

BILL ANALYSIS

C.S.S.B. 1896
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The findings of *M.D. v. Abbott* have highlighted safety concerns regarding certain placements of children in foster care and also have resulted in federal court orders directing the Department of Family and Protective Services (DFPS) to increase the safety of such placements. It has been suggested that many foster care placement options for children with serious behavioral and mental health needs have been diminished as a result of the actions taken by DFPS to implement those federal court orders. There are additional concerns that these findings have contributed to the lack of placement capacity and increased the number of foster youth staying in DFPS offices and other inappropriate settings. Current law does not adequately address these court findings nor does it require quality placements for every child in foster care. Furthermore, there are concerns that current law also does not adequately address best contracting practices, procurement and performance measures for the state's community-based foster care model, expanded capacity needs and flexibility to build capacity, or the implementation of the federal Family First Prevention Services Act, which provides for prevention services to address factors that could otherwise lead to charges of neglect or mistreatment and the removal of children from their homes. C.S.S.B. 1896 seeks to address these concerns and also increase the efficiency and flexibility of the state's foster care system.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 9, 20, 22, and 23 of this bill.

ANALYSIS

C.S.S.B. 1896 amends the Family Code to require a court before it enters a final order naming a relative or another adult with a longstanding and significant relationship with a foster child as the permanent managing conservator for the child to verify that:

- the individual was offered the opportunity to become verified by a licensed child-placing agency to qualify for permanency care assistance benefits and the individual declined that verification process and those benefits; and
- the child-placing agency conducting the verification for the individual's permanency care assistance benefits has been notified of the individual's decision to decline those benefits.

C.S.S.B. 1896 authorizes a single source continuum contractor, in addition to the Department of Family and Protective Services (DFPS), who has a background and criminal history check on

file to provide temporary emergency care for a child if the contractor is unable to find an appropriate placement for the child.

C.S.S.B. 1896 prohibits DFPS from allowing a child to stay overnight in a DFPS office and requires DFPS and single source continuum contractors to do the following:

- lessen employment restrictions to allow single parents to participate in treatment foster care, when quality care is assured;
- expand the eligible age for treatment foster care to include children 10 years of age or older;
- prepare and plan for the subsequent placement not later than the 30th day after a child is placed in treatment foster care to assist in the transition to the least restrictive placement; and
- extend the length of time for a treatment foster care placement.

C.S.S.B. 1896 adds temporary provisions set to expire September 1, 2023, that do the following:

- require DFPS and each single source continuum contractor, in collaboration with local governmental entities and faith- and community-based organizations, to examine the feasibility of designing a volunteer mentor program for children in congregate care settings; and
- require DFPS, not later than December 31, 2022, to report its findings and recommendations for establishing a mentor program to the legislature.

C.S.S.B. 1896 requires the Health and Human Services Commission (HHSC), in collaboration with DFPS and each single source continuum contractor, to develop a plan to increase the placement capacity in each catchment area with the goal of eliminating the need to place a child outside of the child's community and sets out certain requirements for HHSC in developing the plan. A plan that includes the use of an inpatient or outpatient mental health facility must require the facility to discharge a child placed in the facility not later than 72 hours after the treating health care provider determines it is not medically necessary for the child to remain in the facility. The plan must include information and contingency plans to ensure adequate capacity in other facilities to meet placement needs when a facility is placed on probation. The bill requires DFPS and each single source continuum contractor to contract with facilities for reserve beds to ensure DFPS may place each child in a facility if capacity is otherwise unavailable.

C.S.S.B. 1896 redefines "community-based care" as 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 prevent entry into foster care, reunify and preserve families, ensure child safety, permanency, and well-being, and reduce future referrals of children or parents to DFPS.

C.S.S.B. 1896, with respect to provisions relating to the qualifications and selection of a single source continuum contractor, does the following:

- specifies that in order to enter into a contract with DFPS to serve as a single source continuum contractor to provide community-based care service delivery an entity must be a nonprofit entity with a majority of its board members residing in Texas; and
- requires DFPS to request certain local stakeholders in the catchment area to provide any necessary information about the catchment area that will assist DFPS in preparing its request for bids, proposals, or other applicable expressions of interest and selecting a single source continuum contractor to provide community-based care in the catchment area.

