

**SUBJECT:** Revising certain provisions relating to Texas' CBC model of foster care

**COMMITTEE:** Human Services — committee substitute recommended

**VOTE:** 7 ayes — Frank, Hinojosa, Hull, Klick, Meza, Noble, Shaheen

0 nays

2 absent — Neave, Rose

**SENATE VOTE:** On final passage, April 27 — 31-0

**WITNESSES:** For — Sandragrace Martinez, Bexar County Child Welfare Board; Kate Murphy, Texans Care For Children; Jamie McCormick, Texas Alliance of Child and Family Services; (*Registered, but did not testify:* Sarah Crockett, Texas CASA; Lauren Rose, Texas Network of Youth Services; Andrew Brown, Texas Public Policy Foundation; Kerrie Judice, TexProtects)

Against — (*Registered, but did not testify:* Aaryce Hayes, Disability Rights Texas; Tammy Narvaez, Harris County Commissioners Court)

On — Cecilia Hellrung, NAMI Texas; (*Registered, but did not testify:* Deneen Dryden, Lisa Kanne, Tiffany Roper, and Trevor Woodruff, Department of Family and Protective Services; Jean Shaw, Health and Human Services Commission)

**BACKGROUND:** Family Code ch. 264, subch. B-1 governs the state's community-based care (CBC) program, a form of foster care formerly known as foster care redesign that involves contracting out foster care housing placement and transferring certain case management services from the Department of Family and Protective Services (DFPS) to community-based nonprofit and local government entities with the ability to provide child welfare services in accordance with state and federal child welfare goals.

Human Resources Code sec. 42.002 defines "general residential

operation" as a child-care facility that provides care for seven or more children for 24 hours a day, including facilities known as residential treatment centers and emergency shelters.

The *M.D. v. Abbott* lawsuit highlighted key areas that Texas must address to ensure safety of children in foster care and resulted in court orders directing DFPS to take certain actions with respect to Texas' foster system. Although DFPS has taken actions pursuant to such court orders, concerned parties have suggested that current law does not adequately address the findings of the lawsuit nor require quality placements for every child in foster care. Some have suggested that current law should be revised to better address best contracting practices, procurement and performance measures for the CBC model, expanded capacity needs and flexibility to build capacity, or the implementation of certain federal laws.

**DIGEST:**

CSSB 1896 would make certain changes to Texas' community-based care (CBC) model regarding quality and assurance of placements for every child in foster care, expansion of CBC services, contracting practices, and the implementation of federal provisions, among other revisions.

The bill would redefine community-based care (CBC) 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 included 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 the department.

**Placements.** The bill would authorize 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 was unable to find an appropriate placement for the child.

DFPS would be prohibited from allowing a child to stay overnight in a department office.

*Plan to increase placement capacity.* The Health and Human Service Commission (HHSC), in collaboration with DFPS and each single source continuum contractor, would be required 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 make a recommendation to DFPS regarding contracting for additional capacity.

The commission would have to evaluate whether contracting for additional capacity at residential treatment centers, facilities that provided mental inpatient or outpatient beds for crisis intervention and stabilization purposes only for children with severe behavioral health or mental health needs, and other potential temporary placement options provided the best methods for meeting capacity shortages. A plan that included the use of an inpatient or outpatient mental health facility would have to require the facility to discharge a child placed in the facility not later than 72 hours after the treating health care provider determined it was not medically necessary for the child to remain in the facility.

The plan would have to include information and contingency plans to ensure adequate capacity in other facilities to meet placement needs when a facility was placed on probation, and DFPS and each single source continuum contractor would have to contract with facilities for reserve beds to ensure the department could place each child in a facility if capacity was otherwise unavailable.

*Implementation of federal law.* DFPS would be required to develop capacity to the greatest extent possible for placement settings as specified by the bill that would be eligible for federal financial participation under applicable federal law. In developing such capacity, DFPS would have to promote the use of nationally recognized tools and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization and use providers having certain experience with trafficking survivors and youth at risk of trafficking.

**Expansion of CBC.** The bill would revise statutory provisions relating to the expansion of CBC to require, by the last day of the fiscal biennium, that DFPS identify catchment areas in Texas where DFPS would implement CBC and retain an independent entity based in Texas to evaluate the implementation process and single source continuum contractor performance in each catchment area.

DFPS also would have to accept and evaluate unsolicited proposals from entities based in Texas to provide CBC services in a geographic service area where DFPS had not expanded CBC. HHSC in conjunction with DFPS would have to adopt rules to ensure that such proposals complied with state procurement laws and rules. An entity that submitted a proposal would have to meet all applicable criteria and demonstrate established connections to the area the entity proposed to serve. DFPS could change the geographic boundaries of catchment areas to enable satisfactory unsolicited proposals to be accepted and implemented.

The bill would repeal provisions relating to a readiness review process for CBC contractors.

**Single source continuum contractors.** In order to enter into a contract with HHSC to provide CBC service delivery, a nonprofit entity would have to have a majority of its board members residing in Texas, in addition to having a mission focused on child welfare.

