

2017 TEXAS LEGISLATIVE UPDATE IN CHILD WELFARE LAW

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2017 TEXAS LEGISLATIVE UPDATE OF CHILD WELFARE LAWS

Abstract: This paper highlights new laws passed during the 85th State legislative session that impact legal processes for protecting the welfare of children.

1. INTRODUCTION

The purpose of this paper is to highlight legislation passed during the 85th legislative session that impacts the State's legal system for protecting the welfare of children through its various statutorily assigned agents, including the Department of Family & Protective Services [hereinafter "Department"]. This paper categorizes the bills by subject under four categories: 1) participants in the legal process, 2) legal actions, 3) legal decision issues, and 4) legal procedures. Most of the bills will become effective on September 1, 2017, however, the reader should note there are some bills that became effective immediately. Finally, the reader is advised that this summary has gone through a selective process and does not purport to fully summarize everything passed this last session in relation to child welfare law.

2. PARTICIPANTS IN THE LEGAL SYSTEM

I. APPOINTED ATTORNEY FOR CHILD

A. Continued Appointment

Act of May 26, 2017, HB 7 §9

Amends TFC¹ 107.016(2)

Effective 9/1/17

House Bill 7 amends Section 107.016 of the Family Code to permit a court to continue the appointment of an attorney ad litem for the child for as long as the child remains in the Department's conservatorship when the court signs its order appointing the Department as the child's conservator. HB7 §9 (TFC 107.016(2)).

Duty to ensure ID papers

Act of May 28, 2017, SB 11 §3

Amends TFC 107.003(b)

Effective 9/1/17

Senate Bill 11 amends Section 107.003(b) of the Family Code to require an attorney ad litem for a child in a proceeding under Chapters 262 or 263 of the Family Code to make sure certain documents have been received by the subject child if the child is at least 16 years of age. Those documents include (1) a certified copy of the child's birth certificate, (2) a social security card or a replacement social security card, (3) driver's license or personal identification certificate under Chapter 521, Transportation Code, and (4) any other personal document that the Department deems appropriate.

B. Duty to review & bring concerns

Act of May 26, 2017, HB 7 §8.

Amends TFC 107.004

Effective 9/1/17

House Bill 7 adds a duty under Section 107.004 requiring an attorney ad litem for a child in Department conservatorship to "periodically continue to review the child's safety and well-being, including any effects of trauma to the child." HB 7 §8 (TFC 107.004(c-1)). It adds, "when necessary to address an issue of concern," the attorney shall take appropriate action, including requesting a review hearing. *Id.*

II. ASSOCIATE JUDGES

Final Order Authority Added

Act of May 19, 2017, HB 2927

Amends TFC 201.007

Effective Immediately (May 29, 2017)

House Bill 2927 amends Subchapter A of Chapter 201 of the Family Code to specify that an Associate Judge may sign a final order without signature by the referring court when there is a waiver of the de novo hearing under Section 201.015 of the Family Code. HB 2927 §1 (TFC 201.007(a)(16)). To be effective, however, it adds that the parties must waive the right to a de novo hearing before the referring court in writing, and it must be before the start of the hearing conducted by the associated judge. *Id.* Section 201.007(c) of the Family Code is amended to clarify that the order signed by the associate judge pursuant to this authority is a final order for purposes of appeal. *Id.* (TFC 201.016(c)).²

One important aspect of this Bill concerns its application date. Section 6 of the Act instructs that these amendments are effective immediately. Because the Governor signed this bill on May 29, 2017, that means this bill has been in effect since that date. *See* TEX. CONST. Art. IV §14. Moreover, Section 5 of the Bill provides these changes apply to final orders signed on or after the effective date. Subpart (b) of that section further instructs, notwithstanding that, Section 201.007(e) of the Family Code, as added, applies to any order signed under Section 201.007(a)(16) **before May 1, 2017**. *Id.* HB 2927 §5 (emphasis added). Considering this instruction could result in the redesignation of the date of a final order already signed and calculated under the prior law based on the signature of the referring judge, this may result in some unforeseen issues.

III. CHILDREN'S COMMISSION

¹ In this paper "TFC" refers to the Texas Family Code.

² Please note, there was a Senate Bill 1444 that amended the subchapter concerning associate judges for child protection cases, but the Governor vetoed that bill on June 15, 2017.

A. Jury Charge Review
Act of May 26, 2017, HB 7 §6
Amends TFC 105.002
Effective 9/1/17

House Bill 7 adds Subsection (d) to Section 105.002 of the Family Code to require the Department to collaborate with the Permanent Judicial Commission for Children, Youth and Families (“Children’s Commission”) and interested parties concerning whether broad form jury questions should be used in Department-filed suits affecting the parent-child relationship. HB 7 §6 (TFC 105.002(d)). The recommendations are to be made to the legislature no later than December 31, 2017. *Id.*

B. Attorney Ad Litem Study
Act of May 26, 2017, HB 7 §72
Effective 9/1/17

Section 78 of House Bill 7 imposes specific duty upon the Commission that requires the Commission to study the appointment and use of attorneys ad litem in cases involving the Department of Family & Protective Services. HB7 §72. One of the primary purposes is to develop policy recommendations to improve the attorney-ad-litem appointment process and the study is to be reported to each member of the Legislature by September 1, 2018. *Id.* The Commission is also to investigate several issues and perform statistical data collection and analysis of that data for inclusion in its report. *Id.* Some of the issues the commission must look at include: the methods of appointments, accountability across the state to monitor the appointed attorneys, qualifications and training requirements, duration of appointments, rates of compensation, quality of representation, client satisfaction, organization studies and national standards, best practices for attorneys ad litem, average costs for representation, conduct survey of attorneys ad litem, etc. *Id.*

IV. COUNTY COMMISSIONERS COURT

Inquest Regulations
Act of May 28, 2017, HB1549 §10
Adds TFC 264.509(a)
Effective 9/1/17

House Bill 1549 adds a subsection (a-1) to Section 264.524 of the Family Code to require the County Commissioners Courts throughout this State to adopt regulations regarding timeliness of inquests into the death of a child. HB 1549 §10. The standards must be as stringent as the standards by the National

Association of Medical Examiners unless the county finds it is cost prohibitive. *Id.*

V. DEPARTMENT OF FAM. & PROT. SERVS.

A. Powers and Duties
HB 5, HB 1549, HB 7
Effective 9/1/17

House Bill 5 amends Chapters 261, 264, 265 and 266 of the Family Code to change the references in those chapters from the executive commissioner of the Health and Human Services Commission to the commissioner of the Department and references to the Health and Services Commission to mean the Department. HB5 §11 (TFC 264.009(a)); HB5 §10 (TFC 261.004); HB5 §17 (TFC 266.001). Similar changes are made in Chapter 40 of the Human Resources Code. HB5 §28 (HRC 40.0026-0027). Section 34 of House Bill 5 requires the Department and the Commission to contract for shared administrative services and to collaborate for efficient provision of administrative support services. HB5 §34 (HRC 40.048).

Consistent with these changes, the rule-making authority previously given to the Executive Commissioner of Health and Human Services is given to the Commissioner of the Department of Family & Protective Services. HB5 §3 (TFC 107.152(c) (pre and post placement evaluation rules); HB5 §8 (TFC 162.304(b-2)(g) (eligibility for adoption subsidy); HB5 §9 (TFC 162.3041(a-1)) (adoption assistance agreements); HB5 §14 (TFC 266.105) (rules to implement subchapter). It also designates the Department as a juvenile service provider under Section 58.0051 of the Family Code. HB5 §1 (TFC 58.0051(a)(2)). Moreover, the Department is given authority to access juvenile justice information for research and statistical purposes. HB5 §3 (TFC 58.0072(c)). Notwithstanding these shifts, the legislature made clear services provided by the commission for children in Department conservatorship before the effective date of these acts shall continue. HB5 §21 (TFC 266.013).

This paper does not purport to state every duty that the legislature added to the Department’s responsibilities; however, it is worth mentioning there are a lot of new duties. House Bill 1549 requires new duties of collaboration, data collection, development of programs and quicker delivery. *See* HB 7 §33 (adds TFC 264.018(d-1)) (give notice of child placement changes to managed care organization to provide health care under STAR); HB1549 §1 (TFC

261.204(a)) (publish report of fatalities when the Department finds abuse/neglect); HB 1549 §2 (TFC 261.301) (designate after hours investigators in areas of need); HB 1549 §3 (TFC 264.1075) (if child has intellectual disabilities, Department to refer as soon as possible to provider and make sure determination is conducted before the child turns 16); HB 1549 §4 (TFC 264.1261) (collaborate with foster care providers, faith based groups and child advocates to create plan to address substitute care capacity needs short and long term); HB 1549 §7 (TFC 264.5031) (collect in database “near fatality” situations when child abuse involved); HB 1549 §12 (TFC 264.903(a-1)) (expedite caregiver evaluations to ensure caregiver can protect child from alleged perpetrator of abuse/neglect); HB 1549 §13 (TFC 265.005(b)) (make goals to increase families receiving prevention and early intervention services); HB 1549 §14 (TFC 265.007-008) (states how department is to improve early intervention services); HB 1549 §15 (TFC 40.038) (provide program to help caseworkers who experience secondary trauma in employment); HB 1549 §16 (HRC 40.0516) (collect specified data on county and state level of reports of abuse and neglect in child care facilities); HB 1549 §18 (HRC 40.078) (commissioner to establish Prevention task force to recommend changes for prevention of child abuse and neglect).

There are also new reporting duties as well as collaboration requirements. HB4 §§3-4 (report on designated caregiver placement program with first report due 9/1/18); HB5 §7 (TFC 162.086) (information to prospective adoptive parents on sibling access); HB5 §18 (TFC 266.003) (Department to collaborate with commission and health care and child professionals to develop cost effective medical service model for children served by Department). For example, one new collaboration duty is the requirement that the Department and the Texas Juvenile Justice Department coordinate and develop protocols for sharing information that relates to services provided that would enhance rehabilitation and improve community safety. HB 7 §3 (amends TFC 58.0052).

B. Ombudsman’s Office SB 213, 698
Act of May 19, 2017, SB 213
Amends TGC³ 531.991(2)
Effective 9/1/17 but only if funds appropriated

Senate Bill 213 amends subchapter Y of Chapter 531 of the Government Code to require the Governor to appoint an Ombudsman whose duties shall include receiving complaints against the Department, monitoring Department’s responses to corrections recommended and to report wrongdoing or negligence by the Department. SB 213 § 6 (amends TGC 531.993). There is no specific authority allowing the Ombudsman to file legal proceedings against the Department, but this bill specifically grants the Ombudsman authority to “attend” judicial proceedings that may be related to a complaint filed with its office. *Id.* This subchapter also provides for a specific division of the Ombudsman’s office for children and youth in foster care. *Id.* §7. That division shall have procedures for complaints related to those interests and any court with jurisdiction over the child’s case must be made aware of the complaint filed. *Id.* §8.

Section 12 of this bill provides that this Act only takes effect if a specific appropriation for its implementation is provided in a general appropriation by the 85th Legislature. SB 213 §12. If the appropriation is made, the Act takes effect September 1, 2017. SB 213 §13.

VI. DESIGNATED CAREGIVERS

A. Income-Based Assistance for Designated Caregivers

Act of May 25, 2017, HB 4, 85th Leg., R.S.

Amends TFC 264.755 and Adds TFC 264.7551

Effective date 9/1/17 contingent on appropriations

House Bill 4 amends Section 264.755 of the Family Code to require the Department to provide monetary assistance to designated caregivers depending on family income. HB 4 §1 (amends TFC 264.755). The level can be as much as 50 percent of the Department’s daily basic foster care rate depending on family income. *Id.* The bill also adds a Section 264.7551 of the Family Code creating a criminal offense for fraudulent information given to obtain caregiver assistance as well as the possibility of a civil penalty up to \$1000. HB4 §2 (TFC 264.7551).

This Act has an effective date of 9/1/17, but it only takes effect if a specific appropriation is made for implementation of this act, and, if not, the Act has no effect. HB §6. There is an instruction in Section 5 of the Bill clarifying if it goes in effect, it will apply to caregiver assistance agreements before, on or after its effective date. *Id.* §5. There is also a provision for assistance to pending agreements on or after June 1,

³ In this paper, “TGC” refers to the Texas Government Code.