C.S.S.B. 1896 requires a contract with a single source continuum contractor to be consistent with the requirements of applicable law. A contract may only include terms authorized by state laws or rules. In regions identified for the implementation of community-based care or in regions where community-based care currently operates, a contractor may apply to DFPS for a waiver from statutory and regulatory requirements to increase innovation and flexibility for achieving

contractual performance outcomes. The bill repeals provisions relating to a readiness review process for community-based care contractors.

C.S.S.B. 1896 revises provisions relating to the expansion of community-based care to require DFPS to take the following actions not later than the last day of the fiscal biennium:

- identify catchment areas in Texas where DFPS will implement community-based care and retain an entity based in Texas that is independent of DFPS to conduct an evaluation of the implementation process and single source continuum contractor performance in each catchment area, following the implementation of community-based care services in those catchment areas; and
- accept and evaluate unsolicited proposals from entities based in Texas to provide community-based care services in a geographic service area where DFPS has not expanded community-based care.

The bill sets out requirements for those entities in submitting proposals and requires HHSC in conjunction with DFPS to adopt rules to ensure that those proposals comply with state procurement laws and rules. The bill authorizes DFPS, in expanding community-based care, to change the geographic boundaries of catchment areas as necessary to enable satisfactory unsolicited proposals for community-based care services to be accepted and implemented.

C.S.S.B. 1896 authorizes a single source continuum contractor to implement its own procedures to execute DFPS statutory duties the contractor assumes and is not required to follow the DFPS procedures to execute those assumed duties.

C.S.S.B. 1896, with respect to the data access and standards governance council that develops protocols for the electronic transfer of data from single source continuum contractors to DFPS, provides that such transfer is an interoperable electronic transfer. The bill requires the council to allow the contractors to perform services contracted by DFPS in addition to case management functions. The council must, as follows:

- develop protocols for the access, management, and security of data shared with the independent entity retained to conduct the required independent evaluations that ensure the entity has full, unrestricted access to all relevant data necessary for performing a transparent evaluation;
- consist of single source continuum contractors with active contracts and DFPS employees who provide data, legal, information technology, and child protective services; and
- meet at least quarterly with its membership.

The bill repeals provisions relating to a pilot program for family-based safety services.

C.S.S.B. 1896 creates the six-member Joint Legislative Oversight Committee on Community-Based Care Transition. The bill provides for the composition of the committee, appointment of members by the lieutenant governor and speaker of the house of representatives, as applicable, and leadership of the committee and requires the committee to take the following actions:

- meet at the call of the joint chairs;
- monitor and report to the legislature on certain topics related to the implementation of community-based care;
- not later than January 1 of each odd-numbered year, submit a written report of the committee's findings and recommendations to specified recipients; and
- monitor the continued implementation of community-based care and hold public hearings to receive comments from the public on the implementation of community-based care.

The bill authorizes the committee to do the following:

- consider public testimony;
- employ persons necessary to carry out these provisions relating to the committee through funds made available by the legislature; and

- request any relevant information from HHSC, DFPS, or another relevant state agency, which are required to comply with the request, unless the provision of the information is prohibited by state or federal law.

C.S.S.B. 1896 establishes the Office of Community-Based Care Transition as a state agency independent of but administratively attached to DFPS and requires the office to take the following actions:

- assess catchment areas where community-based care services may be implemented;
- develop a plan for implementing community-based care in each catchment area, including the order in which community-based care will be implemented in each catchment area and a timeline for implementation;
- evaluate community-based care providers;
- contract, on behalf of DFPS, with community-based care providers to provide services in each catchment area;
- measure contract performance of community-based care providers;
- provide contract oversight of community-based care providers;
- report outcomes of community-based care providers;
- identify the employees and other resources to be transferred to the community-based care provider to provide the necessary implementation, case management, operational, and administrative functions and outline the methodology for determining the employees and resources to be transferred;
- create a risk-sharing funding model that strategically and explicitly balances financial risk between the state and the community-based care provider and mitigates the financial effects of significant unforeseen changes in the community-based care provider's duties or the population of the region it serves; and
- 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.

The bill requires DFPS to provide any administrative support the office needs and requires DFPS and HHSC to provide access to any information and legal counsel the office requires to implement community-based care. The bill requires the governor, not later than October 15, 2021, to appoint the director of the office who reports directly to the governor and serves in that capacity at the pleasure of the governor. The bill requires the office to report to the legislature at least once each calendar quarter regarding the implementation of community-based care. A provision of provisions relating to community-based care for children applicable to DFPS with respect to any duty assigned by these provisions relating to the office applies to the office in the same manner as the provision would apply to DFPS. DFPS retains the powers and duties provided to DFPS by provisions relating to community-based care for children. The office is abolished and these provisions relating to the office expire on the date that community-based care is implemented in the last DFPS region in Texas.