DFPS would have to request that local stakeholders in a catchment area provide any necessary information about the area to assist the department in preparing a request for expressions of interest to provide CBC care in that area and in selecting a single source continuum contractor to provide CBC services.

A contract with a single source continuum contractor would have to be consistent with the requirements of applicable law and could only include terms authorized by the laws or rules of Texas. In regions identified for implementing CBC and in regions where CBC had been implemented, a

contractor could apply to DFPS for a waiver from any statutory and regulatory requirement in order to increase innovation and flexibility for achieving contractual performance outcomes.

A single source continuum contractor could implement its own procedures to execute the department's statutory duties that the contractor assumed and would not be required to follow the department's procedures to execute such assumed duties.

**Data Access and Standards Governance Council.** The bill would revise and add to certain statutory provisions relating to the Data Access and Standards Governance Council to specify the interoperable nature of the electronic transfer of data between single source continuum contractors and DFPS and to specify that developed protocols would have to allow contractors to perform additional contracted services along with case management functions.

The council would consist of single source continuum contractors with active contracts and certain DFPS employees and would have to meet at least quarterly during each calendar year. The council would have to develop protocols for the access, management, and security of data shared with an independent entity retained to conduct independent evaluations concerning CBC, ensuring full, unrestricted access to all relevant data necessary to perform an evaluation.

**Joint Legislative Oversight Committee.** The bill would create the Joint Legislative Oversight Committee on Community-Based Care Transition, which would be composed of six voting members, including three members of the Senate and three members of the House of Representatives appointed by the lieutenant governor and House speaker, respectively. Joint chairs would be appointed, and the committee would meet at the call of the joint chairs and could consider public testimony. The committee could employ necessary personnel through funds made available by the Legislature.

The committee would have to monitor and report to the Legislature on

funding, performance and outcomes, and challenges related to CBC. The committee also would have to monitor the continued implementation of CBC and hold public hearings on such implementation.

The committee could request any relevant information from relevant state agencies, and the agencies would be required to comply with the request, unless compliance was prohibited by state or federal law.

By January 1 of each odd-numbered year, the committee would have to submit a report of its findings and recommendations as specified by the bill.

**Office of CBC Transition.** The bill would create the Office of Community-Based Care Transition, which would be a state agency independent of but administratively attached to DFPS. The office would be required to:

- assess catchment areas where CBC services could be implemented;
- develop a plan for implementing CBC services in each catchment area, including the order and timeline for implementation;
- evaluate CBC providers;
- contract, on behalf of DFPS, with CBC providers to provide services in each catchment area;
- measure contract performance, provide contract oversight, and report outcomes of CBC providers;
- identify the resources needed to be transferred to the CBC provider for implementation, case management, operational, and administrative functions and outline the methodology for such transfer;
- create a risk-sharing funding model that would balance financial risk between Texas and the CBC provider and mitigate the financial effects of significant unforeseen changes as specified by the bill; and
- require the annual review and adjustment of the funding as specified by the bill.

DFPS would have to provide any needed administrative support to the office, and DFPS and HHSC would have to provide access to any information and legal counsel required by the office.

As soon as practicable after the effective date of this bill, but not later than October 15, 2021, the governor would have to appoint the director of the office.

The office would have to report to the Legislature at least once each calendar quarter regarding implementation of CBC in Texas.

As soon as practicable after the effective date of this bill, DFPS would have to transfer all money, contracts, leases, property, and obligations related to the powers and duties of the office to that office.

The office would be abolished and related provisions of the bill would expire on the date that CBC was implemented in the last department region in Texas.

**General residential operations.** The bill would make various changes regarding general residential operations.

*Improvement of education services.* DFPS would be required to develop a strategic plan for improving the provision of educational services to children placed in a general residential operation. The department would have to report to the Texas Education Agency (TEA) the educational outcomes of such children, and DFPS and TEA would have to annually evaluate the educational outcomes for such children and adopt strategies and policies to improve the outcomes and standards.

*Treatment model for general residential operations.* A general residential operation providing treatment services would be required to have a treatment model addressing all aspects related to children's care, including children's therapeutic needs, and would have to include certain provisions as specified by the bill. The operation would have to adopt policies and procedures to implement the treatment model and annually assess the

overall effectiveness of the adopted model.

On the issuance or renewal of a license, each general residential operation would have to submit information to HHSC on the adopted treatment model, and an operation that contracted with DFPS would have to submit information on the adopted model to DFPS on execution and renewal of a contract.

A general residential operation could change a treatment model after notifying HHSC of the change and submitting the new model to HHSC.

*Evaluation of placements.* A general residential operation considering accepting a child's placement with the operation would have to evaluate the proposed placement using certain criteria as specified by the bill. The operation would have to ensure that the evaluation would not delay the timely placement of a child.

*Limit on placements for new facility.* If DFPS or a single source continuum contractor contracted with a general residential operation providing treatment services to place children with the operation before it was licensed, the contract would have to limit the number of children that could be placed there each month and limit the number of children with a service level of specialized, intense, or intense plus until the operation exhibited sustained compliance with licensing standards.

