

Child Protection Legislative Update: 85th Legislative Session

Texas Supreme Court Children's Commission

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1

House Bill 4, Effective 9/01/17

Enacted Texas Family Code 264.755 (Caregiver Assistance Agreement)

- CAA provides monetary assistance for caring for children in TMC.
- Eligibility: Less or equal to 300% of federal poverty level.
- Capped at 50% of the basic foster care rate for a child (about \$325.00 per child).
- Monetary assistance for one year with one six month extension for good cause.
- Once caregiver takes PMC, may also receive annual reimbursement of other expenses up to \$500 per year for three years or until the child's 18th birthday, whichever occurs first.
- The statute also enacts a criminal offense of fraud with civil penalties.
- Requires the Department to file an annual report on the funds disbursed, permanency outcomes for the children who are placed with relatives, and the length of time between the beginning of CAA and the award of PMC to the caregiver.

2

House Bill 5, Effective 9/01/17

Department of Family and Protective Services as Stand-alone Agency

- Currently part of Health and Human Services Commission (HHSC)
- HHSC will retain responsibility for administering contracts with managed care providers for medical and behavioral health care for children, handle administrative services including payroll, procurement, information resources, rate setting, purchasing and contracting.
- DFPS Commissioner directed to establish certain divisions within the agency (investigations, legal, operations, etc)

3

House Bill 5, Effective 9/01/17

Section 40.021, Amendment, Human Resources Code

- Re-establishes the DFPS Council to assist the commissioner in management and operations of Department, and in development of rules and policies for the Department.

Section 40.027, Amendment, Human Resources Code

- Sets a two-year term limit for the commissioner of the Department. The commissioner will be appointed by Governor with advice and consent from Senate and will report directly to the Governor.

Section 162.0086, NEW, Family Code

- Requires the Department to provide to each person seeking to adopt a child information regarding the right of a child's sibling to file suit for access to that child under Sections 102.0045 and 153.551, Texas Family Code.

4

House Bill 7, Effective 9/01/17

Section 107.002(b) and (c), Powers and Duties of the Guardian ad Litem (GAL)

- Requires GAL to interview educators and child welfare service providers.
- GAL is entitled to have access to a child in the child's placement, be consulted and provide comments regarding the child's placement, receive notification and attend meetings related to the child's service plan, and attend court-ordered mediation regarding the child's case.
- GAL is charged with evaluating whether the child welfare service providers serving children are protecting the child's best interests regarding their care, treatment, services, and ALL other rights listed in Section 263.008 (Foster Youth Bill of Rights).

5

House Bill 7, Effective 9/01/17

Duties of the Child's Attorney; Continued Representation (107.003(b), 107.004(d-3), 107.016)

- A child's Attorney now has an additional duty to review the child's safety and well-being, including any effects of the trauma to the child, and take appropriate action, including requesting a review hearing when necessary to address an issue of concern.
- Statute is now clear that court can retain the Attorney on the child's case as long as the child is in the Department's managing conservatorship.

6

House Bill 7, Effective 9/01/17

Section 262.116, Limits on Removal

- Prohibits the Department from taking possession of a child based on evidence that the parent:
 - Homeschooled the child,
 - is economically disadvantaged,
 - has been charged with a nonviolent misdemeanor (other than one listed in Title 5 (Offenses Against the Person) or Title 6 (Offenses Against the Family) of the Penal Code, or involves family violence as defined by Section 17.004 of the Family Code),
 - provided or administered low-THC cannabis and that was prescribed for the child,
 - declined immunization for a child for reasons of conscience, including religious belief.
- Also requires the Department to train its caseworkers regarding the prohibitions on removal provided under this section.
- Does not prohibit the Department from gathering or offering evidence of the actions described in subsection (a) as part of an action to take possession of a child.

7

House Bill 7, Effective 9/01/17

Section 261.501, Protective Order in Certain Cases

- Department can file an application for a Protective Order (PO) on its own or jointly with a parent, relative or caregiver based on the child being a victim of abuse *or neglect*, and the presence of an immediate or continuing danger of abuse or neglect to the child.
- The Department is authorized to use this PO only after determining that a PO is not available under Title 4, Section 82.002.
 - Essentially, Department would use only when the basis of the PO is an element of abuse not currently included in Title 4, Section 71.004.

8

House Bill 7, Effective 9/01/17

- **Section 161.001(c), Involuntary Termination of the Parent-Child Relationship**
 - Prohibits courts from making findings and ordering termination based on evidence the parent homeschooled the child, is economically disadvantaged, has been charged with a nonviolent misdemeanor (other than one listed in Title 5 or 6 of the Penal Code, or involves family violence as defined by Section 71.004 of the Family Code), administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed or for declining immunization for a child for reasons of conscience, including religious belief.
- **Section 161.001(e), Evidence of (c)**
 - Authorizes the Department to offer evidence of the actions described in Section 161.001(c) as part of an action to terminate the parent-child relationship.

