

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1398
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, Texas has struggled to find adequate placements for certain children in its foster care system. Texas courts have statutory review of foster placements, and the Department of Family and Protective Services (DFPS) requests approval from judges to place a child in various foster care settings, such as a foster home or group residential operation.

Current practices at DFPS allow children to refuse their placements, which often results in children residing in a hotel or a shelter monitored by DFPS staff. Moreover, some judges have ordered children into temporary emergency placements despite the availability of a suitable, regulated foster care placement.

Texas is also implementing community-based care (CBC) to decentralize the placement and case management services for children in foster care. Due to poor performance from certain providers, DFPS has cited the need for additional statutory "tools" to administer CBC and to ensure provider accountability.

Additionally, the federal law—Family First Prevention Services Act (FFPSA)—provides funding and approval for children at-risk of entering foster care to be served by DFPS in the home using evidence-based services.

DFPS provides these services currently within its Texas Family First pilot program. However, statutory guidance for CBC is not clear that CBC providers may also provide "in-home" family preservation services as an alternative to foster care. Additionally, the current CBC statutes lack clarity on whether CBC providers may offer adoption-related services and extended foster care services.

S.B. 1398 addresses these issues by prohibiting judges from rendering orders that would place a foster child in temporary emergency care when a suitable residential placement is available.

It also clarifies that CBC providers can offer "family preservation" services, pre-adoption and post-adoption assistance, and services for children in the conservatorship of the department who must transition to independent living. CBC providers can develop or continue to develop faith-based partnerships to support children in conservatorship.

Finally, it establishes requirements in CBC contracts and implementation planning to allow DFPS to have financial remedies for under performing providers in order to increase provider transparency and ensure there are outcome measures for children in care.

Key Provisions

- Defines "temporary emergency supervision care" as care provided by DFPS for a child without placement for whom DFPS has been appointed as the temporary or permanent managing conservatorship.
- Restricts the ability of a judge to render an order for temporary emergency supervision care placement for a child in a conservatorship if a safe and appropriate placement is available.
- Prohibits DFPS from advocating for a temporary placement if a safe and appropriate placement is available.

- Clarifies that services within CBC include pre-adoption and post-adoption assistance and independent living services.
- Defines the provision of "family preservation services" and includes those services as contract provisions for CBC providers.
- Allows DFPS to include provisions in CBC contracts to collaborate with faith-based organizations on recruitment and support of foster families.
- Increases accountability for CBC providers by:
 - adding requirements to the CBC implementation plan to require information posted on the DFPS website, SSCC performance measure data, SSCCs that are under "quality improvement plans" and SSCC corporate ownership information;
 - establishing contract remedy tools, including financial interventions to hold SSCCs accountable in their contracts;
 - requiring the SSCC to establish local community engagement advisory committees;
 - requires DFPS to conduct performance reviews of the SSCCs to assess outcomes and adds additional outcome measures, including:
 - the percentage of foster children that are reunified with their parents within certain time frames;
 - the rate of recidivism for children re-entering care;
 - the percentage of children that age out of care;
 - the number of placement moves a child has while in foster care;
 - The percentage of families successfully completing family preservation services; and
 - The recidivism rates for families that received those preservation services.

Changes in the Committee Substitute:

This committee substitute makes several key changes:

- It removes "family based safety services" and "reunification" services from the rubric of Family Preservation Services.
 - It strikes "Family Based Safety Services" (FBSS), from the category of Family Preservation because the term is not defined specifically in statute and removing it allows DFPS more flexibility to address how to pair FBSS with family preservation in the coming biennium. (Filed Bill Page 1, Line 12).
 - It strikes "reunification" services as these are not eligible for federal funding as a preservation service. (Filed Bill Page 1, Line 20).
- It removes the word "safe" as it relates to temporary emergency supervision. The language was removed because it is unnecessary as DFPS and CBC placements are required to be safe. (Filed Bill Page 5, Line 5).
- It removes data reporting related to children without placement, as DFPS already executes data reporting as part of its budget riders and its online databook. (Filed Bill Page 3 Lines 21-27 through Page 5, Line 1).
- It removes the provision that allow parents to choose services providers under family preservation and FBSS as these would add to the fiscal note. (Filed Bill Page 2, Lines 10-22).
- It condenses data reporting requirements from the filed bill in CBC. (Filed Bill Page 12, Lines 4-27; Page 13, Lines 1-9) .
- Finally, it reduces the audit requirements by the State Auditor's Office for CBC to auditing once a biennium instead of annually in order to reduce duplicative work. (Committee Substitute Page 17, Lines 7-12).

C.S.S.B. 1398 amends current law relating to certain procedures in a suit affecting the parent-child relationship for a child placed in the conservatorship of the Department of Family and Protective Services and the provision of family preservation services and community-based foster care.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 262.401(3), Family Code, to redefine "family preservation service."