C.S.S.B. 1896 amends the Government Code to require HHSC to annually evaluate the use of benefits under the Medicaid program in the STAR Health program offered to children in foster care and provide recommendations to DFPS and each single source continuum contractor to better coordinate the provision of health care and use of those benefits for children in foster care. The bill requires HHSC to do the following in conducting the evaluation:

- collaborate with residential child-care providers regarding any unmet needs of children in foster care and the development of capacity for providing quality medical, behavioral health, and other services for children in foster care; and
- identify options to obtain federal matching funds under Medicaid to pay for a safe home-like or community-based residential setting for a child in the conservatorship of DFPS who meets certain criteria established by the bill.

The bill requires HHSC to report its findings to the standing committees of the senate and house of representatives having jurisdiction over DFPS. A contract between a Medicaid managed care organization and HHSC for the organization to provide health care services to recipients under the STAR Health program must require the organization to ensure the organization maintains a

network of mental and behavioral health providers, including child psychiatrists and other appropriate providers, in all DFPS regions in Texas, regardless of whether community-based care has been implemented in any region.

C.S.S.B. 1896 exempts a child-specific contract entered into by DFPS for a child without placement from vendor performance review and reporting requirements. The bill classifies DFPS as a health and human services agency for purposes of provisions establishing separate procurement procedures for these agencies.

C.S.S.B. 1896 amends the Human Resources Code to add temporary provisions set to expire September 1, 2025, requiring DFPS to develop a plan to eliminate the DFPS use of paper case files and fully transition to an electronic case management system and to implement a fully electronic case management system not later than September 1, 2023.

C.S.S.B. 1896 requires the state auditor to annually review DFPS performance-based contracts to determine whether DFPS is properly enforcing contract provisions with providers and to provide recommendations for improving DFPS oversight and execution of contracts.

C.S.S.B. 1896 requires DFPS to the greatest extent possible to develop capacity for certain placement settings specified by the bill that are eligible for federal financial participation under federal law. The bill requires DFPS to do the following in developing capacity for those settings:

- promote the use of nationally recognized tools such as the Commercial Sexual Exploitation-Identification Tool (CSE-IT) and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization; and
- use providers that meet certain criteria established by the bill.

C.S.S.B. 1896 requires HHSC to make the child-care licensing division's searchable database accessible to HHSC and DFPS investigators and requires DFPS to make the DFPS searchable database accessible to such investigators.

C.S.S.B. 1896 requires the executive commissioner of HHSC by rule to allow a child-placing agency to issue a provisional license for a kinship provider who meets the basic safety requirements provided by HHSC rule and requires a kinship provider issued a provisional license to complete all licensing requirements within the time provided by rule. The bill requires the executive commissioner to ensure that the implementation of these provisions relating to the provisional license does not reduce the amount of federal money available to the state.

C.S.S.B. 1896 requires DFPS to use data analytics collected regarding residential child-care providers, including general residential operations providing treatment services to young adults with emotional disorders, to develop an early warning system to identify at-risk providers most in need of technical support and to promote corrective actions and minimize standard violations. The system must distinguish between different levels of risk using a multi-point severity scale. The bill requires DFPS to make information regarding the severity scale available to:

- the standing committees of the senate and the house of representatives with oversight of child-care facilities; and
- the public through the DFPS website.

C.S.S.B. 1896 prohibits HHSC from issuing a citation to or taking any other disciplinary action against a general residential operation or a child-placing agency for failing to employ a licensed child-care administrator or licensed child-placing administrator, as appropriate, if the operation or agency has been without an administrator for less than 60 days and has made substantial efforts to hire a qualified administrator.

C.S.S.B. 1896 requires DFPS to develop a strategic plan for improving the provision of educational services to children placed in a general residential operation and to report to the Texas Education Agency (TEA) the educational outcomes for children placed in a general

residential operation. The bill requires DFPS and TEA to annually evaluate the educational outcomes for children placed in a general residential operation and adopt strategies and policies to improve the outcomes and standards.