2017 but before the effective date depending on income. *Id.*

B. Appeal Process if Disqualified

Act of May 21, 2017, SB 879

Adds TFC 264.754(c)

Effective Immediately

Senate Bill 879 amends Section 264.754 of the Family Code to permit a relative or other designated caregiver for a child to appeal a disqualification for placement by the Department based on a low-risk criminal offense. SB 879 §1 (TFC 264.754) (TFC 264.754(c)). A “low-risk criminal offense” is defined to mean a nonviolent criminal offense, including a fraud-based offense, the Department determines has a low risk of impacting: (1) a child’s safety or well-being; or (2) the stability of a child’s placement with a relative or other designated caregiver. SB 879 §1 (TFC 264.754(a)). This Act requires the Department to promulgate a procedure for appropriate regional review of a disqualification decision and prospective relative/designated caregivers will be provided that information. *Id.* (TFC 264.754(d)(e)).

VII. FOSTER CHILDREN

Summer Internship Program

Act of May 24, 2017, HB 1608

Adds TFC 264.1251

Effective Immediately w/1/1/18 pilot program

House Bill 1608 adds a Section 264.1251 to the Family Code to require the Department to establish a summer internship pilot program that permits foster children to develop marketable job skills and professional experience with businesses, governments and nonprofits. HB 1608 §1 (TFC 264.1251). The Department can enter into agreements for this and by April of each year the Department will select children (15 and older) to participate. *Id.* The Department will report to the governor and state representatives concerning its evaluation of the program. The Department is to establish the program by January 1, 2018 and the program expires September 1, 2021. *Id.* and HB §2. This Act had immediate effect. HB 4 §3.

VIII. FOSTER PARENT

A. Education Decision-Making

Act of May 25, 2017, HB 1556 §4

Amends TFC 263.0025

Effective 9/1/17

House Bill 1556 amends 263.0025 of the Family Code to permit a foster parent to act as a parent (per 20 USC §1215(b)) in making special education decisions

if the Department’s rights are not limited, and the foster parent agrees to act under the requirements of Section 29.015(a)(3) and (b) of the Education Code. HB 1556 §4 (amends TFC 263.0025). This act takes effect September 1, 2017. HB1556 §5.

B. Employee Leave Policy

Act of May 12, 2017, HB 88

Adds TLC⁴ 21.0595

Effective 9/1/17

House Bill 88 adds Section 21.059 of the Labor Code to create a new unlawful employment practice related to personal leave. Namely, if an employer has a policy permitting personal leave for employees who are biological/adoptive parents in order to care for or assist a sick child, this new law makes that an unlawful employment practice if the policy does not extend to an employee to care for a foster child under Department conservatorship residing in the employee’s home. HB 88 §1 (adds TLC 21.0595). This Act takes effect September 1, 2017 and applies only to claims based on conduct after that date. HB 88 §§2-3.

C. Intervention Authority Revised

Act of May 19, 2017, HB 1410

Amends TFC 102.004

Effective 9/1/17

House Bill 1410 changes the current intervention authority available to foster parents under Section 102.004(b) of the Family Code. Under current law, Section 102.004(b) of the Family Code provides standing for a “grandparent or other person” to intervene in a suit when the court finds the person has substantial past contact with the child and there is satisfactory proof that appointment of either or both parents would significantly impair the child’s physical health or emotional development. Tex. Fam. Code Ann. §102.004(b) (West 2014). This law has been characterized as a “relaxed standing rule” that allows parties who do not have general standing under Section 102.003 to nonetheless intervene in an ongoing suit. *See Spurck v. Tex. Dept. of Fam. & Prot. Servs.*, 396 S.W.3d 205, 217 (Tex. App. – Austin 2013, no pet.). Because it extends to any “other person”, this provision has been used as a basis for standing by foster parents to intervene. *See Id.* House Bill 1410 changes that.

Namely, House Bill 1410 adds a subpart (b-1) to Section 102.004 of the Family Code that provides: “A foster parent may only be granted leave to intervene

⁴“TLC” refers to the Texas Labor Code.

under Subsection (b) if the foster parent would have standing to file an original suit as provided by Section 102.003(a)(12). HB 1410 §1. This new law only applies to suits filed on or after September 1, 2017. HB 1410 §2-3.

This amended section obviously treats foster parents differently from other significant people in the child's life for purposes of intervention authority under Section 102.004. Namely, any other person who has substantial past contact with the child could potentially intervene in a suit without establishing an independent basis for standing under Section 102.003. 396 S.W.3d at p. 217. Under this amended section a foster parent cannot.

It is important to note, however, that this bill only precludes a foster parent from intervening under Subsection (b) of Section 102.004 of the Family Code, because that is what the new subsection (b-1) says. Accordingly, if a foster parent has independent standing based on a relinquishment that designated the foster parent managing conservator, this new provision would not prevent the foster parent from intervening per Tex. R. Civ. P. 60 based on that independent standing. *See* Tex. Fam. Code Ann. § 102.003(1)(10) (West 2014).

IX. GUARDIAN AD LITEM

A. Additional Authority

Act of May 26, 2017, HB 7 §7

Amends TFC 107.002(c)

Effective 9/1/17

House Bill 7 amends Section 107.002(c) to grant additional authorities to a Guardian Ad Litem for a child. Namely, it provides that the guardian is entitled to:

- .. have access to the child in the child's placement;
- ...be consulted and provide comments on decisions regarding placement, including kinship, foster care and adoptive placements,
- ...evaluate whether the child welfare service providers are protecting the child's best interests regarding appropriate care, treatment, services, and all other foster children's rights listed in Section 263.008;
- ...receive notification regarding and an invitation to attend meetings related to the child's service plan and a copy of the plan; and
- ...attend court-ordered mediation regarding the child's case.

HB 7 §7 (TFC 107.002(c)). This change takes effect September 1, 2017. HB 7 § 79.

B. Additional Duties

Act of May 26, 2017, HB 7 §7

Amends TFC 107.002(b)

Act of May 28, 2017, SB 11 §2

Amends TFC 107.002(b-1)

Effective 9/1/17

House Bill 7 amends Section 107.002(b) of the Family Code to require a Guardian Ad Litem for a Child to interview a child's educators and child welfare service providers. HB 7 §7 (TFC 107.002(b)). Senate Bill 11 amends Section 107.002(b-1) of the Family Code to require a guardian ad litem appointed for a child in a proceeding under chapter 262 and 263 of the Family Code to ascertain whether a child who is at least 16 years of age has obtained certain documents. Those documents include: (1) a certified copy of the child's birth certificate, (2) a social security card or replacement social security card, (3) a driver's license or personal identification certificate under Chapter 521, Transportation Code, and (4) any other personal document the Department deems appropriate. *Id.*

C. Continued Appointment

Act of May 26, 2017, HB 7 §9.

Amends TFC 107.016(1)

Effective 9/1/17

House Bill 7 amends Section 107.016 of the Family Code to permit a court to continue the appointment of a guardian ad litem for the child for any period during the time the child remains in the conservatorship of the department. HB7 §9 (TFC 107.016).

X. LAW ENFORCEMENT

A. Child Abduction Reporting

Act of May 24, 2017, HB 1503

Amends 63.0041 CCP

Effective 9/1/17

House Bill 1503 amends Article 63.0041 of Code of Criminal Procedure to require quicker law enforcement communication regarding an attempted child abduction. HB 1503 (CCP 63.0041). It provides a local law enforcement agency, on receiving a report of an attempted child abduction, shall as soon as practicable, but not later than eight hours after receiving the report, provide any relevant information regarding that attempted child abduction to a clearing house. Supplemental information not immediately available shall be entered as soon as possible. *Id.*

B. Release to Non-governmental

Act of May 26, 2017, SB 1571

Adds CCP art. 2.273

Effective 9/1/17

Senate Bill 1571 adds Article 2.273 to the Code of Criminal Procedure to address law enforcement placement decisions after taking a child in possession. §SB1571§1 (Adds CCP art. 2.273). Importantly, it specifies certain requirements that the officer must meet when placing the child with someone other than an authorized governmental entity. *Id.* In particular, it provides the officer must:

(1) verify with National Crime Information Center that the child is not a missing child;

(2) search the relevant databases of the National Crime Information Center system, including those pertaining to protection orders, historical protection orders, warrants, sex offender registries, and persons on supervised release to:

A) verify that the person to whom the child is being released:

(i) does not have a protective order issued against the person; and

(ii) is not a registered sex offender unless the person is the child's parent or guardian and there are no restrictions regarding the person's contact with the child; and

(B) obtain any other information the Department of Family and Protective Services considers:

(i) relevant to protect the welfare of the child; or

ii) reflective of the responsibility of the person to whom the child is being released;

(3) call the Department of Family and Protective Services Abuse Hotline to determine whether the person to whom the child is being released is listed in the registry as a person who abused or neglected a child;

(4) verify that the person to whom the child is being released is at least 18 years of age; and

(5) maintain a record regarding the child's placement, including:

(A) Identifying information about the child, including the child's name or pseudonyms; and

(B) the name and address of the person to whom the child is being released.

Id.

XI. PARENTS

A. Right to View Deceased Child

Act of May 24, 2017, HB 298 §1, SB 239 §1

Adds Subchapter D to Ch. 49 CCP⁵

Effective 9/1/17

House Bill 298 and Senate Bill 239 add a Subchapter D to Chapter 49 of the Code of Criminal Procedure to give a parent the right to view a deceased child whose death occurred at a hospital or other institution. HB 298 §1 (CCP art. 49.52). However, if the child is not at a hospital or institution, the medical examiner or justice of peace must approve. *Id.* Act takes effect September 1, 2017. HB 298 §2, SB 239 §2.

B. Authorization Agreement

Act of May 19, 2017, HB 871 §1

Amends TFC 34.002

Effective 9/1/17

House Bill 871 amends Section 34.002(a) and 34.0021 of the Family Code to authorize a parent to enter into an authorization agreement under these sections with an adult caregiver. HB 871 §3 (TFC 34.002(a)). This changes the requirement in Section 34.002(a) that currently only authorizes these agreements with a relative. *Id.*

C. Support Obligations After Termination

Act of May 8, 2017, SB 77 §1

Amends TFC 154.001

Suits filed after 9/1/17

Senate Bill 77 amends Section 154.001(a-1) of the Family Code to authorize a court to require a parent to continue to pay child support after parental rights are terminated in specified circumstances. SB77 §1 (TFC 154.001). Those circumstances involve a termination involving Section 161.001(b)(1)(T)(iv) or (b)(1)(U) of the Family Code or a situation in which the child was conceived as a result of certain Penal Code offenses. *Id.*

XII. PROSECUTORS

Act of May 28, 2017, HB 1278

Amends TGC 552.117(a)

Effective immediately

House Bill 1278 amends the Public Information Act at Section 552.117(a) of the Government Code to exempt from disclosure personal information that relates to a current or former county or district attorney or criminal district attorney whose jurisdiction includes child protective matters. HB 1278 §1 (TGC 552.117(a)(12)). It also adds language to extend this exemption to current or former employees of these prosecutors. HB 1278 §2 (TGC

⁵⁵ In this paper, "CCP" refers to the Code of Criminal Procedure.

552.117(a)(13)). It further clarifies this information remains protected from disclosure regardless of whether these persons comply with sections 552.024 or 552.1175 of the Public Information Act. HB 1278 §1 (TGC 552.117(a)(12-13)).

XIII. PROSPECTIVE ADOPTIVE PARENT

Act of May 28, 2017, SB11 §5
Amends TFC 162.0062 & 162.007
Effective 9/1/17

Senate Bill 11 adds subsections (a-1) and (c-1) to Section 162.0062 of the Family Code to provide a right to a prospective adoptive parent prior to adoption to examine certain records relating to the child's health history. SB 11 §5 (TFC 162.0062). The Department, licensed child-placing agency, single source continuum contractor or other person placing a child for adoption shall inform the prospective adoptive parent of that right and will edit records as needed to protect the identity of the biological parents or other confidential information. Also, if the parents indicate they wish to proceed with the adoption under Subsection (c) of this Section, they are to be provided with access to research regarding health or trauma conditions that could impact child development and permanency.