SECTION 2. Amends the heading to Section 262.411, Family Code, to read as follows:

Sec. 262.411. SELECTION OF SERVICE PROVIDER; REIMBURSEMENT.

SECTION 3. Amends Section 262.411, Family Code, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Provides that a managing conservator, guardian, or other member of a household who is not a parent and who obtains family preservation services from a provider selected by the person is responsible for the cost of those services. Deletes existing text providing that a parent who obtains family preservation services from a provider selected by the person is responsible for the cost of those services.

SECTION 4. Amends Subchapter A, Chapter 263, Family Code, by adding Section 263.0022, as follows:

Sec. 263.0022. TEMPORARY EMERGENCY SUPERVISION; MONTHLY REPORT.

(a) Defines "temporary emergency supervision."

(b) Prohibits DFPS or a single source continuum contractor from advocating for and a court from rendering an order placing a child in temporary emergency supervision if a safe and appropriate placement is available. Prohibits DFPS or the contractor and the court from considering a child's refusal to stay in a placement when determining whether the placement is safe and appropriate.

(c) Requires DFPS or the single source continuum contractor, before a court is authorized to order temporary emergency supervision for a child, to submit a report to the court that includes information regarding each attempted placement, including the type of placement, the location of the placement, the date DFPS or the contractor contacted the placement, and the reason DFPS or the contractor determined the placement was not appropriate.

SECTION 5. Amends Section 264.107(g), Family Code, as follows:

(g) Authorizes an employee of DFPS or contractor who has on file with DFPS or contractor, as applicable, a background and criminal history check, if DFPS or single source continuum contractor is unable to find an appropriate placement for a child, to provide temporary emergency supervision, rather than emergency care, for the child. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 264.1261(b), Family Code, to make a nonsubstantive change.

SECTION 7. Amends Section 264.152, Family Code, by amending Subdivision (2) and adding Subdivisions (5) and (6) to redefine "case management" and to define "faith-based organization" and "family preservation service."

SECTION 8. Amends Section 264.153, Family Code, as follows:

Sec. 264.153. COMMUNITY-BASED CARE IMPLEMENTATION PLAN. (a) Requires that the plan for implementing community-based care include certain information, including DFPS's contract monitoring approach and a plan for evaluating the continuous performance of each contractor and the community-based care system as a whole that includes an evaluation, rather than an independent evaluation, of each contractor's processes and fiscal and qualitative outcomes.

(b) Requires DFPS to annually:

(1) makes no changes to this subdivision; and

(2) post on DFPS's Internet website the progress DFPS has made toward its goals for implementing community-based care, including:

(A) performance measure data from each single source continuum contractor;

(B) quality improvement plans and corrective action plans for each contractor; and

(C) any contractor responses to the plans described by Paragraph (B).

SECTION 9. Amends the heading to Section 264.154, Family Code, to read as follows:

Sec. 264.154. QUALIFICATIONS OF SINGLE SOURCE CONTINUUM CONTRACTOR; SELECTION; PUBLICATION.

SECTION 10. Amends Section 264.154, Family Code, by adding Subsections (d) and (e), as follows:

(d) Requires DFPS to annually post on DFPS's Internet website:

(1) the list of single source continuum contractors providing services under this subchapter; and

(2) a description of each contractor's full corporate structure, including divisions and subsidiaries.

(e) Requires a single source continuum contractor to provide information described by Subsection (d)(2) to DFPS.

SECTION 11. Amends the heading to Section 264.155, Family Code, to read as follows:

Sec. 264.155. CONTRACT PROVISIONS.

SECTION 12. Amends Section 264.155, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires that a contract with a single source continuum contractor to provide community-based care services in a catchment area include provisions that:

(1) establish a sequential plan, rather than a timeline, for the implementation of community-based care in the catchment area, including a sequential plan for implementing the following in an order determined by DFPS based on community needs and contractor capacity:

(A) family preservation services; and

(B)-(C) redesignates existing Paragraphs (A)-(B) as Paragraphs (B)-(C) and makes no further changes;

(2)-(4) makes no changes to these subdivisions;

(5) require DFPS to conduct annual performance reviews of the contractor beginning on the first anniversary of the contract to:

(A) determine if the contractor has achieved certain applicable performance outcomes and other requirements specified in the contract as determined by services implemented at the time of the review;

(B) ensure service authorizations are based on documented criteria and are not being used to negatively impact a child's access to care by conducting utilization reviews on a sample of cases at least biennially;

(C) review the contractor's compliance with requirements related to conflicts of interest and financial disclosures; and

(D) assess the adequacy of the contractor's provider network and service delivery system;

(6) following the review under Subdivision (5), require, rather than allow, DFPS to:

(A) publish the review on DFPS's Internet website;

(B) impose financial remedies, rather than penalties, on the contractor for failing to meet applicable performance outcomes, contract requirements, or deliverables, as determined by services implemented at the time of the review, rather than any specified performance outcomes, or follow applicable court orders relating to child welfare;

(C) redesignates existing Paragraph (B) as Paragraph (C) and makes a conforming change; and

(D) if deficiencies in the provision of services are identified, impose a corrective action plan to address the deficiencies that includes a timeline for addressing the deficiencies and provides for escalating interventions if deficiencies are not addressed;

(7) allow DFPS to implement formal measures to ensure the contractor is delivering high-quality service, including quality improvement plans, financial interventions, and other appropriate interventions or restrictions;

(8) require the adoption of a capitated funding methodology for the provision of all services not later than the third anniversary of the date the contract is executed;

(9) for a catchment area in which a contractor has not implemented services before September 1, 2023, if family preservation services are included in the initial service implementation, require:

(A) an external review to ensure the contractor has adequate systems and processes in place to effectively provide family preservation services;

(B) the establishment of performance outcomes specific to family preservation services; and

(C) the achievement of the performance outcomes as a condition of continued provision or expansion of family preservation services;

(10) redesignates existing Subdivision (7) as Subdivision (10) and makes no further changes;

(11) require the contractor to implement, rather than provide, preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area that include the

establishment of a community advisory committee that meets at least quarterly, maintains, as the majority of the committee's membership, members not employed by or contracted with the contractor, and includes certain representatives;

(12) require DFPS to include findings and recommendations from the advisory committee established under Subdivision (11) in the annual performance review under Subdivision (5), any corrective action plan under Subdivision (6)(D), and any other applicable quality improvement measures; and

(13) redesignates existing Subdivision (9) as Subdivision (13) and makes no further changes.

Deletes existing text requiring that a contract with a single source continuum contractor to provide community-based care services in a catchment area include provisions that allow DFPS 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. Makes conforming and nonsubstantive changes.

(a-1) Authorizes a contract with a single source continuum contractor to provide community-based care services in a catchment area to include provisions that require the contractor to develop a program to recruit and retain foster parents from faith-based organizations, including requirements for the contractor to:

(1) collaborate with faith-based organizations to inform prospective foster parents about the need for foster parents in the community, the requirements for becoming a foster parent, and any other aspect of the foster care program that is necessary to recruit foster parents;

(2) provide training for prospective foster parents; and

(3) identify and recommend ways in which faith-based organizations may support persons as they are recruited, are trained, and serve as foster parents.

SECTION 13. Amends Section 264.156(a), Family Code, as follows:

(a) Requires DFPS to develop a formal review process to assess the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering foster care services and services for relative and kinship caregivers, including the contractor's ability to provide certain services, including family preservation services. Makes nonsubstantive changes.

SECTION 14. Amends Sections 264.158(a) and (b), Family Code, to make conforming and nonsubstantive changes.

SECTION 15. Amends Section 264.162, Family Code, as follows:

Sec. 264.162. REVIEW OF CONTRACTOR PERFORMANCE. Requires DFPS to develop a formal review process that includes a monitoring schedule to evaluate a single source continuum contractor's implementation of placement services and case management services in a catchment area. Requires DFPS to post the monitoring schedule on DFPS's Internet website.

SECTION 16. Amends the heading to Section 264.2031, Family Code, to read as follows:

Sec. 264.2031. SELECTION OF SERVICE PROVIDER; REIMBURSEMENT.

SECTION 17. Amends Section 264.2031(b), Family Code, as follows:

(b) Provides that a managing conservator, guardian, or other member of a household who is not a parent and who obtains family preservation services from a provider selected by the person is responsible for the cost of those services. Deletes existing text providing that a parent who obtains family preservation services from a provider selected by the person is responsible for the cost of those services.

SECTION 18. Amends Section 40.0583, Human Resources Code, to require the state auditor to biennially, rather than annually, review DFPS's performance-based contracts for certain purposes.

SECTION 19. Repealers: Sections 264.113(a) (relating to defining "faith-based organization") and (b) (relating to requiring DFPS to develop a program to recruit and retain foster parents from faith-based organizations), Family Code.

Repealer: Section 264.113(c) (relating to requiring DFPS to work with OneStar Foundation to increase the number of foster families available for DFPS and its private providers), Family Code.

SECTION 20. (a) Provides that Section 263.0022, Family Code, as added by this Act, applies to a placement review hearing of a child regardless of the date on which DFPS is named the child's managing conservator.

(b) Makes application of Sections 264.152, 264.155, 264.156(a), and 264.158(a) and (b), Family Code, as amended by this Act, prospective.

SECTION 21. Effective date: September 1, 2025.