C.S.S.B. 1896 requires each general residential operation providing treatment services to submit on issuance of an initial or renewal license to HHSC information on the operation's treatment model. The bill requires a general residential operation that contracts with DFPS to provide residential care for children in foster care to submit information on the operation's treatment model to the DFPS on execution and renewal of a contract and to annually assess the overall effectiveness of the model. The bill requires the treatment model to address all aspects related to children's care, including children's therapeutic needs, and sets out the required components of the model. A general residential operation may change a treatment model after notifying HHSC of the change and submitting the new treatment model to HHSC. The bill authorizes the executive commissioner to adopt rules to implement these provisions relating to the treatment model and requires the general residential operation to adopt policies and procedures to implement the treatment model.

C.S.S.B. 1896 requires a general residential operation that considers accepting a child's placement with the operation to evaluate the proposed placement on certain criteria established by the bill and provides for a limit on the number of children that may be placed at the operation for a new facility if DFPS or a single source continuum contractor contracts with a general residential operation providing treatment services to place children with the operation before the operation is licensed. The bill requires a general residential operation to develop a transition plan for each child who has been placed at the operation for longer than six months. The bill requires HHSC in coordination with DFPS and single source continuum contractors to establish guidelines in the STAR Health program to improve the use of telehealth services to provide and enhance mental health and behavioral health care for children placed in the managing conservatorship of the state.

C.S.S.B. 1896 authorizes HHSC, rather than DFPS, to issue a provisional child-care administrator's license to an applicant licensed in another state who applies for a license in Texas if the applicant meets certain criteria and authorizes HHSC to issue such a provisional license to an applicant who otherwise qualifies for a license but does not meet the applicable experience requirement and complies with any additional requirement established by rule. The bill authorizes the executive commissioner by rule to establish additional requirements for the issuance of a provisional child-care administrator's license as the executive commissioner determines appropriate.

C.S.S.B. 1896 includes temporary provisions set to expire September 1, 2023, requiring HHSC, in collaboration with DFPS, to review the federal Centers for Medicare and Medicaid Services' Integrated Care for Kids (InCK) Model to determine whether implementing the model could benefit children in Texas, including children enrolled in the STAR Health Medicaid managed care program and to report, not later than December 1, 2022, its findings to the governor and legislature.

C.S.S.B. 1896 requires DFPS, not later than December 1, 2022, to provide the legislature with options for conducting independent administrative reviews of DFPS investigations of licensed residential child-care facilities and independent appeals of determinations from those investigations.

C.S.S.B. 1896 includes temporary provisions set to expire September 1, 2023, requiring DFPS to do the following:

- study extending permanency care assistance benefits to individuals who are not relatives of a foster child and who do not have a longstanding and significant relationship with the foster child before the child enters foster care;

- assess the potential impact and favorable permanency outcomes for children who might otherwise remain in foster care for long periods or have managing conservatorship of the child transferred without any benefits to the caregiver; and
- not later than December 31, 2022, submit a report to the legislature on the results of the study and assessment and recommendations for further action based on the study and assessment.

C.S.S.B. 1896 requires DFPS to do the following not later than January 1, 2025:

- transition the family-based safety services program to evidence-based programs under the federal Family First Prevention Services Act;
- develop an implementation plan for the transition of services; and
- develop community referrals to existing prevention and early intervention programs.

C.S.S.B. 1896 requires the executive commissioner, not later than January 1, 2024, to adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes.

C.S.S.B. 1896 requires HHSC and DFPS to jointly evaluate the federal Consolidated Appropriations Act of 2021 to determine methods for maximizing the state's receipt of federal funds to provide foster youth transition planning to adulthood and additional services for foster youth and young adults in extended foster care.

C.S.S.B. 1896 requires DFPS to transfer all money, contracts, leases, property, and obligations related to the powers and duties of the Office of Community-Based Care Transition to that office. The bill establishes that the office, DFPS, and HHSC are required to implement the bill's provisions only if the legislature appropriates money specifically for that purpose.