It is significant to note that Section 162.007 of the Family Code also specifically requires a child's health history to include whether the birth mother consumed alcohol during pregnancy and whether the child was diagnosed with fetal alcohol spectrum disorder. This change solidifies the Legislature's acknowledgement of the problem of fetal alcohol syndrome that can be a particularly important health issue for adopting parents wishing to adopt children in the State child welfare system.

XIV. RELATIVES/KINSHIP

Promotion of relative/kinship placements
Act of May 28, 2017, SB 11 §18
Amends TFC 264.151(12)
Effective 9/1/17

Senate Bill 11 adds Section 264.521 of the Family Code to specify the goals that the legislature intends to be implemented with community based-care for children through nonprofits and local governmental entities. Among the listed goals is "the promotion of placement of children with relative or kinship caregivers if reunification is not possible." SB 11 §18 (TFC 264.151(12)).

XV. SINGLE SOURCE CONTINUUM CONTRACTORS

A. Eligibility
Act of May 28, 2017, SB 11 §18
Adds TFC 264.154
Effective 9/1/17

Senate Bill 11 adds Section 264.154 of the Family Code to specify the entities who can be single source continuum contractors and can qualify to contract with the Department to provide foster care. Namely, it provides such entity:

must be a nonprofit entity that has an organizational mission focused on child welfare or a governmental entity.

SB11 §18 (TFC 264.154). The legislative intent statement appearing at the beginning of this subchapter, Section 264.151, also indicates the legislature intends the Department to contract with community based nonprofits and local governmental entities "that have the ability to provide child welfare services." *Id.* (TFC 164.151).

B. Limited Outsourcing
Act of May 28, 2017, HB 5
Amends TGC 531.02013
Effective 9/1/17

Section 531.02013 of the Government Code is amended by House Bill 5 to provide an additional limit on outsourced functions. Namely, the Department cannot contract to outsource: investigations of alleged abuse, neglect or exploitation occurring at a child-care facility, including a residential child-care facility, as those terms are defined by Section 42.002, Human Resources Code. HB5 §24 (TGC 531.02013).

C. Limited Liability
Act of May 28, 2017, HB 5 §13
Amends TFC ch 264; adds TFC 264.170
Effective 9/1/17

House Bill 5 adds a subchapter in chapter 264 of the Family Code to explain that a single source continuum contractor who provides contract services for the Department is a "charitable organization for purposes of Chapter 84, Civil Practice and Remedies Code for those services. HB5 §13 (TFC 264.170).

XVI. TEXAS SUPREME COURT

A. Jurisdiction

Act of May 19, 2017, HB 1761

Amends TGC 22.001(a), (b), and (c)

Effective 9/1/17

House Bill 1761 amends the general section concerning the Supreme Court's jurisdiction over regular appeals at Section 22.001 of the Government Code. Under its current wording this section lists six situations when the supreme court may exercise jurisdiction over an appeal: (1) a case in which the justices of a court of appeals disagree on a question of law material to the decision; (2) a case in which one of the court of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case; (3) a case involving the construction or validity of a statute necessary to a determination of the case; (4) a case involving state revenue; (5) a case in which the railroad commission is a party; and (6) any other case in which it appears that an error has been committed by the court of appeals and that is of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute." Tex. Gov't Code Ann. §22.001(a)(1-6) (West 2014).

House Bill 1761 eliminates these six conditions for its jurisdiction under Section 22.001 and provides the following instead:

- (a) The supreme court has appellate jurisdiction, except in criminal matters, of an appealable order or judgment of the trial courts if the court determines that the appeal presents a question that is important to the jurisprudence of the state. The supreme court's jurisdiction does not include cases in which the jurisdiction of the court of appeals is made final by statute.

HB 1761 §1 (TGC §22.001(a)). As indicated, the Supreme Court's review power over appeals is now limited to situations when it can determine the judgment on appeal presents a question that is important to the jurisprudence of the state. Subsection (b) then provides that the appeal may be taken to the Supreme Court by petition for review; and subsection (c) provides that the appeal must first be brought to the court of appeals. *Id.* (TGC §22.001(b)-(c)).

One important aspect of this change is the omission of any focus on error correction. The law prior to this change has allowed review when "it appears that an error of law has been committed ... and that error is of such importance to the jurisprudence of the state that ... it requires correction." Tex. Gov't Code Ann. §22.001(a)(6) (West 2014). This shift in focus may result in the Supreme Court being more restrictive in granting review.

B. Rules for Post-judgment Process

Act of May 26, 2017, HB 7

Adds TFC 263.4055

Effective 9/1/17

House Bill 7 requires the Supreme Court to adopt rules to address conflicts between the filing of a motion for new trial and the filing of an appeal of a final order rendered under Chapter 263. HB7 §30 (TFC 263.4055). It adds that the Supreme Court is to adopt rules to address the period for a court reporter to submit the appellate record. *Id.*

C. Rules for Foreign Law/Judgments

Act of May 22, 2017, HB 45 §2

Adds Sections TGC 22.0041 and 22.022

Effective 9/1/17

House Bill 45 adds Section 22.041 of the Government Code to require the Supreme Court to adopt rules of evidence and procedure to implement the limitations on granting comity for a foreign judgment or an arbitration involving marriage or the parent-child relationship to protect against violations of constitutional rights and public policy. HB 45 §2 (TGC 22.041(b)). This bill also requires the Supreme Court to "provide for a course of instruction" that relates to these issues and adopt rules to accomplish that. HB 45 §2 (TGC 22.022). The bill instructs that the rules are to be adopted not later than January 1, 2018. HB 45 §3.

3) LEGAL ACTIONS:

I. MANDAMUS

Act of May 24, 2017, HB 1480 §1

Amends TGC 22.221(b)

Effective 9/1/17

House Bill 1480 amends Section 22.221 of the Government Code to permit mandamus against an associate judge under Chapter 201 of the Family Code. HB 1480 §1. This Act only applies to suits filed under the Family Code on or after the effective date on September 1, 2017. HB 1480 §§2 and 3.

II. PROTECTIVE ORDER - CHAPTER 261

Act of May 26, 2017, HB 7 §14 Amends Chapter 261 of the Family Code Effective 9/1/17

House Bill 7 adds a Subchapter F to Chapter 261 of the Family Code to authorize a specific type protective order that can be filed by the Department. Namely, it permits the Department to file a request for a protective order on its own initiative or jointly with a parent, relative or caregiver who requests it if certain conditions are met and the court can make certain findings. Importantly, this Act instructs it is not available if the department can apply for a protective order under Chapter 82. HB7 §14 (TFC 261.501(3)).

The condition when this order may be sought is when (1) the department has temporary managing conservatorship of the child and (2) the department determines the child is a victim of abuse or neglect or has a history of being abused or neglected. HB7 §14 (TFC 261.501(1)&(2)). The Department must also determine there is a threat of one of the following: (i) immediate or continued abuse or neglect to the child; (ii) someone illegally taking the child from the home in which the child is placed; (iii) behavior that poses a threat to the caregiver with whom the child is placed; or (iv) someone committing an act of violence against the child or the child's caregiver. HB7 §14 (TFC 261.501(2)(b)).

The bill adds a Section 261.502 to the Family Code to require certain facts to be certified by the Department in its application for this order. Those certified facts must include that the Department diligently searched for and either was unable to locate the child's parent, legal guardian, or custodian, other than the respondent to the application or located and provided notice of the proposed application to the child's parent, legal guardian or custodian, other than the respondent to the application. HB7 §14 (TFC 261.502(a)). If applicable, the Department must also certify that the relative or caregiver who is jointly filing the petition, or with whom the child would reside following entry of the protective order, has not abused or neglected the child and does not have a history of abuse or neglect. HB 7 §14 (TFC 261.503(a)) .

Section 261.504(b) of the Family Code, as added by this bill, states the court *shall issue* a protective order if the court makes an affirmative finding under Subsection (a) of Section 261.504. HB 7 §14 (TFC 261.504(b)) (emphasis added). The affirmative

findings under Subsection (a) include whether there are reasonable grounds to believe: (1) the child is a victim of abuse or neglect; or has a history of being abused or neglected and (2) there is a threat of immediate or continued abuse or neglect to the child; someone illegally taking the child from the home in which the child is placed; behavior that poses a threat to the caregiver with whom the child is placed; or someone committing an act of violence against the child or the child's caregiver. HB 7 §14 (TFC 261.504). Section 261.503, as added by this Bill, states the court may grant this protective order *ex parte* without further notice to the respondent and without a hearing, if the court finds from information in the application that there is "*an immediate danger* of abuse or neglect to the child." HB7 §14 (TFC 261.502(b)) (emphasis added).

Later in House Bill 7, at section 69, it amends Section 25.07 of the Penal Code to make a violation of an order under Chapter 261 an act subject to prosecution. HB7 §69 (amends TPC⁶ 25.07(a)).

III. REMOVAL LIMITATION

Act of May 26, 2017, HB 7 §19 Adds TFC 262.116 Effective 9/1/17

House Bill 7 adds Section 262.116 of the Family Code to state specific evidence that cannot be the basis for the Department taking possession of a child. It states as follows:

Sec.262.116. LIMITS ON REMOVAL.

(a) The Department of Family and Protective Services may not take possession of a child under this subchapter based on evidence that the parent:

- (1) homeschooled the child;
- (2) is economically disadvantaged;
- (3) had been charged with a nonviolent misdemeanor offense other than:
 - (A) an offense under Title 5, Penal Code;
 - (B) an offense under Title 6, Penal Code; or
 - (C) an offense that involves family violence, as defined by Section 71.004 of this code;
- (4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or

⁶ In this paper, "TPC" refers to the Texas Penal Code.

- (5) declined immunization for the child for reasons of conscience, including a religious belief.

HB7 §19 (TFC §262.116). A subsection (d) is added to this section to clarify, however, that this section “does not prohibit the department from gathering or offering evidence described by Subsection (a) as part of an action to take possession of a child under this subchapter.” HB7 §19 (TFC 262.116(d)).

IV. SUIT TO MODIFY WITHOUT POSSESSION

A. Requirements: Suit without Possession **Act of May 26, 2017, HB 7, SB 999** **Amends TFC 262.101, 262.113** **Effective 9/1/17**

Senate Bill 999 amends Section 262.101 of the Family Code to separate the elements of proof that the affidavit must show into four rather than three separate elements. SB 999 §4 (amends TFC 262.101). The requirements stated in this section were not changed, but the reformatting emphasizes that the current first element of proof actually has two separate elements of proof. *Id.*

Senate Bill 999 also amends Section 262.105 of the Family Code with a new Subsection (b) that states:

- (b) An original suit filed by a governmental entity after taking possession of a child under Section 262.104 must be supported by an affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that:
 - (1) based on the affiant’s personal knowledge or on information furnished by another person corroborated by the affiant’s personal knowledge, one of the following circumstances existed at the time the child was taken into possession:
 - (A) there was an immediate danger to the physical health or safety of the child;
 - (B) the child was the victim of sexual abuse or of trafficking under Section 20A.02 or 20A.03, Penal Code;
 - (C) the parent or person who had possession of the child was using a controlled substance as defined by Chapter 481, Health and Safety Code, and the use constituted an immediate danger to the physical health or safety of the child; or
 - (D) the parent or person who had possession of the child permitted the

child to remain on premises used for the manufacture of methamphetamine; and

- (2) based on the affiant’s personal knowledge:
 - (A) continuation of the child in the home would have been contrary to the child’s welfare;
 - (B) there was no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and
 - (C) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

SB 999 §8 (adds TFC 262.105(b))

House Bill 7 amends Section 262.113 of the Family Code to add requirements to the affidavit filed with Department’s suit that requests to take possession of a child when the Department does not take possession in advance of filing suit. As amended, it states:

Sec. 262.113. **FILING SUIT WITHOUT TAKING POSSESSION OF CHILD.** An original suit filed by a governmental entity that requests to take possession of a child after notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- (1) 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 of the child and that allowing the child to remain in the home would be contrary to the child’s welfare; and
- (2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, have been made to prevent or eliminate the need to remove the child from the child’s home [~~and~~ ~~(2) allowing the child to remain in the home would be contrary to the child’s welfare.~~

HB7 §18 (amends TFC 262.113).

