special advocates;

24 (D) child advocacy centers;

25 (E) service providers;

26 (F) foster families;

27 (G) biological parents;

- 1 (H) foster youth and former foster youth;
- 2 (I) relative or kinship caregivers;
- 3 (J) child welfare boards, if applicable;
- 4 (K) attorneys ad litem;
- 5 (L) attorneys that represent parents involved in
- 6 suits filed by the department; and
- 7 (M) any other stakeholders, as determined by the
- 8 contractor; ~~and~~

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

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

19 (11) create a risk-sharing funding model that
20 strategically and explicitly balances financial risk between the
21 state and the contractor and mitigates the financial effects of
22 significant unforeseen changes in the contractor's duties and
23 responsibilities or its contract population; and

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

27 (b) A contract with a single source continuum contractor

1 under this subchapter must be consistent with the requirements of
2 applicable law and may only include terms authorized by the laws or
3 rules of this state.

4 (c) In regions identified for implementing community-based
5 care and in regions where community-based care has been
6 implemented, a contractor may apply to the department for a waiver
7 from any statutory and regulatory requirement to increase
8 innovation and flexibility for achieving contractual performance
9 outcomes.

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

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

19 (1) case management services for children and
20 families;

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

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

27 (b) As part of the readiness review process, the single

1 source continuum contractor must prepare a report that defines:

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

4 (2) the methods the contractor will use to eliminate
5 conflicts of interest, including financial incentives for a single
6 source continuum contractor that refers a child for foster care
7 services to itself or to a subcontractor in which that contractor
8 has a majority financial stake [~~plan detailing the methods by which~~
9 ~~the contractor will avoid or eliminate conflicts of interest. The~~
10 ~~department may not transfer services to the contractor until the~~
11 ~~department has determined the plan is adequate)].~~

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

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

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

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

27 (2) following the implementation of community-based

1 care services in those catchment areas, retain an entity based in
2 this state that is independent of the department to conduct an
3 evaluation of ~~[evaluate]~~ the implementation process and the single
4 source continuum contractor performance in each catchment area.

5 (b) Notwithstanding the process for the expansion of
6 community-based care described in Subsection (a), ~~[and in~~
7 ~~accordance with the community-based care implementation plan~~
8 ~~developed under Section 264.153, beginning September 1, 2017,]~~ the
9 department shall accept and evaluate unsolicited proposals ~~[begin~~
10 ~~accepting applications]~~ from entities based in this state to
11 provide community-based care services in a geographic service
12 ~~[designated catchment]~~ area where the department has not
13 implemented community-based care. An entity that submits a proposal
14 to provide community-based care services must ensure that it meets
15 all criteria outlined by this subchapter and must demonstrate
16 established connections to the area the entity proposes to
17 serve. The Health and Human Services Commission in conjunction with
18 the department shall adopt rules to ensure that proposals submitted
19 under this subsection comply with state procurement laws and rules.

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

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

27 Sec. 264.158. TRANSFER OF ~~[CASE MANAGEMENT]~~ SERVICES TO

1 SINGLE SOURCE CONTINUUM CONTRACTOR.

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

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

10 (1) the case management of children, relative and
11 kinship caregivers, and families receiving services from that
12 contractor; ~~[and]~~

13 (2) foster care services; and

14 (3) family preservation services ~~[family~~
15 ~~reunification support services to be provided after a child~~
16 ~~receiving services from the contractor is returned to the child's~~
17 ~~family for the period of time ordered by the court]~~.

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

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

24 Sec. 264.159. DATA ACCESS AND STANDARDS GOVERNANCE COUNCIL.

25 (a) The department shall create a data access and standards
26 governance council to develop protocols for the interoperable
27 electronic transfer of data from single source continuum

1 contractors to the department to allow the contractors to perform
2 case management functions and additional contracted services by the
3 department.

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

8 (c) The council shall develop protocols for the access,
9 management, and security of data shared with an independent entity
10 retained to conduct the independent evaluations required under this
11 subchapter. The protocols shall ensure the entity has full,
12 unrestricted access to all relevant data necessary to perform an
13 evaluation.

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

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

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

1 ~~services for relative and kinship caregivers]~~ in that catchment
2 area. The department shall enumerate in its contract with a single
3 source continuum contractor all duties the single source continuum
4 contractor will assume.

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

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

13 (b) The contract performance outcomes specified in a
14 contract under this subchapter must be consistent with the purposes
15 described by Section 264.151. The contract must allow the
16 contractor operational discretion in meeting performance outcomes.

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

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

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

27 (B) a comparison of the performances of service

1 providers for each region of this state for the time covered by the
2 report;

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

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

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

9 (d) The contract must clearly define the manner in which the
10 contractor's performance will be measured and identify the
11 information sources the department and, if applicable, the
12 independent evaluator will use to evaluate the performance.

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

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

17 SECTION 15. The changes in law made by this Act apply only
18 to a contract for foster care services entered into or renewed on or
19 after the effective date of this Act.

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