

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~~]

1 ~~environment~~];

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

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

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

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

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

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

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

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

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

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

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

- 1 (1) ensures the safety of children placed in
2 substitute care;
- 3 (2) increases the number of children and youth placed
4 with their siblings;
- 5 (3) increases the placement of children and youth in
6 their home communities;
- 7 (4) increases the number of children and youth who are
8 reunified with one or both parents;
- 9 (5) increases the number of children and youth who are
10 placed with or achieve permanency with relatives;
- 11 (6) decreases the time children and youth spend in
12 substitute care;
- 13 (7) increases the number of children and youth placed
14 in least restrictive, family-like settings;
- 15 (8) decreases the number of placement changes that
16 children and youth experience while in substitute care; and
- 17 (9) decreases the number children and families
18 referred to the department or the number of times that a child and
19 the child's family re-enters services and care described in this
20 subchapter.

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

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

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

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

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

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

24 (i) providing any required notifications or
25 consultations;

26 (ii) preparing court reports;

27 (iii) attending judicial and permanency

1 hearings, trials, and mediations;

2 (iv) complying with applicable court orders; and

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

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

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

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

25 (5) "Child who is a candidate for foster care" means a
26 child who is at imminent risk of being removed from the child's home
27 and placed into the conservatorship of the department because of a

1 continuing danger to the child's physical health or safety caused
2 by an act or failure to act of a person entitled to possession of the
3 child but for whom a court of competent jurisdiction has issued an
4 order allowing the child to remain safely in the child's home or in
5 a kinship placement with the provision of family preservation
6 services.

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

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

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

26 SECTION 3. Section [264.153](#), Family Code, is amended to read
27 as follows:

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

2 (a) The department shall develop and maintain a plan for
3 implementing community-based care. The plan must:

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

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

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

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

1 existed on August 31, 2017;

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

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

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

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

26 (9) transmit all reports and evaluations required
27 under this subsection immediately upon their receipt by department

1 to the relevant oversight committees of the Texas Legislature and
2 the Office of the Governor.

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

8 (A) community and faith-based entities;

9 (B) the judiciary;

10 (C) court-appointed special advocates;

11 (D) child advocacy centers;

12 (E) service providers;

13 (F) foster families;

14 (G) biological parents;

15 (H) foster youth and former foster youth;

16 (I) relative or kinship caregivers;

17 (J) child welfare boards, if applicable;

18 (K) attorneys ad litem; and

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

21 (b) The department shall annually by the end of the fiscal
22 year[+]

23 [~~1~~] update the implementation plan developed under
24 this section and post the updated plan on the department's Internet
25 website. [~~and,~~]

26 [~~2~~] ~~post on the department's Internet website the progress~~
27 ~~the department has made toward its goals for implementing~~

1 ~~community-based care.]~~

2 SECTION 4. Section 264.154, Family Code, is amended to read
3 as 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 [~~foster care~~] service delivery under this subchapter, an
7 entity must be a nonprofit entity with a majority of its board
8 members residing in Texas that has an organizational mission
9 focused on child welfare or a governmental entity.

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

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

- 17 (A) community and faith-based entities;
- 18 (B) the judiciary;
- 19 (C) court-appointed special advocates;
- 20 (D) child advocacy centers;
- 21 (E) service providers;
- 22 (F) foster families;
- 23 (G) biological parents;
- 24 (H) foster youth and former foster youth;
- 25 (I) relative or kinship caregivers;
- 26 (J) child welfare boards, if applicable;
- 27 (K) attorneys ad litem; and

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

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

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

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

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

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

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

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

24 (3) require the single source continuum contractor to
25 create a single process for the training and use of alternative
26 caregivers for all child-placing agencies in the catchment area to
27 facilitate reciprocity of licenses for alternative caregivers

1 between agencies, including respite and overnight care providers,
2 as those terms are defined by department rule;

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

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

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

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

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

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

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

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

25 (8) require the contractor to provide preliminary and
26 ongoing community engagement plans to ensure communication and
27 collaboration with local stakeholders in the catchment area,

1 including any of the following:

2 (A) community faith-based entities;

3 (B) the judiciary;

4 (C) court-appointed special advocates;

5 (D) child advocacy centers;

6 (E) service providers;

7 (F) foster families;

8 (G) biological parents;

9 (H) foster youth and former foster youth;

10 (I) relative or kinship caregivers;

11 (J) child welfare boards, if applicable;

12 (K) attorneys ad litem;

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

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

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

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

27 (11) include a risk-sharing funding model that

1 strategically and explicitly balances financial risk between the
2 state and the contractor and mitigates the financial effects of
3 significant unforeseen changes in the contractor's duties and
4 responsibilities or its contract population; and

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

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

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

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

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

27 (1) case management services for children and

1 families;

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

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

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

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

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

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

1 earlier transition of service delivery to the contractor.

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

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

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

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

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

1 under this subsection are not in violation of procurement
2 regulations.

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

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

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

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

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

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

25 (2) the case management of children, relative and
26 kinship caregivers, and families receiving services from that
27 contractor; and [~~family reunification support services to be~~

1 ~~provided after a child receiving services from the contractor is~~
2 ~~returned to the child's family for the period of time ordered by the~~
3 ~~court]~~

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

6 (d) Except as provided by Section 264.163, a single source
7 continuum contractor providing services under this subchapter in a
8 catchment area must, either directly or through subcontractors,
9 assume the statutory duties of the department as defined in Section
10 264.161 in connection with the delivery of foster care services,
11 family preservation services, and services for relative and kinship
12 caregivers, and case management services in that catchment area.
13 The department shall enumerate all duties as such in its contract
14 with a single source continuum provider.

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

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

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

22 (a) The department shall create a data access and standards
23 governance council to develop protocols for the interoperable
24 electronic transfer of data from single source continuum
25 contractors to the department to allow the contractors to perform
26 case management functions and additional contracted services by the
27 department.

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

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

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

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

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

27 SECTION 12. Section 264.162, Family Code, is amended to

1 read as follows:

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

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

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

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

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