As indicated, the affidavit must still state facts that indicate allowing the child to remain in the home would be contrary to the child’s welfare. However, it adds that there must be facts of *continuing danger* to

the physical health or safety of the child. *Id.* Also, the continuing danger must be caused by a person entitled to possession of the child. *Id.* Additionally, the reasonable efforts to eliminate the need for removal of the child must be shown to be “consistent with the circumstances and providing for the safety of the child.” *Id.*

B. Standards: Temporary Order

Act of May 28, 2017; SB 999

Repeals 262.205 and 262.201(i)

Effective 9/1/17

Senate Bill 999 repeals the current section that authorizes a hearing for temporary removal of a child when the child is not in the Government’s possession. SB 999 §15 (repeals TFC 262.205).

Senate Bill 999 also adds a subsection (j) to Section 262.201 to specify when a court may issue a temporary order for a suit filed under Section 262.113. SB999 §13 (TFC 262.201(j)). It provides:

(j) In a suit filed under Section 262.113, at the conclusion of the full adversary hearing, the court shall issue an appropriate temporary order under Chapter 105 if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- (1) 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 of the child and continuation of the child in the home would be contrary to the child’s welfare; and
- (2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

Id.

V. TEMPORARY CARE OF MINOR

Act of May 19, 2017, HB 1043

Adds Chapter 35 of TFC

Effective immediately

House Bill 1043 provides for a procedure to permit a temporary order for a specified applicant to perform certain acts necessary for a child’s welfare in lieu of an authorization agreement. HB 1043 §2. This procedure is adopted in a new Chapter 35 of the Family Code, and, is effective immediately. HB 1043 §1 & §2.

The first two sections of the new Chapter 35 specify who may petition for this order:

1. Petitioner must be eligible to consent to treatment under Section 32.001 or to enter an authorization agreement under Section 34.001.
2. Subject child must have resided with the Petitioner at least 30 days prior to filing petition.
3. Petitioner does not have an authorization agreement for the subject child.

Id. (TFC §§35.001-35.002).

The new Section 35.005 provides the court “shall” award the temporary authorization if:

1. The court finds it is necessary to the child’s welfare;
2. No objection is made by the child’s parent, conservator or guardian.
3. The court finds by a preponderance of the evidence that the child does not have a parent, conservator, or other legal representative available to give the necessary consent.

HB 1043 §1 (TFC §35.005(b)&(c)).

The order may grant the petitioner authority or consent for any care essential to the child’s welfare. *Id.* (TFC §35.005(d)(6)). Moreover, the Act clarifies that the order may include consent for medical treatment, public benefits, and school enrollment. *Id.* (TFC §35.005(d)). The order may be in effect for up to a year and may be rendered for not more than one more year on a showing by the petitioner of continuing need. *Id.* (TFC §35.005-006). However, at any time, the child’s parent, conservator or guardian can request that the order be terminated. *Id.* (TFC 35.006(b)).

Section 35.007, as added by this Bill, clarifies that the temporary order does not confer or affect standing or a right of intervention in a proceeding under Title 5. Moreover, it adds that it does not establish legal custody or affect the rights of the parent or other person with legal rights of custody and control of the child. *Id.* (TFC §35.007). Finally, this Act clarifies that “it is not a child custody determination and does not create a court of continuing, exclusive jurisdiction under Title 5.” *Id.* (TFC §35.007(d)).

VI. TERMINATION OF PARENTAL RIGHTS

Act of May 26, 2017, HB 7 §12 Amends TFC 161.001 and 161.206 Effective 9/1/17

Section 161.001(b) of the Family Code is one of the primary provisions that authorizes the remedy of parental termination. Tex. Fam. Code Ann. §161.001(b) (West 2014). It authorizes parental termination when the court finds the facts provide proof of one of the specific predicate acts or omissions of a parent from a statutory list in subpart (1) of this Section, as well as a finding that termination of the parent-child relationship is in the child's best interest. *Id.* Section 12 of House Bill 7 makes qualifications and amendments to this provision.

A. Limits and Defenses under Section 161.001

First, House Bill 7 adds a Subsection (c) after the parental termination subdivision in Section 161.001 to prohibit a court from making a finding under Subsection (b) "based on evidence" of five different scenarios. Those five scenarios include situations when the parent:

- (1) homeschooled the child;
- (2) is economically disadvantaged;
- (3) has been charged with a nonviolent misdemeanor offense other than:
 - (A) an offense under Title 5, Penal Code;
 - (B) an offense under Title 6, Penal Code;
 - (C) an offense that involves family violence, as defined by Section 71.004 of this code;
- (4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or
- (5) declined immunization for the child for reasons of conscience, including a religious belief.

HB7 § 12 (adds TFC 161.001(c)). A subsection (e) is added to Section 161.001 in this same section to clarify, however, the following:

(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

HB7 §12 (TFC 161.001(e)).

House Bill 7 also adds a Subsection (d) in Section 161.001 to prohibit an order for parental termination

under the predicate act (b)(1)(O) of this section if the parent provides specified evidence in defense. Namely, it provides:

(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of the evidence that:

- (1) the parent was unable to comply with specific provisions of the court order; and
- (2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

It is important to note that while proof of parental termination requires "clear and convincing evidence," this parental defense only requires proof by a preponderance of the evidence. *See* Tex. Fam. Code Ann. §161.001(b)(1) (West 2014). House Bill 7 also emphasizes the different standard with the addition of Section 161.206(a-1). HB7 §13. In that section, it states: "In a suit filed by the Department of Family & Protective Services seeking termination of the parent-child relationship for more than one parent of the child, the court may order termination of the parent-child relationship for the parent only if the court finds by clear and convincing evidence grounds for the termination of the parent-child relationship for that parent." *Id.*

B New Grounds TFC 161.001

Act of May 8, 2017, SB 77 §2 Adds TFC 161.001(b)(1)(T)(iv) & (b)(1)(U) Effective for suits filed after 9/1/17

Senate Bill 77 adds a new U ground and a new conviction basis under ground T. SB 77 §2 (TFC 161.001). Both of these changes relate to sexual assault of the other parent of the child under Section 22.011 or 22.021 of the Family Code. *Id.* The new subsection U extends to deferred adjudication or its equivalency for that crime. *Id.*

This change is effective for suits filed after September 1, 2017. SB77 §§3-4.

VII. TRANSFER OF ADOPTED-CHILD'S CARE

Act of May 20, 2017, HB 834 §1 and §3. Adds TFC 162.026 and TPC 25.081 Effective 9/1/17

House Bill 834 adds a Subchapter A to Chapter 162 of the Family Code to require court approval for certain transfers of custody of an adopted child, and also

amends the Penal Code to make transfers in violation of that subject to criminal prosecution. HB 834.

The new section 162.026 of the Family Code added by this bill provides:

Sec. 162.026. REGULATED CUSTODY TRANSFER OF ADOPTED CHILD. A parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child to any person who is not a relative or stepparent of the child or an adult who has a significant and long-standing relationship with the child unless:

- (1) the parent, managing conservator, or guardian files a petition with a court of competent jurisdiction requesting a transfer of custody; and
- (2) the court approves the petition.

HB834 §1 (TFC 162.026).

Section 3 of this bill also adds Section 25.081 of the Penal Code and defines “unregulated transfer” as a transfer without approval required by Section 162.026 of the Family Code. HB 834 §3. It then provides that a person commits an offense if the person knowingly conducts an unregulated custody transfer of an adopted child or facilitates or participates in an unregulated transfer. *Id.* It adds that this offense is a felony of the third degree, but is of the second degree if it is done with intent to commit other specified offenses. *Id.* This section clarifies this offense does not apply to placement of an adopted child with the Department or for short term. *Id.* The Act takes effect September 1, 2017. HB 834 §6.

4) LEGAL DECISIONS

I. ENDANGERMENT DECISION

A. Voluntary Placement Not Admission

Act of May 26, 2017, HB 7 §17

Adds TFC 262.013

Effective 9/1/17

House Bill 7 adds a Section 262.013 to the Family Code to clarify that “the existence of a parent’s voluntary agreement to temporarily place the parent’s child in the managing conservatorship of the department is not an admission by the parent that the parent engaged in conduct that endangered the child.” HB7 §17 (TFC 262.013). This appears to have been added to ensure a parent’s agreement to place a child in the Department’s care will not be construed as

evidence that the parent admitted he or she endangered the child.

B. Continuing Danger Decision: Adv. Hrg.

Act of May 28, 2017, SB 999 §13

Adds TFC 262.201(i)

Effective for suits filed on or after 9/1/17

Senate Bill 999 adds a new subsection (i) to Section 262.201 of the Family Code to state what a court may consider in deciding whether there is a continuing danger to a child’s health or safety for purposes of deciding whether to continue removal of the child at the adversary hearing. That new subsection states:

(i) In determining whether there is a continuing danger to the physical health or safety of the child under Subsection (g), the court may consider whether the household to which the child would be returned includes a person who:

- (1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- (2) has sexually abused another child.

SB 999 §13 (adds (i) to TFC 262.201).

II. HEALTH CARE DECISIONS

Act of May 26, 2017, HB 7 §38

Adds TFC 266.005

Effective 9/1/17

Section 38 of House Bill 7 adds Section 266.005 of the Family Code to require a court to state its reasons for making a health care decision that goes against a health care consultation. HB7 §38 (TFC 266.005). This applies when it is shown a health care professional was consulted for some service, procedure or treatment for the child, and the child is in the conservatorship of the Department. *Id.*

III. EVALUATION OF LEAST RESTRICTIVE ENVIRONMENT FOR PLACEMENT

Act of May 23, 2017, HB 1542

Amends TFC 263.001 and 264.107

Effective 9/1/17

House Bill 1542 adds a definition at Section 263.001 of the Family Code for “least restrictive environment.” HB 1542 §1 (TFC 263.001(3-a)). It is defined to mean “a placement for a child that, in comparison to all other available placements, is the most family-like setting.” *Id.* A Subsection (c) is added to Section 264.107 of the Family Code directing the department to consider whether the placement is the least

restrictive setting for the child among other factors in deciding the best interest of the child in the placement decision. HB 154 §4 (TFC 264.107(c)).

IV. UNSUPERVISED VISITS PRESUMPTION

Act of May 16, 2017, SB 495
Amends TFC 153.004
Effective September 1, 2017

Senate Bill 495 amends Section 153.004 to add that family violence may provide a basis for a rebuttable presumption that it is not in the child's best interest to have unsupervised visitation with the parent. SB495 §1 (TFC 153.004(e)). It also adds that the history of family violence and other matters listed can provide that presumption if the proof relates to any person in the household or who is permitted by that parent to have unsupervised access to the child during periods of possession. *Id.* (TFC 153.004(e)(2)). It clarifies that "family violence" has the meaning assigned by Section 71.004. *Id.* (TFC 153.004(g)).

V. MEDIATED SETTLEMENT AGREEMENTS

Act of May 16, 2017, SB 495 §2
Amends TFC 153.0071(e-1)
Effective September 1, 2017

Senate Bill 495 amends Section 153.0071(e-1) to provide an additional ground for declining a mediated settlement agreement when a person is a registered sex offender. In particular, it designates the current basis as Subpart (A) and adds the new basis as Subpart (B) as follows:

(B) the agreement would permit a person who is subject to registration under Chapter 62, Code of Criminal Procedure, on the basis of an offense committed by the person when the person was 17 years of age or older or who otherwise has a history or pattern of past or present physical or sexual abuse directed against any person to:

- (i) reside in the same household as the child; or
- (ii) otherwise have unsupervised access to the child; and

SB495 §2 (TFC 153.007(e-1)).