9

House Bill 7, Effective 9/01/17

- **Section 161.001(d), "O" Grounds**
 - Prohibits courts from ordering termination on "O" grounds if a parent proves by preponderance of the evidence that the parent was unable to comply with specific provisions of the court order, that the parent made a good faith effort to comply with the order, and that failure to comply is not attributable to any fault of the parent.
- **Section 161.206 (a-1), Order Terminating Parental Rights**
 - Restricts courts from terminating the parental rights of a parent unless the court finds by clear and convincing evidence grounds for termination for that parent.

10

House Bill 7, Effective 9/01/17

Section 262.013, Voluntary Temporary Managing Conservatorship

- Prevents a person's voluntary agreement to TMC to be used as an admission by the parent that the parent engaged in conduct that endangered the child.

Section 262.014, Disclosure of Certain Evidence

- Department will be required, before the adversary hearing, to provide the name of any person the Department intends to call as a witness to the allegations (except a Department employee), a copy of any offense report relating to the allegations contained in the petition that will be used to refresh a witness's memory, and a copy of any photo, video or recording that will be presented as evidence.

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House Bill 7, Effective 9/01/17

Section 262.206, Ex Parte Hearings Prohibited

- Section 262.206 (Ex Parte Hearings Prohibited) prohibits a court from holding an ex parte hearing unless otherwise authorized by Chapter 262 or other law. For example, emergency removal hearings under Chapter 262, temporary protective order hearings under Chapter 81, and temporary orders hearings under Chapter 105.

12

House Bill 7, Effective 9/01/17

Section 263.0021, Notice of Hearings; Presentation of Evidence

- New subsection (e) requires that notice of a hearings conducted under Chapter 263 (Status, Permanency Reviews) state that individuals entitled to notice may, but are not required to, attend and be heard at the hearing.
- New subsection (f) requires the Court to determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child.

13

House Bill 7, Effective 9/01/17

Section 262.0022, Review of Placement; Findings

- Requires Court at each hearing under Chapter 262 to review the placement of each child in TMC or PMC who is not placed with a relative caregiver or designated caregiver and make a finding as to whether the Department is able to place the child with a relative or other designated caregiver and state the evidence that supports its finding either way.

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House Bill 7, Effective 9/01/17

Section 263.002 Review of Placements by Court

- Requires Court at each permanency hearing under Chapter 263 to review the placement of each child in TMC or PMC who is not placed with a relative caregiver or designated caregiver and make a finding as to whether the Department is able to place the child with a relative or other designated caregiver and state the evidence that supports its finding either way.

Section 263.5031, Permanency Review After Final Order

- Requires the judge to determine whether the Department has placed the child with a relative or other designated caregiver, as opposed to a foster home or non-relative caregiver placement.

15

House Bill 7, Effective 9/01/17

Section 264.018(d-1), Notice of Placement Change

- Now requires the Department to provide notice within 24 hours AFTER a placement change to the child's managed care organization.
- The managed care organization must in turn provide notice of the placement change to the child's primary care physician before the end of the second business day.

Section 533.0056 – Govt Code, Notice of Placement Change

- Section 533.0056 requires that any contract between a managed care organization and HHSC to provide health services to a child in foster care requires notice of a placement change to each specialist treating the child, and to coordinate the transition of care from one primary care physician to a new treating primary care physician and treating specialists, if any.

16

House Bill 7, Effective 9/01/17

Section 263.401(a), (b), (b-1), Automatic Dismissal Without Court Order

- Court jurisdiction automatically terminates without a court order unless the court has commenced the trial on the merits or granted an extension under Section 263.401(b) or (b-1) by the original dismissal date.
- The court must provide notice of the automatic dismissal date at least 60 days before the dismissal date.

Section 263.402(b)

- Section 263.402 (Limit on Extension) which currently requires a party to make a motion to dismiss the suit once the deadline has passed or the right is waived is repealed - motion to dismiss is no longer required because the court loses jurisdiction unless the court has commenced a trial on the merits or ordered an extension under Section 263.401.

17

House Bill 7, Effective 9/01/17

Section 263.403(a) (2) (B) Transition Monitored Return

- Allows a court to order a transition of the child to the child's parents on a return and monitor while a parent completes requirements imposed under a service plan *and specified in the temporary order*.
 - Designed to allow a gradual return of the child to their parent's home under a monitored return before a parent has completed all requirements of the service plan.