C.S.S.B. 1896 repeals the following provisions:

- Sections 264.1261(a) and (b), Family Code, as added by Chapter 822 (H.B. 1549), Acts of the 85th Legislature, Regular Session, 2017;
- Section 264.156(c), Family Code;
- Section 264.169, Family Code; and
- Section 40.0581(f), Human Resources Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1896 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes the following not included in the engrossed:

- an authorization for a single source continuum contractor to provide temporary emergency care for a child if the contractor is unable to find an appropriate placement for the child;
- a provision redefining "community-based care";
- provisions relating to the qualifications and selection of a single source continuum contractor;
- provisions relating to the required contract provisions of a contract with a single source continuum contractor;
- provisions relating to a waiver from any statutory and regulatory requirement to increase innovation and flexibility for achieving contractual performance outcomes;

- provisions relating to the expansion of community-based care to require DFPS to take certain actions not later than the last day of the state fiscal biennium;
- provisions authorizing a single source continuum contractor to implement its own procedures to execute DFPS statutory duties the contractor assumes and establishing that the contractor is not required to follow the DFPS procedures to execute those assumed duties; and
- provisions relating to the data access and standards governance council that develops protocols for an interoperable electronic transfer of data from single source continuum contractors to DFPS.

The substitute makes certain revisions to the requirement, which is contained in both the substitute and the engrossed, for HHSC to develop a plan to increase the placement capacity in each catchment area as follows:

- the substitute provides that HHSC must evaluate whether contracting for additional capacity for temporary placement provides the best methods for meeting capacity shortages, but the engrossed required HHSC to consider that matter;
- the engrossed required HHSC, in considering that matter, to consider whether facilities that provide mental inpatient or outpatient beds for children with severe behavioral health or mental health needs provide those best methods, but the substitute specifies that, for the evaluation it requires, such facilities are those that provide beds for crisis intervention and stabilization purposes only for such children;
- the substitute requires, which the engrossed did not, that HHSC make a recommendation to DFPS regarding contracting for additional capacity; and
- the substitute adds a requirement, which is not included in the engrossed, for a plan that includes the use of an inpatient or outpatient mental health facility to require the facility to discharge a child placed in the facility not later than 72 hours after the treating health care provider determines it is not medically necessary for the child to remain in the facility.

With respect to the Office of Community-Based Care Transition, the substitute expands the actions the office is required to take and changes the date on which the office is abolished and provisions relating to the office expire from January 1, 2027, to the date that community-based care is implemented in the last DFPS region in Texas. The substitute includes the following not included in the engrossed:

- a provision establishing that a provision relating to community-based care for children applicable to DFPS with respect to any duty assigned by the bill to the office applies to the office in the same manner as the provision would apply to DFPS; and
- a provision establishing that DFPS retains the powers and duties provided to DFPS by provisions relating to community-based care for children.

With respect to the bill's requirement for HHSC to annually evaluate the use of benefits under the Medicaid program in the STAR Health program offered to children in foster care, the substitute includes a requirement not included in the engrossed for HHSC, in conducting the evaluation to identify options to obtain federal matching funds under Medicaid, to pay for a safe home-like or community-based residential setting for a child in the conservatorship of DFPS who meets certain criteria established by the bill. The substitute changes the specified entities to whom HHSC is required to report its findings.

The substitute includes the following not included in the engrossed:

- an exemption for a child-specific contract entered into by DFPS for a child without placement from vendor performance review and reporting requirements; and
- a provision classifying DFPS as a health and human services agency for purposes of provisions establishing separate procurement procedures for these agencies.

With respect to the bill's requirement for DFPS to develop capacity for certain placement settings specified by the bill that are eligible for federal financial participation under federal law,

the substitute includes a requirement not included in the engrossed for DFPS to use providers that meet certain criteria established by the substitute.

With respect to the bill's requirement for DFPS to use data analytics collected regarding residential child-care providers to develop an early warning system to identify at-risk providers, the substitute includes the following not included in the engrossed:

- a requirement for the system to distinguish between different levels of risk using a multi-point severity scale; and
- a requirement for DFPS to make information regarding the severity scale available to the specified entities.

The substitute does not include a provision that is included in the engrossed requiring a weekly inspection by HHSC of a general residential operation that is placed on probation for continued violations and that prohibits DFPS or a single source continuum contractor from placing a child in a facility whose license HHSC has placed on probation.

The substitute includes a repeal not included in the engrossed of provisions relating to a readiness review process for community-based care contractors.

While the engrossed provided for an immediate effective date, on the necessary vote, only for the requirement that HHSC and DFPS jointly evaluate the federal Consolidated Appropriations Act of 2021 and provided September 1, 2021, as the effective date for the rest of its provisions, the substitute instead provides for the immediate effect, on the necessary vote, of all of its provisions but retains the September 1, 2021, contingency effective date.