5) LEGAL PROCEDURES

I. ADVERSARY HEARING DISCLOSURES

Act of May 26, 2017, HB 7 §13

Adds TFC 262.014 **Effective September 1, 2017**

House Bill 7 adds a procedure in Section 262.014 of the Family Code that requires the Department to provide certain information before the full adversary hearing when requested by an attorney for a parent. It states:

Sec. 262.014. DISCLOSURE OF CERTAIN EVIDENCE. On the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship filed under this chapter, or the attorney ad litem for the parent's child, the Department of Family and Protective Services shall, before the full adversary hearing, provide:

- (1) The name of any person, excluding a department employee whom the department will call as a witness to any of the allegations contained in the petition filed by the department;
- (2) a copy of any offense report relating to the allegations contained in the petition filed by the department that will be used in court to refresh a witness's memory; and
- (3) a copy of any photograph, video, or recording that will be presented as evidence.

HB7 §17 (TFC 161.014).

There are three important points that can be derived from the plain wording of this section. First, the disclosure required under this section is only required if there is a request by the parent's attorney and the parent is a party. Second, the items subject to disclosure are only items that will actually be used at the hearing: i.e. a person whom the Department will call as a witness, an offense report that will be used to refresh a witness's memory and a photo, video or recording that will be presented as evidence. Third, the duty is only required of the Department. It is not required of the attorney ad litem for the child or any parent in the suit.

Additionally, an important point that can be made about this duty concerns the lack of enforcement. This section does not provide any penalty if the Department fails to disclose under this Section and does not provide that this duty is subject to the same sanctions available for discovery abuses under the Rules of Civil Procedure. Consequently, it appears a party's sole remedy to address noncompliance would be a motion to compel or possibly mandamus.

II. ADVERSARY HEARING TIMING

A. Continuance for Lawyer

Act of May 26, 2017, HB 7 §20;

Act of May 28, 2017, SB 999 §13

Adds TFC 262.201(a-5) aka (e-1)

Effective September 1, 2017

Both Senate Bill 999 and House Bill 7 amend Section 262.201 of the Family Code to provide authority for a court to continue the full adversary hearing for up to 7 days when a parent who is “not indigent” needs an attorney to prepare. HB7 §20 (TFC 262.201(a-5)); SB999 §13 TFC 262.201(e-1). The new section provides the continuance must be based on “good cause” and that the hearing may only be postponed for not more than seven days from the date of the parent’s appearance. *Id.* The new authority indicates the court is granting the continuance to allow the parent to hire an attorney or to provide the parent’s attorney time to respond to the petition and prepare for the hearing. *Id.*

Notably, the alphabetic and numbered sections referred to in these bills are different. House Bill 7 adds this section as a new subsection (a-5) while Senate Bill 999 eliminates the current subpart numbering under subsection (a) and designates this as a new subsection (e-1). *Id.* This may cause a little confusion at first but are reconcilable since they create identical changes. *See* TEX. GOV’T CODE ANN. 311.025 (West 1998).

Also, the last sentence added to this new authority has some numbering issues, but that also appears reconcilable. Namely, Senate Bill 999 requires this new authority to be subject to limits and requirements under Subsection (e) of Section 262.201, while House Bill 7 refers to the limits and requirements of subsection (a-3). *Id.* However, examination of both bills reveals that Subsection (a-5) and Subsection (e) of Section 262.201 are the same Subsection numbered differently in these bills. Notably, House Bill 7 adds reference to Section 155.207 as a requirement that the continuance would be subject to; however, that does not appear in conflict with Senate Bill 999 since this relates to the timing required for a transfer under Section 155.207 of the Family Code. *See* Tex. Fam. Code Ann. §155.207 (West 2014).

B. 30 Day Restriction under 262.113

Act of May 28, 2017, SB 999 §13

Adds TFC 262.201(b)

Effective September 1, 2017

Senate Bill 999 adds a subsection (b) to Section 262.201 of the Family Code to provide a full adversary hearing in a suit filed under Section 262.113 shall be held not later than the 30th day after the suit is filed. SB 999 §13 (adds TFC 262.201(b)). The bill does not include any penalty or remedy if the hearing is not held within that time, therefore, it appears its enforcement would likely require mandamus. *See e.g. In re E.D.L.*, 105 S.W.3d 679, 688 (Tex. App. – Fort Worth 2003, pet. denied) (though Section 262.201 of the Family Code requires adversary hearing within 14 days, this requirement is procedural and mandamus would be proper remedy to compel its timeliness).

III. CCJ TRANSFERS

A. Automatic Process: TFC 262.203(a)(2)

Act of May 26, 2017, HB 7; SB 738 and 999

Amends TFC 155.201(d)

Effective 9/1/17

House Bill 7 and Senate Bills 738 and 999 attempt to invoke an automatic transfer procedure from the court of continuing exclusive jurisdiction to a court exercising jurisdiction under Chapter 262. That is, these bills add a subsection (d) to Section 155.201 of the Family Code to require the court of continuing, exclusive jurisdiction to transfer its proceedings, pursuant to the requirements of section 155.204(i), to the court where the suit is pending when it receives a transfer order under 262.203(a)(2) of the Family Code. HB7 §10 and SB738 §1 and SB999 §1-2 (TFC 155.201(d)). Importantly, this only involves situations when the court of continuing exclusive jurisdiction receives a transfer order involving Section 262.203 (a)(2) of the Family Code and that involves the mandatory transfer situations under Section 155.201 of the Family Code. Tex. Fam. Code Ann. §262.203(a)(2) and §155.201 (West 2014).

This new section directs that the transfer be done pursuant to the requirements of Section 155.204(i). Section 155.204(i) is amended by these bills to read as follows:

“If a transfer order has been signed by a court of exercising jurisdiction under Chapter 262, the Department of Family and Protective Services shall file the transfer order with the clerk of the court of continuing exclusive jurisdiction. On receipt and without a hearing or further order from the court of continuing, exclusive jurisdiction, the clerk of the court of continuing exclusive jurisdiction shall transfer the files as provided by this subchapter

within the time required by Section 155.207.” Tex. Fam. Code Ann. §155.204(i) (West 2014).

Id. (TFC 155.204(i)).

B. Transfer Findings: TFC 262.203

Act of May 26, 2017, HB 7 §21

Amends TFC 262.203(a)

Effective 9/1/17

House Bill 7, Senate Bill 738 and 999 also amends Section 262.203(a) of the Family Code as follows:

- (a) On the motion of a party or the court’s own motion, if applicable, the court that rendered the temporary order shall in accordance with procedures provided by Chapter 155:
 - (1) Transfer the suit to the court of continuing, exclusive jurisdiction, if any, within the time required by Section 155.207(a), if the court finds that the transfer is:
 - (a) Necessary for the convenience of the parties; and
 - (b) In the best interest of the child
 - (2) Order transfer of the suit from the court of continuing jurisdiction; or
 - (3) If grounds exist for transfer based on improper venue, order transfer of the suit to the court having venue of the suit under Chapter 103.

HB 7 §21 (TFC 262.203(a)(1) (emphasis added). As revised, it makes a difference whether the decision is to transfer to or from the court of continuing, exclusive jurisdiction. If the court is deciding to transfer to the court of continuing, exclusive jurisdiction, this section requires the court to make two findings: 1. the transfer is necessary for the convenience of the parties and (2) is in the best interest of the child. *Id.* Nevertheless, for the court to order transfer from the court of continuing, exclusive jurisdiction, subpart(a)(2) does not include such findings. HB 7 §21 (TFC 262.203(a)(1)). HB7 §21; SB738 §3; SB999 §14 (TFC 262.203(a)).

IV. DISMISSAL DEADLINE TFC 263.401

A. Automatic and Jurisdictional

Act of May 26, 2017 HB7 §§27-28

Act of May 28, 2017, SB11 §12 & 13

Amends TFC §§263.401-402.

Effective 9/1/17

Both Senate Bill 11 and House Bill 7 make almost identical amendments to Sections 263.401 & 263.402

of the Family Code. SB11 §12; HB7 §§27-28. Section 263.401 of the Family Code is a provision that imposes a restricted time period for a Department-filed suit to remain pending after a child is taken into State care. Tex. Fam. Code Ann. §263.401 (West Supp. 2015). In 2009, considering a waiver provision in Section 263.402 of the Family Code, the Supreme Court held this time restriction in section 263.401 was not a jurisdictional requirement. *See In re Dept. of Fam. & Prot. Servs.*, 273 S.W.3d 637, 642 (Tex. 2009). Both Senate Bill 11 and House Bill 7 change that.

Both Senate Bill 11 and House Bill 7 amend Section 263.401(a) identically as follows:

- (a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court’s jurisdiction over ~~court shall dismiss~~ the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order.

SB 11 §12; HB 7 §27. Both bills also eliminate subpart (b) of Section 263.402 eliminating the waiver provision. SB 11 §13; HB 7 §28.

Nevertheless, House Bill 7 differs from Senate Bill 11 by adding a sentence at the end of Section 263.401(a) that states:

Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.

HB7 §27. Because this provides something different from Senate Bill 11 in an amendment to Section 263.401, one must turn to the Code Construction Act for guidance. *Compare* SB11 §12.

According to the Code Construction Act, when bills enacted at the same sessions of the legislature amend the same statutes without reference to each other, they are to “be harmonized, if possible, so that effect may be given to each.” Tex. Gov’t Code Ann. §311.025(b)

(West 1998). If the amendments are irreconcilable, the latest date in enactment prevails. *Id.*

Senate Bill 11 is latest enacted bill to amend Section 263.401 so it would control in the event of conflict. Nevertheless, they do not appear to conflict since the last sentence added to Section 263.401(a) in House Bill 7 does not directly conflict with any of the changes made in Senate Bill 11. Consequently, it appears both bills can be read together as effective.

With the changes to Sections 263.401 and 263.402 in these two bills, there are four primary changes. First, both bills expressly make the limited time period after a Department files suit a matter that relates to the court's jurisdiction. Second, they make the expiration of the stated time period subject to automatic dismissal "without court order." Third, in conformity with that change, it eliminates waiver of the right to object to a dismissal under Section 263.401. And fourth, Senate Bill 11 places a duty of notification concerning the dismissal on the court. There are numerous issues related to these four changes.

Issues related to the Bill's Jurisdictional Designation and Elimination of Waiver.

First, the characterization of the dismissal dates as a matter that relates to the court's jurisdiction and the elimination of the waiver provision are important changes that expose judgments in these cases to invalidation for years. As noted by the Supreme Court, "[i]f the dismissal dates set by the Family Code are jurisdictional, then ... its orders beyond those dates are void." *In re Dept. of Fam. & Prot. Servs.*, 273 S.W.3d at p. 641. The potential that a judgment could be characterized as void raises the possibility of "collateral attack upon ... termination orders well after the completion of the termination proceedings and even after adoption of the children by other parties." *Id.* at p. 642. This concern seems well-founded since the Supreme Court has made clear the jurisdictional authority of a court to grant an adoption depends on the validity of the underlying parental termination judgment. *See Schiesser v. State*, 544 S.W.2d 373, 377 (Tex. 1977) (adoption order rendered while termination order on appeal declared "void").

It may be argued that the concern about collateral attacks should be limited since Section 161.211 and Section 162.012 of the Family limit collateral attacks on parental termination and adoption judgments to six months after the judgments are signed. Tex. Fam. Code Ann. §161.211 and §162.012 (West 2014). However, a prior opinion from the Texas Supreme

Court indicates those sections will not have effect against a collateral attack based on jurisdiction.

Namely, in *In re E.R.*, the Texas Supreme Court held Section 161.211 of the Family Code could not prevent a collateral attack on a parental termination judgment by someone deprived of appropriate service by publication. *In re E.R.*, 385 S.W.3d 552 (Tex. 2012). Notably, the Supreme Court has recognized by prior opinion that "personal jurisdiction may be waived." *In re Fisher*, 433 S.W.3d 523, 532 (Tex. 2014). However, in *In re E.R.*, it noted that result is different when there is a complete failure of service, because that deprives a trial court of personal jurisdiction making the resulting judgment "void" and subject to challenge at any time. *Id.* 566.