Section 263.403 (a-1)

- Unless a court has already granted an extension under Section 263.401(b), the Department or the parent may request an additional six months under Section 263.403 (a-1) to complete any remaining requirements of the service plan *specified in the temporary order* that are mandatory for the return of the child.

Section 263.403(c)

- If the court must terminate the monitored return **or the transition plan order**, the court must set the matter for dismissal no later than six months from the date terminating the transition order or the date the child is moved.

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House Bill 7, Effective 9/01/17

- **If the court has not granted an extension of the 12 month deadline under 263.401 (b):**
- The court can order a Regular Monitored Return under Section 263.403(a)(2)(A).
 - The Family Code does not authorize any type of extension associated with a Monitored Return ordered pursuant to Section 263.403(a)(2)(A). Per Section 263.403(b), the court must schedule a new dismissal date not later than the 180th day after the court enters the order unless the court commences a trial on the merits. OR
- The court can order a Transition Monitored Return under 263.403 (a)(2)(B).
 - Under new Section 263.403(a-1), the Court can order an additional six months for the parent to complete the services requirements *specified in the temporary order* during a Transition Monitored Return granted pursuant to Section 263.403(a)(2)(B), but only if no extension under Section 263.401 was already granted.

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House Bill 7, Effective 9/01/17

After an extension period has been granted pursuant to 263.401(b):

- The court can order a Regular Monitored Return under either Section 263.403(a)(2)(A).
- OR
- The court can order a Transition Monitored Return under 263.403(a)(2)(B), *but the additional six months of 263.403 (a-1) is not available.*

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House Bill 7, Effective 9/01/17

Section 266.005, Health Care Consultation

- Requires a Court to note on the record when the Court declines to follow the recommendation of a health care professional who has been consulted regarding a health care service, procedure, or treatment for a child in conservatorship of the Department.

21

House Bill 7, Effective 9/01/17

Chapter 572, Health & Safety Code, Admission of Children for Inpatient Mental Health

The Department is prohibited from admitting to an inpatient mental health facility a minor in DFPS conservatorship unless a physician states that the minor is a person with a mental illness or demonstrates symptoms of a serious emotional disorder, **and** presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

Provides that admission to an inpatient mental health facility is a significant event for purposes of Section 264.018, Texas Family Code, which requires notice to all parties entitled to notice under that section, and to the court of continuing jurisdiction, within three business days from the admission.

The Department is required to periodically review the need for continued inpatient treatment, and if the Department determines there is no longer a need, the Department must notify the facility administrator that the minor may no longer be detained unless an application for court-ordered mental health services is filed.

22

House Bill 1542, Effective 9/01/17

Section 263.001(3-a), Definitions

- Redefines “least restrictive setting” to mean a placement that, in comparison to all other available placements, is the most family-like setting.

Section 263.001(c)

- For children older than six, if a suitable relative or other designated caregiver is not available as a placement, placing the child in a foster home or a cottage home (even though part of a general residential operation and considered a congregate care facility under federal law), is considered under state law to be the least restrictive setting.
- For children younger than six, if there is no suitable relative or other designated caregiver, the least restrictive setting is a foster home. A cottage home can be considered the least restrictive only if the Department determines it is in the best interest of the child to be placed in the cottage home.

23

House Bill 1542, Effective 9/01/17

Section 264.107, Placement of Children

- Requires the Department to consider whether a placement is in the child’s best interest, and in determining so, shall consider whether the placement is the least restrictive setting for the child, in closest geographic proximity to the child’s home, is most able to meet the identified needs of the child, and satisfies any expressed interests of the child relating to placement, when developmentally appropriate.

24

House Bill 1549, Effective 9/01/17

Section 261.204, Annual Child Fatality Report

- Department must publish statewide aggregated child fatality report by March of each year, and it must contain information regarding abuse or neglect, the age and sex of the child, and the county in which the fatality occurred. Department must also collect data on near fatalities.

Section 261.301(j), After Hours Investigators

- Requires the Department to designate employees to serve as after-hours investigators and responders in certain geographic areas with demonstrated need.

25

House Bill 1549, Effective 9/01/17

Section 264.1075, Assessing Needs of Child

- Requires the Department to assess whether a child has a developmental disability as soon as possible after the child is placed in the Department's conservatorship, and refer child for services as soon as possible.

Section 264.1261, Capacity Needs Plan

- Requires the Department to develop a capacity needs and availability assessment of each type of foster care and kinship placement in each region where Community-Based Care has not been implemented.

