

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 368
By: Zaffirini
Health & Human Services
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Committee Report (Substituted)

DIGEST AND PURPOSE

The goal of permanency planning is to ensure that children grow up in families rather than institutional settings. Permanency planning is supposed to be done for all young people who are under 22 years of age. Currently, there are few children residing in institutions who have permanency plans with the objective of family placement. For many children, permanency plans do not exist, and according to some providers, many institutions are not even aware of the permanency planning requirements and do not know how to do a permanency plan. The purpose of C.S.S.B. 368 is to address some of the problems that are occurring in the implementation of the permanency planning policy by instructing the Health and Human Services Commission and other appropriate agencies to develop uniform permanency planning procedures.

C.S.S.B. 368 requires the Health and Human Services Commission to make permanency planning procedures across health and human agencies more uniform. It requires community resource coordination groups, including the Health and Human Services Commission, the Department of Protective and Regulatory Services, and the Texas Department of Mental Health and Mental Retardation, to develop permanency planning for children in nursing homes; both the primary agency and the parents or guardians to be involved in permanency planning; agencies to appoint an advocate in certain cases; a child to be placed on a Medicaid waiver list within 24 hours of being placed in an institution; and requires the Department of Human Services (DHS) to include permanency planning compliance as an item to be included in the DHS survey process for facilities that serve children.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTIONS 1 (Section 531.159, Government Code) and 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 531D, Government Code, as added by Chapter 241. Acts of the 75th Legislature, Regular Session, 1997, as follows:

SUBCHAPTER D. PERMANENCY PLANNING

Sec. 531.151. DEFINITIONS. Adds definitions of “child” and “community resource coordination group,” and redefines “institution.”

Sec. 531.152. POLICY STATEMENT. No changes.

Sec. 531.153. DEVELOPMENT OF PERMANENCY PLAN. (a) Adds language relating to an exception as provided by Subsection (b) and adds language requiring the Health and Human Services Commission (commission) and each appropriate health and human services agency to develop procedures to ensure that a permanency plan is developed for each child who resides in an institution in this state on a temporary or long-term basis or with respect to whom the commission or appropriate health and human services agency is notified in advance that institutional care is sought.

(b) Requires the Department of Protective and Regulatory Services (department) to develop a permanency plan as required by this subchapter for each child who resides in an institution in this state for whom the department has been appointed permanent managing conservator. Provides that the department is not required to develop a permanency plan under this subchapter for a child for whom the department has been appointed temporary managing conservator, but is authorized to incorporate the requirements of this subchapter in a permanency plan developed for the child under Section 263.3025 (Permanency Plan), Family Code.

(c) Requires the commission and other appropriate health and human services agencies to develop to the extent possible uniform procedures applicable to each of the agencies and each child who is the subject of a permanency plan that promote efficiency for the agencies and stability for each child.

(d) Authorizes the Texas Department of Human Services (TDHS), the Texas Department of Mental Health and Mental Retardation (MHMR), and the department, in implementing permanency planning procedures under Subsection (a) to develop a permanency plan for each child, to carry out certain duties.

(e) Authorizes TDHS, MHMR, and the department to solicit and accept gifts, grants, and donations to support the development of permanency plans for children residing in institutions by individuals or organizations not employed by or affiliated with those institutions.

(f) Requires a health and human services agency that contracts with a private entity under Subsection (d) to develop a permanency plan to ensure that the entity is provided training regarding the permanency planning philosophy under Section 531.151 and available resources that will assist a child residing in an institution in making a successful transition to community-based residence.

Sec. 531.154. NOTIFICATION REQUIRED. (a) Requires an institution, not later than the third day after the date a child is initially placed in the institution, to notify certain groups under certain conditions.

(b) Requires TDHS to notify the local mental retardation authority, as defined by Section 531.002 (Definitions), Health and Safety Code, of a child's placement in a nursing home if the child is known or suspected to suffer from mental retardation or another disability for which the child is authorized to receive services through MHMR.

Sec. 531.155. OFFER OF SERVICES. Authorizes each entity receiving notice of the initial placement of a child in an institution under Section 531.154 to contact the child's parent or guardian to ensure that the parent or guardian is aware of certain services and options.

Sec. 531.156. DESIGNATION OF ADVOCATE. (a) Requires TDHS, except as provided by Subsection (b), to designate a person, including a member of a community-based organization, to serve as a volunteer advocate for a child residing in an institution to assist in developing a permanency plan for the child under certain conditions.

(b) Requires MHMR to designate the person to serve as a volunteer advocate for a child in accordance with Subsection (a) if the child resides in an institution operated by the department.

(c) Authorizes the person designated by TDHS or MHMR to serve as the child's volunteer advocate under this section to be a person selected by the child's parent or

guardian, except that the person is prohibited from being employed by or under a contract with the institution in which the child resides; an adult relative of the child; or a representative of a child advocacy group.