While the Supreme Court held the six month limit could not be mechanically applied against someone effectively deprived of service, that same opinion acknowledged an equitable defense might be available. *Id.* at p. 568. Namely, the court concluded that: "If, after learning that a judgment has terminated her rights, a parent unreasonably stands mute, and granting relief from the judgment would impair another party's substantial reliance interest, the trial court has discretion to deny relief. *Id.* at p. 569. Recognizing that the record was silent on possible substantial reliance interests secured during the challenging parent's delay, the court in *In re E.R.* remanded the case for consideration of that equitable defense to the collateral challenge. *Id.*

It may seem this same analysis should apply if a challenge is raised based on lack of subject matter jurisdiction under the amended language of Section 263.401. Nevertheless, that probably is not the case. Under the current wording of Section 263.401, the restricted deadline imposed relates to the court's jurisdiction. Consequently, a collateral challenge to a court's judgment signed beyond the stated deadline does not just relate to a single party's rights. It relates to the court's authority to make any decision in the case after the expiration of the deadline. Consequently, the analysis would be more like the situation when plenary jurisdiction expires. In that situation, a judgment entered after plenary jurisdiction expires may be declared a nullity at any time. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995).

Issues with Respect to Automatic Dismissal without Court Order.

With respect to the amendment that causes the dismissal to occur “automatically” and “without court order,” that amendment appears to trigger two issues: (1) is the automatic dismissal with prejudice? (2) and is there enough certainty for its automatic operation to apply?

The issue concerning the effect of the automatic dismissal is important, because a dismissal “with prejudice” is an adjudication of the parties’ rights, while a dismissal without prejudice is not. *In re Dept. of Fam. & Prot. Servs.*, 273 S.W.3d at p. 651 (Dissent). What that means is a dismissal with prejudice can preclude the Department from refileing a suit on the same legal grounds. Notably, this issue was not addressed in the law before this amendment and nothing in the amendments seen by the author provides any further illumination on that issue. Therefore, it appears this question remains unanswered.

Nonetheless, it should be noted there is case law on the prior law that is instructive. In particular, there is a dissenting opinion authored by Justices Hecht and Brister from a 2009 mandamus proceeding involving Section 263.401 that provides a good discussion of that issue. In their opinion, the dissenting justices note that at least four appellate courts had considered that issue and held the dismissal under Section 263.401 was without prejudice. *In re Dept. of Fam. & Prot. Servs.*, 273 S.W.3d at p. 651. The dissenters also noted the dismissal in no way appeared to be an adjudication of rights or a sanction and was more like a want of prosecution provision, therefore, a dismissal without prejudice would appear to be appropriate. *Id.* at p. 651-53.

The other issue that this bill raises concerns the certainty of the automatic dismissal deadline. The drafter of this change obviously concluded there was certainty in the deadline in this section because otherwise it would be problematic to make the deadline a jurisdictional mechanism. That may have been determined appropriate since Section 263.401 clearly defines a year period following the date that the court orders a child in State care. *See* Tex. Fam. Code Ann. §263.401 (West 2015). As such, the drafter must have concluded an automatic dismissal of the case without court order would be appropriate much like the automatic denial of a motion for new trial that occurs on 75th day after a judgment is signed. *See* Tex. R. Civ. P. 329b(c). However, that assessment is not correct.

The timeframe in Rule 329b(c) that invokes an automatic ruling goes from two certain dates: i.e. (1) the date the judgment is signed until (2) the 75th day expires. Section 263.401 also has two similar certain dates that go from the date the order of custody is signed that places a child in Department’s care and the calculation of the one-year period specified. However, that is not the only time period involved. The initial phrase in Section 263.401 modifies the timeframe from the date of custody until the anniversary date with two conditions. Those two conditions are: “Unless” [(1)] the court has commenced the trial on the merits or [(2)] granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator.” Tex. Fam. Code Ann. 263.401(a); HB 7 §27. The first condition – commencement of trial – stops the deadline and the second condition –allows limited delay. The problem these modifications provide for this new scheme is the lack of clarity in the operation of an automatic dismissal.

Namely, the first condition that stops the deadline states: “the court has commenced the trial on the merits.” Neither Section 263.401 nor any other provision in the Family Code defines this phrase. Also, the Texas Supreme Court has not decided its meaning. While there is an opinion from 1876 that indicated the court found trial commencement occurred when the plaintiffs were called upon and announced ready, the context of that construction was very different as was the statutory phrase involved. *See Watt v. White, Smith & Baldwin*, 46 Tex. 338, 340, 1876 WL 9309 *2 (Tex. 1876). (deciding propriety of removal action, construction involved phrase “before or at the term at which said cause could be first tried, and before the trial thereof.”). Also, while criminal case law may provide some guidance, the Texas Supreme Court is not bound by criminal jurisprudence and it is difficult to apply the same meaning when those cases consider the intent of specific laws and constitutional interests unique to the criminal context. *See BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d 1, 19 (Tex. 2015) (case refused for consideration by Court of Criminal Appeals does not carry precedential weight or dispose of issue for Texas Supreme Court); *Also see Garner v. State*, No. 05-16-00707-CR, ___S.W.3d ___, 2017 WL 1908633 *7 (Tex. App. – Dallas 2017, no pet. h.) (held trial begins when jury

impaneled and sworn for purposes of Article 36.29 of the Code of Criminal Procedure); *Sanchez v. State*, 138 S.W.3d 324 (Tex. Crim. App. 2004) (acknowledging there was no definition of the phrase “trial on the merits commences,” but concluded it did not mean the date the case was set for trial); *Crist v. Bretz*, 437 U.S. 28, 38 (1978) (held double jeopardy attaches when the jury is empaneled and sworn).

Moreover, the uncertainty of this phrase is not a secret. The Tyler Court of Appeals expressly acknowledged the law was unsettled concerning the meaning of this phrase in an opinion issued in 2016. *See In re D.I.*, No. 12-16-00159-CV, 2016 WL 6876503 (Tex. App. – Tyler 2016, no pet.). In that case, the issue concerned whether an appointed attorney provided ineffective assistance of counsel in failing to challenge the court’s failure to dismiss a case under Section 263.401. In deciding that issue the court had to decide whether it would have been clear to the attorney that trial did not commence when the judge timely called the case for trial, but ordered a continuance not long after the announcement. 2016 WL 6876503 at *1. The court noted there were only a few appellate decisions addressing the meaning of when trial commences for purposes of Section 263.401 and none of those decisions were by the Texas Supreme Court. *Id.* at *2. Consequently, since the law was so unsettled, the court concluded it could not find the parent’s attorney’s failure to raise a dismissal issue was ineffective assistance of counsel. *Id.*

As mentioned earlier, there is a Texas Supreme Court opinion from 1876 that characterizes commencement as the moment plaintiffs are called upon and announce ready, however, appellate opinions deciding Section 263.401 have not found that meaning applicable. *See Watt v. White, Smith & Baldwin*, 46 Tex. 338, 340, 1876 WL 9309 **2 (Tex. 1876). For example, in 2015, while the Amarillo Court of Appeals did not state precisely what commencement meant under Section 263.401, it found calling the parties to the bench, making inquiry on how long the trial would take and then immediately recessing the case for trial would not be enough. *See In re D.S.*, 455 S.W.3d 750, 751 (Tex. App. – Amarillo 2015, no pet.). The court’s opinion suggested “at a minimum the parties should be called upon to make their respective announcements and the trial court should ascertain whether there are any preliminary matters to be taken up.” *Id.* at 753

(emphasis added). Later, considering the holding of the Amarillo Court, the Houston Court of Appeals (First District) found the announcement of the parties coupled with the court’s determination of a number of preliminary evidentiary matters could be construed sufficient, even though the trial was ordered to resume later to permit the father’s attorney to contact his client in prison. *In re D.W.*, 498 S.W.3d 100, 114 (Tex. App. – Houston [1st Dist.] 2016, no pet.).

B. Court’s Duty of Notification
Act of May 26, 2017 HB7 §27
Amends TFC §§263.401(a)
Effective 9/1/17

Another issue with respect to the change in Section 263.401 concerns the trial judge’s duty after a suit is automatically dismissed.HB7 §27 (TFC 263.401(a)). It adds:

Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.

HB7 §27 (TFC 263.401(a)). Importantly, unlike the notice provision in Rule 306a, this provision places the duty of notification of a judgment on the judge. Nonetheless, a judge can trigger this notification under the procedures of Rule 306a so long as the court ensures a written judgment is signed that reflects the automatic dismissal date.

Namely, Rule 306a(2) instructs “Judges, attorneys and clerks” to use their best efforts to cause all judgments to be reduced to writing and signed. Since an automatic dismissal of a suit would be a judgment subject to the best efforts requirement, a signed judgment should be signed that triggers notice by the clerk under Rule 306a. Namely, under Rule 306(a)(3), when the judgment is signed, the duty is upon the clerk to “immediately” send out notices to all parties.

C. Extension for Service Plan
Act of May 26, 2017, HB 7 §29
Adds (a-1) to TFC 263.403
Effective 9/1/17

Section 29 of House Bill 7 adds a subsection (a-2) to Section 263.403 of the Family Code to provide authority for an extension of six months as necessary for a parent to complete the remaining requirements in a service plan and specified in the temporary order as

mandatory for the child's return. HB7 §29 (adds TFC 263.403(a-3)). Subsection (a) of Section 263.403(a) is also amended to clarify this six months extension is in addition to the current monitor and return extension in that section. HB7 §29 (amends TFC 263.403(a)). Subsection (c) is amended to clarify if a court renders a temporary order for this extension, the court shall at the time of the order, schedule a new dismissal date and it may not be later than 180 days after the "order is rendered." HB7 §29 (amends TFC 263.403(c)).

D.Reconciliation of Application Dates
Act of May 26, 2017 HB7 §73
Act of May 28, 2017, SB11 §33, 34
TFC 263.401 date differs from 263.402-03
Suits filed on or after 9/1/17

The instructions on application of the changes in House Bill 7 and Senate Bill 11 have a general effective date of September 1, 2017. Nonetheless, it should be noted that there are different instructions concerning Sections 263.401 of the Family Code that need to be reconciled. *See* HB7 §79; SB11 34.

Namely, House Bill 7 instructs:

- (b)The changes made by this Act to Section 263.401, Family Code, apply only to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after the effective date of this Act. A suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

HB7 §73 (emphasis added).

Senate Bill 11, on the other hand, instructs differently:

The changes in law made by this Act to Section 263.401, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed and the former law is continued in effect for that purpose.

SB11 §33 (emphasis added).

As indicated, the effective application dates for the changes made in Section 263.401 by House Bill 7 and Senate Bill 11 are different. House Bill 7 makes the changes in Section 263.401 applicable to any suit affecting the parent-child relationship that is *pending* on September 1, 2017; while Senate Bill 11 only makes the changes applicable to suits *filed on or after* September 1, 2017. These instructions are inconsistent when applied to the primary identical changes that both of these bills made to Section 263.401. Consequently, it appears necessary to look to the Code Construction Act to determine how these conflicts are reconciled. *See* Tex. Gov't Code Ann. §311.002 (West 1998).

Section 311.025(b) of the Code Construction Act instructs "if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each." Tex. Gov't Code Ann. §311.025(b) (West 1998). However, "If the amendments are irreconcilable, the latest in date of enactment prevails." *Id. The date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.* Tex. Gov't Code Ann. §311.025 (West 1998). The legislative records indicate Senate Bill 11 was the latest. S.J. of Tex., 85th Leg., R.S. 3567 (2017) (House concurred in senate Amendments to HB7 on May 26, 2017); S.J. of Tex., 85th Leg., R.S. 4150-51 (House adopted conference committee reports on SB 11 on May 28, 2017). Consequently, to the extent there are any irreconcilable differences in the amendments as promulgated in these two bills, the application date provided by Senate Bill 11 prevails.

The application period for Section 263.401 under Senate Bill 11 is for suits filed on or after September 1, 2017 while House Bill 7's application is for suits *pending* on or after September 1, 2017. These periods are in conflict. Consequently, the application date provided in Senate Bill 11 should apply, and the changes to Section 263.401 should only apply to suits filed on or after September 1, 2017.

With respect to the amendments to Sections 263.402 to 263.403 of the Family Code, that appears to be the same. Neither House Bill 7 nor Senate Bill 11 provide specific application instructions for those sections. Consequently, the instruction already discussed above in Senate Bill 11 applies and the following instruction in House Bill 7 applies:

(c) Except as otherwise provided by this section, the changes in law made by this Act apply only to a suit affecting the parent-child relationship on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is subject to the law in effect at the time the suit was filed, and the former law is continued in effect for that purpose.