26

House Bill 1556, Effective 9/01/17

Section 29.015, Special Education Decision-Making for Children in Foster Care

- Allows a foster parent to act as a parent of a child with a disability, to make decisions related to special education and participate in the ARD committee process.
- Requirement for the child to reside in the home for 60 days no longer applies.
- The foster parent must agree to participate in making special education decisions, and must complete a training program. See also TFC Amended Section 263.0025.
- The Department must inform the school district within five days of enrollment that a foster parent is unwilling or unable to serve as a parent in this capacity.

27

House Bill 1556, Effective 9/01/17

Section 29.0151, Appointment of Surrogate Parent for Certain Children

- Allows a child with a disability to have a trained surrogate parent appointed for the child by the court and requires a school district to appoint a surrogate parent if the district was unable to identify and locate the child's parent or if the child's foster parent was unwilling or unable to serve as a parent.
- Surrogate parent duties include: ensuring the child's due process rights are protected, visiting the child and the school, reviewing the child's education records, and consulting with any person involved in the child's education.

28

House Bill 871, Effective 9/01/17

House Bill 3052, Effective 9/01/17

Section 34.001, et. Seq. Authorization Agreement for Nonparent Adult Caregiver – HB 871

- Renamed Chapter 34; authorizes parent to enter into an agreement with an “adult caregiver”, rather than a “relative” of the child.
- Still allows the designated person to perform the acts such as authorize medical care and enroll the child in school, among other things.
- Clarifies that when used in a Parental Child Safety Placement or during an investigation by the Department, serving as an adult caregiver does not subject the caregiver to any licensing or regulation of a residential child-care facility governed by Human Resource Code Chapter 42.
- Children who are the subject of an authorization agreement under Chapter 34 are not considered to be placed in foster care and parties to the agreement are not subject to any law or rule governing foster care providers.

29

House Bill 871, Effective 9/01/17

House Bill 3052, Effective 9/01/17

- **HB 871** adds a requirement that the agreement state that it is for a term of 6 months from date of execution which renews automatically for 6 month terms OR include a specific expiration date that is earlier than 6 months. Termination or continuation of the agreement must comply with Sections 34.0075 and 34.008.
- **HB 3052** provides that notice requirements under Section 34.005 require that a parent who is a party to the agreement must mail the executed agreement by certified mail, return receipt requested or international registered mail, return receipt requested within 10 days of the date the agreement is executed to any parent who is not also a party.
- Also allows adult caregivers to obtain copies or originals of state-issued personal identification documents for the child, including the child’s birth certificate, and to the extent authorized under federal law, copies or originals of federally issued personal identification documents for the child, including the child’s social security card.

30

House Bill 3052, Effective 9/01/17

Section 102.008(b), Amendment, and Section 160.6035, Amendment, Family Code

- **HB 3052** requires that a petition must include a statement as to whether there is protective order in effect or an application pending under Title 4, Family Code, Chapter 7A, Code of Criminal Procedure, or an order for emergency protection under Article 17.292, Code of Criminal Procedure, and must attach a copy of each order in effect, if a party to the suit or a child of a party was the applicant or victim of the conduct alleged in the application, and the other party was the respondent or defendant.
- If a copy of an order in effect is not available at the time of filing of the petition, the petition must state that a copy of the order will be filed with the court before any hearing.
- Title IV-D agency (OAG) exempted from these requirements.

31

House Bill 3859, Effective 9/01/17

Chapter 45, Rights of Conscience for Service Providers

- Prohibits the Department or an SSCC from discriminating or taking any adverse action against a child welfare services provider that makes a decision based on a sincerely held religious belief.
 - Applies to any agency, municipality, political subdivision, department, bureau, board, commission, office, agency, council, and institution of higher education.
 - Creates a cause of action if the service provider is directly or indirectly adversely affected; waives sovereign immunity.
 - Department must refer or place children for child welfare services with an alternate provider in the catchment area or a nearby catchment area.

32

House Bill 3859, Effective 9/01/17

- Newly enacted **Section 264.107 (HB1542)** provides that in selecting a placement for a child, the Department shall consider whether the placement is in the child's best interest.
 - In determining best interest, the department shall consider whether the placement is the least restrictive setting, the closest in geographic proximity to the child's home, is the most able to meet the identified needs of the child, and satisfies any expressed interests of the child relating to placement, when developmentally appropriate.
- Section 45.009(g) provides that Chapter 45 may not be construed to allow a child welfare services provider to deprive a minor of the rights, including the right to medical care, provided by Chapters 32, 263, and 266, Family Code.
- Section 45.009(h) of Chapter 45 may not be construed to prohibit the Department from exercising its duty as the child's managing conservator to make decisions in the child's best interest or obtaining necessary child welfare services from an alternate child welfare services provider.