*Transition plans.* A general residential operation would have to develop a transition plan for each child who had been placed at the operation for longer than six months.

**Early warning system.** DFPS would have to use data analytics regarding residential child-care providers 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 early warning system would have to distinguish between different levels of risk using a multi-point severity scale. DFPS would have to make information regarding the severity scale available as specified by the bill.



**Prohibition on disciplinary action.** HHSC could not issue a citation to or take any other disciplinary action against a general residential operation or a child-placing agency for failing to employ a licensed child-care administrator or child-placing administrator if the operation or agency had been without an administrator for less than 60 days and had made substantial efforts to hire a qualified administrator.

**STAR Health program.** The bill would require HHSC to annually evaluate the use of benefits under 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. In conducting the evaluation, HHSC would have to:

- 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 such children; and
- identify options to obtain federal matching funds to pay for a safe home-like or community-based residential setting for certain children as specified by the bill in the conservatorship of DFPS.

HHSC would have to report its findings from the evaluation as specified by the bill.

A contract to provide health care services to recipients under the STAR program would have to require the managed care organization to ensure it maintained a network of mental and behavioral health providers in all DFPS regions in Texas, regardless of whether CBC was implemented in any region. Such changes would apply only to a STAR Health contract entered into, renewed, or extended on or after the bill's effective date.

*Telehealth pilot program.* HHSC in coordination with DFPS and single source continuum contractors would have 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.

**Benefits related to kinship verification.** Before a court entered 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, the court would have 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; and
- the child-placing agency conducting the verification for the individual's permanency care assistance benefits had been notified of the individual's decision to decline benefits.

**Treatment foster care.** DFPS and single source continuum contractors would be required to:

- lessen employment restrictions to allow single parents to participate in treatment foster care, when quality care was assured;
- expand the eligible age for treatment foster care to include children 10 years of age and older;
- prepare and plan for the subsequent placement by the 30th day after a child was 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.

**Mentors for foster children.** DFPS and each single source continuum contractor, in collaboration with certain organizations and entities, would have to examine the feasibility of designing a volunteer mentor program for children in congregate care settings. By December 31, 2022, DFPS would have to report its finding and recommendations for establishing such a program. This provision would expire September 1, 2023.

**Provisional licenses.** The bill would authorize the issuance of certain provisional licenses and would change issuance requirements for other

provisional licenses.

*Kinship providers.* The HHSC executive commissioner would have to authorize a child-placing agency to issue a provisional license for a kinship provider who met the basic safety requirements provided by commission rule. The executive commissioner would have to ensure that implementation of this provision would not reduce the amount of federal money available to Texas.

*Child-care administrator.* The bill would authorize HHSC, rather than DFPS, to issue a provisional child-care administrator's license to an applicant licensed in another state who applied for a license in Texas if the applicant met certain criteria. The bill also would authorize HHSC to issue a provisional child-care administrator's license to an applicant who would otherwise qualify for a license but did not have the required one year of full-time experience in management or supervision of child-care personnel and programs and who complied with any additional requirements as established by the HHSC executive commissioner.

**Electronic case management system.** DFPS would have to develop a plan to eliminate the department's use of paper case files and fully transition to an electronic case management system. The electronic system would have to be implemented by September 1, 2023, and these provisions would expire September 1, 2025.

**Access to database.** The bill would require HHSC to make the child-care licensing division's searchable database accessible to HHSC and DFPS investigators and would require DFPS to make the DFPS searchable database accessible to HHSC and DFPS investigators.

**Audit.** The state auditor would have to annually review the department's performance-based contracts to determine whether the department was properly enforcing contract provisions and to provide recommendations for improving department oversight and execution of contracts.

**Miscellaneous contracting provisions.** The bill would exempt a child-

specific contract entered into by DFPS for a child without placement from vendor performance review and reporting requirements.

DFPS would be classified as a health and human services agency for purposes of provisions establishing procurement procedures for health and human services agencies.

**Other provisions.** The bill would include 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 model to determine whether implementing the model could benefit children in Texas. By December 1, 2022, HHSC would have to report its findings to the governor and the Legislature.

By December 1, 2022, DFPS would have 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 such investigations.

The bill would require DFPS to conduct a study on extending permanency care assistance benefits to certain individuals and assess the potential impact and favorable permanency outcomes of such extension on children as specified by the bill. By December 31, 2022, DFPS would have to report the result of the study and certain recommendations to the Legislature. These provisions would expire September 1, 2023.

By January 1, 2025, DFPS would have to transition the family-based safety services program to evidence-based programs under the Family First Prevention Services Act, develop an implementation plan for the transition, and develop community referrals to existing prevention and early intervention programs.

As soon as practicable after the effective date of the bill, but not later than January 1, 2024, The HHSC executive commissioner would have to adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes as specified by the bill.

HHSC and DFPS would have to jointly evaluate the federal Consolidated Appropriations Act to determine methods for maximizing Texas' 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.

The affected agencies would have to implement provisions of the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, the entities could but would not be required to implement the bill's provisions with other appropriations available for the purpose.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of about \$32 million to general revenue through fiscal 2023.