HB7 §73(c). As indicated, this instruction provides the changes of this bill only apply to suits filed on or after the effective date. Because that is the effective date in Senate Bill 11, that appears to be effective date for Sections 263.402-03 as well. *See* SB11 §33.

V. ELECTRONIC NOTARY

Act of May 22, 2017, HB 1217 §1
Amends CPR⁷ 121.006
Effective 9/1/17

House Bill 1217 amends Section 121.006 of the Civil Practice and Remedies Code to permit a process by which a person can appear before a notary either in person or by an interactive two-way audio and video communication. HB 1217 §1 (adds CPR 121.006(c)). This section is further amended to require an online notarization to state how the person appeared before the notary. *Id.*

A subchapter C is added to Chapter 406 of the Government Code to define the significant terms related to an electronic notarization and explain the standards. HB 1217 §3 (TGC 406.101-104). It provides the secretary of state may adopt rules to facilitate and implement this subchapter and develop the standards for online notarization. *Id.* (TGC 406.103-104).

VI. EX PARTE HEARINGS UNDER CH. 262

Act of May 26, 2017 HB7 §22
Adds TFC 262.206
Effective 9/1/17

House Bill 7 adds a Section 262.206 to the Family Code which provides:

Unless otherwise authorized by this chapter or other law, a hearing held by a court in a suit under this chapter may not be ex parte.

HB7 §22 (TFC 262.206). As indicated, this section prohibits ex parte hearings not authorized by Chapter 262 or other law for suits under Chapter 262, but does not specify what other law might authorize an ex parte hearing.

VII. SAME COURT -SAME INCIDENT/HOME

Act of May 28, 2017 SB999 §3
Adds TFC 262.013

Suits filed on or after September 1, 2017

Senate Bill 999 adds Section 262.013 of the Family Code to impose the following filing requirement when a suit is based on allegations from the same incident abuse or neglect and involving children in the same home:

Sec. 262.013. FILING REQUIREMENT REGARDING MORE THAN ONE CHILD. Each suit under this chapter based on allegations of abuse or neglect arising from the same incident or occurrence and involving children that live in the same home must be filed in the same court.

SB999 §3 (adds TFC 262.013). This requirement applies to suits filed on or after September 1, 2017. SB §16-17.

VIII. PERMANENCY HEARINGS

A. Required Court Findings
Act of May 26, 2017 HB7 §23 & §31
Amends TFC 263.003 and 263.5031
Effective 9/1/17

House Bill 7 amends Section 263.002 of the Family Code to require a court to include a statement in its findings at each permanency hearing before final order under Chapter 263 concerning whether the department placed the child with a relative or designated caregiver. HB7 §23 (adds TFC 263.003(b)). Section 263.5031 of the Family Code similarly requires that finding at each permanency hearing following final order. HB7 §31 (amends TC 263.5031).⁸

⁷ In this paper, "CPR" refers to the Civil Practice and Remedies Code.

⁸Section 15 of House Bill 7 also requires findings at each hearing under Chapter 262 concerning whether the department has the option of placing the child with a relative or other designated caregiver. HB7 §15 (adds TFC 262.0022). However, Chapter 262 of the Family Code is the

It also adds a section that requires a court at each permanency hearing before a final order to make a finding on whether returning a child to the child's home is safe and appropriate, whether the return is in the best interest of the child and whether it is contrary to the welfare of the child for the child to return home. HB7 §23 (TFC 23.003(c)).

A. Notice and Right to Testify

Act of May 26, 2017 HB7 §24

Amends TFC 263.0021

Effective 9/1/17

House Bill 7 amends Section 263.0021 of the Family Code to require the notice of hearing sent to the persons entitled to come to the permanency hearing that such individual may, but is not required to, attend and be heard at the hearing. HB7 §24 (adds TFC 263.0021(e)). House Bill 7 also amends Section 263.0021 to clarify that the court is to determine if a caregiver is present and allow them to testify if the caregiver wishes to provide information about the child. HB7 §24 (adds TFC 263.0021(f)).

chapter that involves hearings when the Department seeks orders to protect a child, including for emergency removal of a child. *See* Tex. Fam. Code Ann. §261.001-309 (West 2014). Permanency hearings are not part of that chapter but it looks like the legislature wants the Court to make a finding concerning the option of a relative or designated caregiver early in the proceedings.

ATTACHMENT 1 - HOUSE BILL 7

AN ACT

relating to child protective services suits, motions, and services by the Department of Family and Protective Services and to the licensing of certain facilities, homes, and agencies that provide child-care services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 109.331(d), Alcoholic Beverage Code, is amended to read as follows:

(d) This section does not apply to a [~~foster group home, foster family home,~~ family home, specialized child-care [agency group] home, or agency foster home as those terms are defined by Section 42.002, Human Resources Code.

SECTION 2. Section 29.081(d), Education Code, is amended to read as follows:

(d) For purposes of this section, "student at risk of dropping out of school" includes each student who is under 26 years of age and who:

(1) was not advanced from one grade level to the next for one or more school years;

(2) if the student is in grade 7, 8, 9, 10, 11, or 12, did not maintain an average equivalent to 70 on a scale of 100 in two or more subjects in the foundation curriculum during a semester in the preceding or current school year or is not maintaining such an average in two or more subjects in the foundation curriculum in the current semester;

(3) did not perform satisfactorily on an assessment instrument administered to the student under Subchapter B, Chapter 39, and who has not in the previous or current school year subsequently performed on that instrument or another appropriate instrument at a level equal to at least 110 percent of the level of satisfactory performance on that instrument;

(4) if the student is in prekindergarten, kindergarten, or grade 1, 2, or 3, did not perform satisfactorily on a readiness test or assessment instrument administered during the current school year;

(5) is pregnant or is a parent;

(6) has been placed in an alternative education program in accordance with Section 37.006 during the preceding or current school year;

(7) has been expelled in accordance with Section 37.007 during the preceding or current school year;

(8) is currently on parole, probation, deferred prosecution, or other conditional release;

(9) was previously reported through the Public Education Information Management System (PEIMS) to have dropped out of school;

(10) is a student of limited English proficiency, as defined by Section 29.052;

(11) is in the custody or care of the Department of Family and Protective [~~and Regulatory~~] Services or has, during the current school year, been referred to the department by a school official, officer of the juvenile court, or law enforcement official;

(12) is homeless, as defined by 42 U.S.C. Section 11302, and its subsequent amendments; or

(13) resided in the preceding school year or resides in the current school year in a residential placement facility in the district, including a detention facility, substance abuse treatment facility, emergency shelter, psychiatric hospital, halfway house, cottage home operation, specialized child-care home, or general residential operation [~~foster group home~~].

SECTION 3. Section 58.0052, Family Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In addition to the information provided under Subsection (b), the Department of Family and Protective Services and the Texas Juvenile Justice Department shall coordinate and develop protocols for sharing with each other, on request, any other information relating to a multi-system youth necessary to:

(1) identify and coordinate the provision of services to the youth and prevent duplication of services;

(2) enhance rehabilitation of the youth; and

(3) improve and maintain community safety.

SECTION 4. Section 101.0133, Family Code, is amended to read as follows:

Sec. 101.0133. FOSTER CARE. "Foster care" means the placement of a child who is in the conservatorship of the Department of Family and Protective Services and in care outside the child's home in a residential child-care facility, including an [agency foster group home,] agency foster home, specialized child-care [foster group] home, cottage [foster] home operation, general residential operation, or another facility licensed or certified under Chapter 42, Human Resources Code, in which care is provided for 24 hours a day.

SECTION 5. Section 101.017, Family Code, is amended to read as follows:

Sec. 101.017. LICENSED CHILD PLACING AGENCY. "Licensed child placing agency" means a person, including an organization or corporation, licensed or certified under Chapter 42, Human Resources Code, by the Department of Family and Protective Services to place a child in an adoptive home or a residential child-care facility, including a child-care facility, agency foster home, cottage home operation, or general residential operation [agency foster group home, or adoptive home].

SECTION 6. Section 105.002, Family Code, is amended by adding Subsection (d) to read as follows:

(d) The Department of Family and Protective Services in collaboration with interested parties, including the Permanent Judicial Commission for Children, Youth and Families, shall review the form of jury submissions in this state and make recommendations to the legislature not later than December 31, 2017, regarding whether broad-form or specific jury questions should be required in suits affecting the parent-child relationship filed by the department. This subsection expires September 1, 2019.

SECTION 7. Sections 107.002(b) and (c), Family Code, are amended to read as follows:

(b) A guardian ad litem appointed for the child under this chapter shall:

(1) within a reasonable time after the appointment, interview:

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- (A) the child in a developmentally appropriate manner, if the child is four years of age or older;
 - (B) each person who has significant knowledge of the child's history and condition, including educators, child welfare service providers, and any foster parent of the child; and
 - (C) the parties to the suit;
- (2) seek to elicit in a developmentally appropriate manner the child's expressed objectives;
 - (3) consider the child's expressed objectives without being bound by those objectives;
 - (4) encourage settlement and the use of alternative forms of dispute resolution; and
 - (5) perform any specific task directed by the court.
- (c) A guardian ad litem appointed for the child under this chapter is entitled to:
- (1) receive a copy of each pleading or other paper filed with the court in the case in which the guardian ad litem is appointed;
 - (2) receive notice of each hearing in the case;
 - (3) participate in case staffings by the Department of Family and Protective Services concerning the child;
 - (4) attend all legal proceedings in the case but may not call or question a witness or otherwise provide legal services unless the guardian ad litem is a licensed attorney who has been appointed in the dual role;
 - (5) review and sign, or decline to sign, an agreed order affecting the child; ~~and~~
 - (6) explain the basis for the guardian ad litem's opposition to the agreed order if the guardian ad litem does not agree to the terms of a proposed order;
 - (7) have access to the child in the child's placement;
 - (8) be consulted and provide comments on decisions regarding placement, including kinship, foster care, and adoptive placements;
 - (9) evaluate whether the child welfare services providers are protecting the child's best interests regarding appropriate care, treatment, services, and all other foster children's rights listed in Section 263.008;
 - (10) receive notification regarding and an invitation to attend meetings related to the child's service plan and a copy of the plan; and
 - (11) attend court-ordered mediation regarding the child's case.

SECTION 8. Section 107.004, Family Code, is amended by adding Subsection (d-3) to read as follows:

(d-3) An attorney ad litem appointed to represent a child in the managing conservatorship of the Department of Family and Protective Services shall periodically continue to review the child's safety and well-being, including any effects of trauma to the child, and take appropriate action, including requesting a review hearing when necessary to address an issue of concern.

SECTION 9. Section 107.016, Family Code, is amended to read as follows:

Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF APPOINTMENT. In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as

conservator of the child is requested:

- (1) an order appointing the Department of Family and Protective Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem ~~[or attorney ad litem]~~ for the child for any period during the time the child remains in the conservatorship of the department, as set by the court; ~~and~~
- (2) an order appointing the Department of Family and Protective Services as the child's managing conservator may provide for the continuation of the appointment of the attorney ad litem for the child as long as the child remains in the conservatorship of the department; and
- (3) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

- (A) the date the suit affecting the parent-child relationship is dismissed;
- (B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or
- (C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

SECTION 10. Section 155.201, Family Code, is amended by adding Subsection (d) to read as follows:

(d) On receiving notice that a court exercising jurisdiction under Chapter 262 has ordered the transfer of a suit under Section 262.203(a)(2), the court of continuing, exclusive jurisdiction shall, pursuant to the requirements of Section 155.204(i), transfer the proceedings to the court in which the suit under Chapter 262 is pending within the time required by Section 155.207(a).

SECTION 11. Section 155.204(i), Family Code, is amended to read as follows:

(i) If a transfer order has been signed by a court exercising jurisdiction under Chapter 262, the Department of Family and Protective Services shall ~~[a party may]~~ file the transfer order with the clerk of the court of continuing, exclusive jurisdiction. On receipt and without a hearing or further order from the court of continuing, exclusive jurisdiction, the clerk of the court of continuing, exclusive jurisdiction shall transfer the files as provided by this subchapter within the time required by Section 155.207(a).