33

Senate Bill 11, Effective 9/01/17

Community Based Care (CBC)

Section 264.151, NEW, Family Code

- Embodies legislative findings and intent regarding CBC provided by nonprofit and local governmental entities to provide foster care and kinship care, including case management.
- Legislature intends for CBC to include goals related to safety, minimizing placement changes, placement with siblings, placement in the child's home community, and respecting the child's culture, presenting opportunities for normal experiences and activities, reunification with parents, and in the alternative, placement with relative or kinship caregivers if reunification is not possible.

Section 264.152, NEW, Family Code

- Includes definitions of case management, catchment area, and community-based care.
 - Case management means the provision of case management services for any child in the TMC or PMC, the child's family, a young adult in extended care, a relative or kin caregiver, or a child in the catchment area through the Interstate Compact on the Placement of Children (ICPC), visits with child and family, permanency planning, coordination and monitoring of services, assumption of all court-related duties (court reports, service of parties, notice of events), and any other function or service the Department determines is necessary to allow the SSCC to assume case management responsibility.

34

Senate Bill 11, Effective 9/01/17

Section 264.154, SSCC must be nonprofit or governmental entity

- Requires any SSCC seeking to contract to provide foster care service delivery to be a nonprofit entity with an organizational mission focused on child welfare. The provider can also be a governmental entity.

Section 264.155, Contract Requirements

- Must include an implementation timeline for implementing case management services for children, families, and relative and kinship caregivers as well as family reunification support services that will be provided once the child is returned to the child's family.
- Provisions regarding access to the Department's data, and participation in a Data Access and Standards Governance Council created by SB11.
- All caregivers for all child placing agencies in the catchment area and under contract with the SSCC are similarly trained so they can provide reciprocal caregiving, respite, and overnight care among the different providers and homes.

35

Senate Bill 11, Effective 9/01/17

Section 264.155, Contract Requirements (cont'd)

- Must articulate how SSCC will maintain a diverse network of service providers offering a range of capacity options while accommodating children from diverse cultural backgrounds.
- Must allow for a performance review starting 18 months after the SSCC starts providing case management and family reunification services in a catchment area, and must spell out financial penalties for failing to meet performance outcomes as well as financial incentives for exceeding performance outcomes.
- Require that the SSCC give hiring preference to Department employees who are displaced once case management transfers to the SSCC.
- Must include a community engagement plan to ensure communication and collaboration with local stakeholders in the catchment area.
- **Must include a provision that requires the SSCC and its contractors comply with any applicable court order issued by a court of competent jurisdiction or any order imposing a requirement on the Department that relates to functions assumed by the contractor.**

36

Senate Bill 11, Effective 9/01/17

Section 264.156, Readiness Review

- The Department must conduct a readiness review before expanding CBC outside of the initial catchment area where it has been implemented.
- Must assess ability of SSCC to take on responsibilities and administrative requirements for delivering foster care services, relative and kinship services, case management, evidence-based, promising practice, or evidence-informed supports, and capacity for inpatient and outpatient services and supports for children at all service levels.
- Must include description of how SSCC will avoid/eliminate conflicts of interest.
 - Department may not transfer services to the contractor until the Department has determined that the plan to address conflicts of interest is adequate.

37

Senate Bill 11, Effective 9/01/17

Section 264.157, New Catchment Areas

- Requires Department, no later than 12/31/19, to identify up to eight catchment areas that are best suited to implement CBC, and where CBC has been implemented, evaluate the implementation process and contractor performance in each catchment area.
- The Department may change the existing geographic catchment area boundaries as necessary to align with specific communities.
- The Department is responsible for providing and ensuring the continuity of services for children and families during any transition period to community based care in a catchment area.

38

Senate Bill 11, Effective 9/01/17

Section 264.158, Transfer of Case Management Services

- Requires transfer of Case Management Services to SSCC of all children, relative and kinship caregivers, and families receiving services from a contractor.
 - 9/1/17 CM will transfer to ACH Our Community, Our Kids (OCOK) project in Tarrant and surrounding counties.
- The statute also requires the transfer of case management services to any catchment area to which CBC is expanded after September 1, 2017, after the Department has completed its readiness review under Section 264.156.
- The Department must also work with the SSCC to establish a case transfer planning team to address data transfer, file transfer procedures, and notification to relevant persons regarding the transfer of services to the contractor.

39

Senate Bill 11, Effective 9/01/17

Section 264.159, Data Access and Standards Governance Council

- Establishes a Council which will develop protocols for the electronic transfer of data from the SSCC to the Department to enable the performance of case management functions.

40

Senate Bill 11, Effective 9/01/17

Section 264.160, NEW, Family Code

- Requires each SSCC to maintain minimum insurance coverage, to minimize risk of insolvency and protect against damages.