(d) Requires TDHS or MHMR, as appropriate, to provide to each person designated to serve as a child's volunteer advocate information regarding permanency planning under this subchapter.

Sec. 531.157. COMMUNITY-BASED SERVICES. Requires a state agency that receives notice of a child's placement in an institution to ensure that, on or before the third day after the date the agency is notified of the child's placement in the institution, the child is also placed on a waiting list for waiver program services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, appropriate to the child's needs.

Sec. 531.158. LOCAL PERMANENCY PLANNING SITES. Redesignated from Section 531.154.

Sec. 531.159. MONITORING OF PERMANENCY PLANNING EFFORTS. (a) Requires the commission and each appropriate health and human services agency to require a person who develops a permanency plan for a child residing in an institution to identify and document in the child's plan all ongoing permanency planning efforts at least semiannually to ensure that, as soon as possible, the child will benefit from a permanent living arrangement with an enduring and nurturing parental relationship.

(b) Sets forth provisions relating to the initial placement of a child in an institution and the extension of the placement, if necessary.

(c) Requires the commissioner of human services (commissioner), the commissioner's designee, or another person with whom the commission contracts, on receipt of a recommendation made under Subsection (b) for an extension of a child's placement, to conduct a review of the child's placement. Authorizes the commissioner or the commissioner's designee, based on the results of the review, to approve a six-month extension of the child's placement if the extension is appropriate.

(d) Authorizes the child to continue residing in the institution after the six-month extension approved under Subsection (c) only under certain conditions.

(e) Requires the commissioner or the commissioner's designee to conduct a semiannual review of data received from health and human services agencies regarding all children who reside in institutions in this state. Requires the commissioner, the commissioner's designee, or a person with whom the commission contracts to also review the recommendations of the chief executive officers of each appropriate health and human services agency or the officer's designee if the officer or the officer's designee repeatedly recommends that children continue residing in an institution.

(f) Requires the commission by rule to develop procedures by which to conduct the reviews required by Subsections (c), (d), and (e). Requires the commission, in developing the procedures, to seek input from the work group on children's long-term care and health programs established under Section 22.035 (Work Group on Children's Long-Term Care and Health Programs), Human Resources Code.

Sec. 531.160. INSPECTIONS. Sets forth provisions relating to the inspection of an institution and the extent to which the institution is complying with the permanency planning requirements under this subchapter.

Sec. 531.161. ACCESS TO RECORDS. Requires each institution in which a child resides to allow the commission and appropriate health and human services agencies access to the child's records to assist the commission or agency complying with the requirements of this subchapter.

Sec. 531.162. PERMANENCY REPORTING. Redesignated from Section 531.155. (a) No changes.

(b) Requires the commissioner to submit a semiannual report to the governor and the committees of each house of the legislature that have primary oversight jurisdiction over health and human services agencies. Requires the report to contain certain information.

Sec. 531.163. EFFECT ON OTHER LAW. Provides that this subchapter does not affect responsibilities imposed by federal or other state law on a physician or other professional.

SECTION 2. (a) Requires the Health and Human Services Commission to conduct a study regarding certain information.

(b) Requires the commission, based on the results of the study conducted under this section, by rule to modify the method of reimbursement provided for permanency planning activities to incorporate modifications determined to be effective in enhancing those activities.

SECTION 3. Repealer: Chapter 2420, Health and Safety Code, as added by Chapter 913, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 4. Requires the commissioner of health and human services and each appropriate health and human services agency, notwithstanding SECTION 6 of this Act, to begin conducting the reviews required by Section 531.159, Government Code, as added by this Act, not later than March 1, 2002.

SECTION 5. Requires that, if before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation, the state agency request the waiver or authorization and authorizes the delay of implementation of that provision until the waiver or authorization is granted.

SECTION 6. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from original in SECTION 1 by amending Sections 531.151, 531.152, and 531.154, and adding new Sections 531.155 - 531.163, Government Code, whereas the original only amended Section 531.153, Government Code.

Eliminates original SECTION 2, which amended Section 242.043(a), Health and Safety Code and replaces it with a new SECTION 2 relating to a study conducted by the Health and Human Services Commission.

Eliminates original SECTION 3, which amended the heading to Chapter 2420, Health and Safety Code, as added by Chapter 913, Acts of the 75th Legislature, Regular Session, 1997, and replaces it

with a new SECTION 3 repealing Chapter 2420, Health and Safety Code, as added by Chapter 913, Acts of the 75th Legislature, Regular Session, 1997.

Eliminates original SECTION 4, which amended Chapter 2420, Health and Safety Code, as added by Chapter 913, Acts of the 75th Legislature, Regular Session, 1997, and replaces it with a new SECTION 4 relating to the date by which the commissioner of health and human services and each appropriate health and human services agency is required to begin conducting the reviews required by Section 531.159, Government Code.