Section 264.161, NEW, Family Code

- Requires that the SSCC assume the statutory duties of the Department in connection with the delivery of foster care services, and relative and kinship caregiver services.

Section 264.162, NEW, Family Code

- Requires the Department to develop a formal review process to evaluate an SSCC's implementation of the placement services and case management services in a catchment area. This is in addition to the Section 264.155(5) requirement that the Department conduct a performance review 18 months after the contractor begins providing case management and family reunification services.

41

Senate Bill 11, Effective 9/01/17

Section 264.163, NEW, Family Code

- States that the Department will be represented in court in accordance with Section 264.009, Family Code, in those areas where a SSCC is providing family-based services or CBC services.

Section 264.164, NEW, Family Code

- Records and information held by the SSCC are subject to Govt Code Chapter 552 (Public Information Act) in the same manner as the records of the Department.
- Subchapter C of Chapter 261 which deals with confidentiality and privileged communication applies to the SSCC as well.

42

Senate Bill 11, Effective 9/01/17

Section 264.165, Termination

- Requires the SSCC to provide 60-days-notice before terminating a contract to provide services. The Department may terminate a contract with an SSCC with 30-days-notice.

Section 264.166, Termination / Contingency

- Requires the Department to have a contingency plan in the event of early termination.
- SSCC is required to provide a transfer plan to support the Department's contingency plan to ensure continuity of services. SSCC must submit an updated transfer plan each year and six months before the end of each contract period.
- If the SSCC gives notice of early termination, the Department may at that point enter into a contract with a different SSCC for the sole purpose of assuming the contract being terminated.

43

Senate Bill 11, Effective 9/01/17

Section 264.167, Attorney-Client Privilege

- Provides that an employee, agent, or representative of a SSCC is considered to be a client representative of the Department for purposes of the attorney-client privilege governed by Rule 503 of the Texas Rules of Evidence.

Section 264.168, Review of Contractor Recommendations

- Allows, but does not require, the Department to review, approve, or disapprove a contractor's recommendation with respect to a child's permanency goal.
 - The statute allows the Department to include in the contract any necessary oversight measures and review processes to maintain compliance with federal and state requirements.
 - It also requires the Department to develop an internal dispute resolution process to decide disagreements between the SSCC and the Department.

44

House Bill 5, Effective 9/01/17

Section 264.170, Limited Liability for a SSCC

- Grants Limited Liability for SSCC and related personnel that contract with the Department to provide services.
- Limitations apply to acts or omissions by the SSCC or its personnel occurring while acting within the course and scope of the entity's contract with the Department and the person's duties for the entity.
- The protections of the CPRC are only effective if at the time of the incident or cause of action, insurance coverage in the minimum amount required by Chapter 84, CPRC is in effect.

45

Senate Bill 11, Effective 9/01/17

Section 40.040, Quality Oversight and Assurance Division

- Requires the Department to establish a quality oversight and assurance division to oversee contract compliance, conduct assessments of fiscal and qualitative performance of the SSCC and vendors, and create and administer a dispute resolution process. The Department must also monitor the transfer of case management services.

46

Senate Bill 11, Effective 9/01/17

Section 264.018(d-2) Notice Required by SSCC

- Require the SSCC in any area where Community Based Care (CBC) has been implemented to provide notice within 24 hours AFTER a placement change to the child's managed care organization, and the managed care organization must give notice of the placement change to the child's primary care physician. (HB7 requirement on Dept.)

Section 264.128, Single Plan of Service

- Requires the Department to collaborate with child placing agencies to implement a single child plan of service in regions of the state where CBC has not been implemented.

Section 266.012, Medical Assessment

- Requires an SSCC providing therapeutic foster care services to a child must ensure that the child receives a comprehensive assessment under this section at least once every 90 days.

47

Senate Bill 11, Effective 9/01/17

Section 264.1076, Medical Care

- Requires that any child taken into conservatorship receive necessary emergency medical care as soon as possible.
- For children who remain in the conservatorship for more than three business days, they must receive an initial medical examination by the end of the third business day after the child is removed from the child's home if the child is removed because of sexual abuse, physical abuse or another obvious physical injury to the child, or if the child has a chronic medical condition, is medically fragile or has a diagnosed mental illness.
- A physician or health care provider cannot administer a vaccination without parental consent except for a tetanus vaccination, and only if the physician or other health care provider determines that an emergency requires a vaccination. The prohibition of vaccinations does not apply once the Department is named the child's managing conservator at the Adversary Hearing.

48

Senate Bill 11, Effective 9/01/17

Section 261.001, Definitions, Texas Family Code

- Definition of Abuse now includes “forcing or coercing a child to enter into a marriage.”
- Adds “Exploitation” which means the illegal or improper use of a child or child’s resources for monetary or personal benefit or profit by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.
- Amends “Neglect” to include an act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan that causes or may cause substantial emotional harm or physical injury to, or the death of, a child serviced by the facility or program.
- Adds to definition of “person responsible for a child’s care, custody or welfare” an employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42, Human Resources Code.

49

Senate Bill 11, Effective 9/01/17

Section 40.042, NEW, Human Resources Code

- The definition of abuse, neglect and exploitation will be the same for all investigations whether conducted by child protective services or child care licensing.

50

Senate Bill 490, Effective 9/01/17

Section 33.007, Education Code, Education and Training Voucher

- During the first year of enrollment in high school, and every year thereafter, the school counselor must provide information to students in foster care about the tuition and fee waiver and the Education and Training Voucher (ETV).
- Counselors will be required to maintain a record of the number of times the student and caregiver were informed about the waiver and ETV.

51

Senate Bill 1220, Effective 9/01/17

Section 25.007(b), Education Code, Transition Assistance

- Requires Texas Education Agency (TEA) to develop procedures to ensure that when a homeless youth or foster youth transfers to a new school, the new school relies on decisions made by the previous school regarding placement in courses or educational programs and places the student in comparable courses or educational programs at the new school, if those courses or programs are available.
- In addition to accepting a referral for special education evaluation, school districts, campuses, and open-enrollment charter schools must provide comparable services during the referral process or until the new school develops an individualized education program (IEP) for the student.

52

HB 1410, Effective 9/01/17

Section 102.004(b) and (b-1), Standing of Foster Parent to Intervene

- A foster parent may only be granted leave to intervene under Section 102.004(b) if the foster parent would have standing to file an original suit as provided by Section 102.003(a)(12).
 - Section 102.003(a)(12) requires child placed in home at least 12 months ending not more than 90 days preceding the date of the filing of the petition.
- Bill applies only to an original suit affecting the parent-child relationship filed on or after the effective date of this Act.

53

Senate Bill 495, Effective 9/01/17

Section 153.004, History of Domestic Violence or Sexual Assault

- The rebuttable presumption in Section 153.004 is expanded to provide that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect, abuse or family violence by that parent *or any person who resides in the parent's house or who is permitted by that parent to have unsupervised access to a child during that parent's periods of possession of or access to the child.*

Section 153.0071(e-1), Alternate Dispute Resolution

- Section 153.0071 is amended to allow an additional basis for a court to decline to enter a judgment on a Mediated Settlement Agreement (MSA) if the agreement would permit a person who must register as a sex offender under Chapter 62 of the Code of Criminal Procedure due to an offense committed when the person was over the age of 17 or otherwise has a history or pattern of physical or sexual abuse directed against any person to reside in the same household as the child or otherwise have unsupervised access to the child.

54

Senate Bill 999, Effective 9/01/17

Section 262.203, Transfer of Suit

- Requires a court, on the motion of a party or on the court's own motion, to transfer a suit to a court of continuing jurisdiction *if necessary for the convenience of the parties and in the best interest of the child*.
- Alternatively, the court may order transfer of the suit from the CCJ.

Section 155.201, Mandatory Transfer

- Requires that upon receiving notice that a court exercising emergency jurisdiction under Chapter 262 has ordered the transfer of a suit under Section 262.203(a)(2), the court of continuing jurisdiction (CCJ) must transfer the proceedings to the court exercising jurisdiction under Chapter 262.

55

Senate Bill 999, Effective 9/01/17

Section 155.204, Procedure for Transfer

- Requires the Department to file a transfer order issued under 262.203(a)(2) with the clerk of the CCJ so that the clerk of the CCJ can, within the time required by Section 155.207(a), transfer the case to the court exercising jurisdiction under Chapter 262.
- Transfer provisions also in HB 7.

56

Senate Bill 999, Effective 9/01/17

Section 262.013, Filing Requirement

- Requires the Department to file suit in the same court a petition based on allegations arising from the same incident or occurrence and involving children living in the same home.

Section 262.105, Filing Petition After Taking Possession

- Clarifies that the petition filed after taking possession of a child in an emergency pursuant to Section 262.104 (Removal without Court Order) must be supported by an affidavit that comports with the same conditions and circumstances required in cases where the Department takes possession of a child in an emergency under Section 262.101 (Emergency Removal with a Court Order).
- Provides that an affidavit supporting a petition filed after taking possession of a child in an emergency without a court order must state facts related to reasonable efforts that were made to avoid removal.

57

Senate Bill 999, Effective 9/01/17

Section 262.107(a), Standard for Decision

- Requires evidence that one of four circumstances exist when a child has been removed without a court order under Section 262.104 (Removal without a Court Order). If the child was removed due to an immediate danger, that there is a continuing danger if the child is returned, the child has been a victim of sexual abuse or trafficking or there is a substantial risk that the child will be the victim of sexual abuse or trafficking in the future, the person entitled to possession is currently using a controlled substance that constitutes an immediate danger to the physical health or safety of the child, or the person entitled to possession permitted the child to remain on premises used for the manufacture of methamphetamine.

Section 262.1131, New Temporary Restraining Order

- Authorizes the court to render a Temporary Restraining Order (TRO) as provided by Section 105.001 when the Department files suit under Section 262.113.

58

Senate Bill 999, Effective 9/01/17

Section 262.201, Full Adversary Hearing

- Streamlines Chapter 262 and the Adversary Hearing process to bring all hearings held subsequent to an emergency removal and hearings on non-emergencies under one section.
- Sets a deadline of 30 days for a court to hear a non-emergency petition filed pursuant to Section 262.113.

59

Senate Bill 999, Effective 9/01/17

Section 262.201, Full Adversary Hearing (Cont'd)

- Adds subsection (j), applicable to petitions filed pursuant to Section 262.113 (non-emergency petition) to require a finding of sufficient evidence to satisfy a person of ordinary prudence and caution:
 - there is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession and continuation in the home would be contrary to the child's welfare, and
 - that reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need to remove the child.
- See also HB7, which amends pleading requirements of Section 262.113.
- SB11 and HB7 amendments do not change the standard of proof; rather, the change requires the court to make all findings based on the "sufficient to satisfy a person of ordinary prudence and caution" standard.
- Amendment puts the findings for non-emergency removal on par with the findings required to affirm a removal in an emergency.
- Repeals Section 262.205.
- Re-letters several subsections.

Senate Bill 999, Effective 9/01/17

Section 262.201(a-5) or (e-1), Extension

- Allows a parent who is not indigent an extension of up to seven days to allow the parent to hire an attorney or to allow the parent's retained attorney time to respond to the petition and prepare for the hearing. An extension under this section is subject to the same restrictions of subsection (a-3) requiring the court to extend any temporary order, TRO or order of attachment issued under Section 262.102(a) until the date of the rescheduled full adversary hearing.

61

Senate Bill 1329, Effective 9/01/17

Section 201.204(d), Authority to Hear Adoptions

- New subsection expressly authorizes a child protection associate judge to hear and render an order in a suit for adoption of a child for whom DFPS has been named as managing conservator.
- Similar provision in HB 2927.

62

Senate Bill 1758, Effective 9/01/17

Section 264.121, Transitional Living Services Program

- Department must conduct ILS assessment for all youth in TMC or PMC who are 16 years or older.
- Department must conduct an ILS assessment for all youth 14 and older who are in PMC.
- Department must update the ILS assessment to ensure it is meeting its obligation to prepare the youth for independent living.
- Department is required to coordinate with stakeholders to develop a plan to standardize the PAL Program to ensure that youth 14 and older enrolled in the PAL receive relevant and age-appropriate information and training.

63

Senate Bill 1758, Effective 9/01/17

Sections 263.306(a-1) and 263.5031, Permanency Hearings Before and After Final Order

- Court to review permanency progress report to determine:
 - whether the Department has conducted an ILS assessment.
 - whether the Department has addressed the goals identified in the permanency plan, including a housing plan and the results of the ILS.
 - For youth who are 16 years of age or older, whether the Department has provided the youth with documents required by Section 264.121(e) (copy and certified copy of birth certificate, social security card, personal identification certificate under Transportation Code, etc.).
 - If the youth is 18 years or older, or has had the disabilities of minority removed, whether the Department has provided the youth with the documents and information listed in Section 264.121(e-1) (copy or certified copy or the original of birth certificate, immunization records, health passport, social security card, proof of enrollment in Medicaid, if applicable, etc.).

64

Senate Bill 1758, Effective 9/01/17

Sections 107.002(b-1) and 107.003(b)

- GAL and the AAL are responsible for ascertaining whether the child has received a copy of the child's birth certificate, social security card, driver's license or personal ID card, and other personal documents the Department determines is appropriate.
 - Also required by SB11.

Sections 263.306(a-1), Native American Inquiry

- Court must ask whether the child or child's family has a Native American heritage and identify any tribe with which child may be associated.
- Section 263.306(a) fully and finally repealed – SB 1488.

65

Senate Bill 1913, Effective 9/01/17

Section 45.0491, Fines and Court Costs for DFPS Youth

- Allows for a presumption of indigence and waiver of payment of fines and costs for youth who is in DFPS conservatorship or was in DFPS conservatorship at the time of the offense or is designated homeless or an unaccompanied youth under federal law.

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