SECTION 12. Section 161.001, Family Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A court may not make a finding under Subsection (b) and order termination of the parent-child relationship based on evidence that the parent:

- (1) homeschooled the child;
- (2) is economically disadvantaged;
- (3) has been charged with a nonviolent misdemeanor offense other than:

- (A) an offense under Title 5, Penal Code;
- (B) an offense under Title 6, Penal Code; or
- (C) an offense that involves family violence, as defined by Section 71.004 of this code;
- (4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or
- (5) declined immunization for the child for reasons of

conscience, including a religious belief.

(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:

(1) the parent was unable to comply with specific provisions of the court order; and

(2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

SECTION 13. Section 161.206, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In a suit filed by the Department of Family and Protective Services seeking termination of the parent-child relationship for more than one parent of the child, the court may order termination of the parent-child relationship for the parent only if the court finds by clear and convincing evidence grounds for the termination of the parent-child relationship for that parent.

SECTION 14. Chapter 261, Family Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PROTECTIVE ORDER IN CERTAIN CASES OF ABUSE OR NEGLECT

Sec. 261.501. FILING APPLICATION FOR PROTECTIVE ORDER IN CERTAIN CASES OF ABUSE OR NEGLECT. The department may file an application for a protective order for a child's protection under this subchapter on the department's own initiative or jointly with a parent, relative, or caregiver of the child who requests the filing of the application if the department:

(1) has temporary managing conservatorship of the child;

(2) determines that:

(A) the child:

(i) is a victim of abuse or neglect; or

(ii) has a history of being abused or neglected; and

(B) there is a threat of:

(i) immediate or continued abuse or neglect to the child;

(ii) someone illegally taking the child from the home in which the child is placed;

(iii) behavior that poses a threat to the caregiver with whom the child is placed; or

(iv) someone committing an act of violence against the child or the child's caregiver; and

(3) is not otherwise authorized to apply for a protective order for the child's protection under Chapter 82.

Sec. 261.502. CERTIFICATION OF FINDINGS. (a) In making the application under this subchapter, the department must certify that:

(1) the department has diligently searched for and:

(A) was unable to locate the child's parent, legal guardian, or custodian, other than the respondent to the application; or

(B) located and provided notice of the proposed application to the child's parent, legal guardian, or custodian, other than the respondent to the application; and

(2) if applicable, the relative or caregiver who is jointly

filing the petition, or with whom the child would reside following an entry of the protective order, has not abused or neglected the child and does not have a history of abuse or neglect.

(b) An application for a temporary ex parte order under Section 261.503 may be filed without making the findings required by Subsection (a) if the department certifies that the department believes there is an immediate danger of abuse or neglect to the child.

Sec. 261.503. TEMPORARY EX PARTE ORDER. If the court finds from the information contained in an application for a protective order that there is an immediate danger of abuse or neglect to the child, the court, without further notice to the respondent and without a hearing, may enter a temporary ex parte order for the protection of the child.

Sec. 261.504. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this subchapter, the court shall find whether there are reasonable grounds to believe that:

(1) the child:

(A) is a victim of abuse or neglect; or

(B) has a history of being abused or neglected; and

(2) there is a threat of:

(A) immediate or continued abuse or neglect to the child;

(B) someone illegally taking the child from the home in which the child is placed;

(C) behavior that poses a threat to the caregiver with whom the child is placed; or

(D) someone committing an act of violence against the child or the child's caregiver.

(b) If the court makes an affirmative finding under Subsection (a), the court shall issue a protective order that includes a statement of that finding.

Sec. 261.505. APPLICATION OF OTHER LAW. To the extent applicable, except as otherwise provided by this subchapter, Title 4 applies to a protective order issued under this subchapter.

SECTION 15. Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.0022 to read as follows:

Sec. 262.0022. REVIEW OF PLACEMENT; FINDINGS. At each hearing under this chapter, the court shall review the placement of each child in the temporary or permanent managing conservatorship of the Department of Family and Protective Services who is not placed with a relative caregiver or designated caregiver as defined by Section 264.751. The court shall include in its findings a statement on whether the department has the option of placing the child with a relative or other designated caregiver.

SECTION 16. Section 262.011, Family Code, as added by Chapter 338 (H.B. 418), Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

Sec. 262.011. PLACEMENT IN SECURE AGENCY FOSTER HOME [~~OR SECURE AGENCY FOSTER GROUP HOME~~]. A court in an emergency, initial, or full adversary hearing conducted under this chapter may order that the child who is the subject of the hearing be placed in a secure agency foster home [~~or secure agency foster group home~~] verified in accordance with Section 42.0531, Human

Resources Code, if the court finds that:

- (1) the placement is in the best interest of the child; and
- (2) the child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Section 20A.02 or 20A.03, Penal Code.

SECTION 17. Subchapter A, Chapter 262, Family Code, is amended by adding Sections 262.013 and 262.014 to read as follows:

Sec. 262.013. VOLUNTARY TEMPORARY MANAGING CONSERVATORSHIP. In a suit affecting the parent-child relationship filed by the Department of Family and Protective Services, the existence of a parent's voluntary agreement to temporarily place the parent's child in the managing conservatorship of the department is not an admission by the parent that the parent engaged in conduct that endangered the child.

Sec. 262.014. DISCLOSURE OF CERTAIN EVIDENCE. On the request of the attorney for a parent who is a party in a suit affecting the parent-child relationship filed under this chapter, or the attorney ad litem for the parent's child, the Department of Family and Protective Services shall, before the full adversary hearing, provide:

- (1) the name of any person, excluding a department employee, whom the department will call as a witness to any of the allegations contained in the petition filed by the department;
- (2) a copy of any offense report relating to the allegations contained in the petition filed by the department that will be used in court to refresh a witness's memory; and
- (3) a copy of any photograph, video, or recording that will be presented as evidence.

SECTION 18. Section 262.113, Family Code, is amended to read as follows:

Sec. 262.113. FILING SUIT WITHOUT TAKING POSSESSION OF CHILD. An original suit filed by a governmental entity that requests to take possession of a child after notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- (1) 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 of the child and that allowing the child to remain in the home would be contrary to the child's welfare; and
- (2) reasonable efforts, consistent with the circumstances and providing for the safety of the child, have been made to prevent or eliminate the need to remove the child from the child's home[~~and~~ ~~(2) allowing the child to remain in the home would be contrary to the child's welfare~~].

SECTION 19. Subchapter B, Chapter 262, Family Code, is amended by adding Section 262.116 to read as follows:

Sec. 262.116. LIMITS ON REMOVAL. (a) The Department of Family and Protective Services may not take possession of a child under this subchapter based on evidence that the parent:

- (1) homeschooled the child;
 - (2) is economically disadvantaged;
 - (3) has been charged with a nonviolent misdemeanor offense other than:
 - (A) an offense under Title 5, Penal Code;
 - (B) an offense under Title 6, Penal Code; or
 - (C) an offense that involves family violence, as defined by Section 71.004 of this code;
 - (4) provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or
 - (5) declined immunization for the child for reasons of conscience, including a religious belief.
- (b) The department shall train child protective services caseworkers regarding the prohibitions on removal provided under Subsection (a).
- (c) The executive commissioner of the Health and Human Services Commission may adopt rules to implement this section.
- (d) This section does not prohibit the department from gathering or offering evidence described by Subsection (a) as part of an action to take possession of a child under this subchapter.

SECTION 20. Section 262.201, Family Code, is amended by amending Subsection (a) and adding Subsection (a-5) to read as follows:

- (a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (a-3) or (a-5).
- (a-5) If a parent who is not indigent appears in opposition to the suit, the court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing. A postponement under this subsection is subject to the limits and requirements prescribed by Subsection (a-3) and Section 155.207.

SECTION 21. Section 262.203(a), Family Code, is amended to read as follows:

- (a) On the motion of a party or the court's own motion, if applicable, the court that rendered the temporary order shall in accordance with procedures provided by Chapter 155:
 - (1) transfer the suit to the court of continuing, exclusive jurisdiction, if any, within the time required by Section 155.207(a), if the court finds that the transfer is:
 - (A) necessary for the convenience of the parties; and
 - (B) in the best interest of the child;
 - (2) ~~[if grounds exist for mandatory transfer from the court of continuing, exclusive jurisdiction under Section 155.207,]~~ order transfer of the suit from the ~~[that]~~ court of continuing, exclusive jurisdiction; or
 - (3) if grounds exist for transfer based on improper venue, order transfer of the suit to the court having venue of the

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suit under Chapter 103.

SECTION 22. Subchapter C, Chapter 262, Family Code, is amended by adding Section 262.206 to read as follows:

Sec. 262.206. EX PARTE HEARINGS PROHIBITED. Unless otherwise authorized by this chapter or other law, a hearing held by a court in a suit under this chapter may not be ex parte.

SECTION 23. Section 263.002, Family Code, is amended to read as follows:

Sec. 263.002. REVIEW OF PLACEMENTS BY COURT; FINDINGS. (a) In a suit affecting the parent-child relationship in which the department has been appointed by the court or designated in an affidavit of relinquishment of parental rights as the temporary or permanent managing conservator of a child, the court shall hold a hearing to review:

- (1) the conservatorship appointment and substitute care; and
- (2) for a child committed to the Texas Juvenile Justice Department, the child's commitment in the Texas Juvenile Justice Department or release under supervision by the Texas Juvenile Justice Department.

(b) At each permanency hearing under this chapter, the court shall review the placement of each child in the temporary managing conservatorship of the department who is not placed with a relative caregiver or designated caregiver as defined by Section 264.751. The court shall include in its findings a statement whether the department placed the child with a relative or other designated caregiver.

(c) At each permanency hearing before the final order, the court shall review the placement of each child in the temporary managing conservatorship of the department who has not been returned to the child's home. The court shall make a finding on whether returning the child to the child's home is safe and appropriate, whether the return is in the best interest of the child, and whether it is contrary to the welfare of the child for the child to return home.

SECTION 24. Section 263.0021, Family Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notice of a hearing under this chapter provided to an individual listed under Subsection (b)(2) must state that the individual may, but is not required to, attend the hearing and may request to be heard at the hearing.

(f) In a hearing under this chapter, the court shall 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.

SECTION 25. Section 263.008(a)(1), Family Code, is amended to read as follows:

(1) "Agency foster [group] home[;]" ~~and ["agency foster home,"]~~ "facility[;]" ~~["foster group home," and "foster home"]~~ have the meanings assigned by Section 42.002, Human Resources Code.

SECTION 26. Section 263.008(e), Family Code, is amended to read as follows:

(e) An ~~[agency foster group home,]~~ agency foster home[; ~~foster group home, foster home,]~~ or other residential child-care facility in which a child is placed in foster care shall

provide a copy of the foster children's bill of rights to a child on the child's request. The foster children's bill of rights must be printed in English and in a second language.

SECTION 27. Section 263.401, Family Code, is amended to read as follows:

Sec. 263.401. DISMISSAL AFTER ONE YEAR; NEW TRIALS; EXTENSION. (a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, ~~the court's jurisdiction over [court shall dismiss]~~ the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order. Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

- (1) schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);
- (2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
- (3) sets the trial on the merits on a date not later than the date specified under Subdivision (1).

(b-1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court:

- (1) schedules a new date on which the suit will be automatically dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date on which:
 - (A) the motion for a new trial or mistrial is granted; or
 - (B) the appellate court remanded the case;
- (2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
- (3) sets the new trial on the merits for a date not later than the date specified under Subdivision (1).

(c) If the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, the court's jurisdiction over ~~[court shall dismiss]~~ the suit is terminated and the suit is automatically dismissed without a court order. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b-1), as applicable.

SECTION 28. Section 263.402, Family Code, is amended to read as follows:

Sec. 263.402. LIMIT ON EXTENSION~~[-WAIVER]~~. ~~[(a)]~~ The parties to a suit under this chapter may not extend the deadlines set by the court under this subchapter by agreement or otherwise.

~~[(b) A party to a suit under this chapter who fails to make a timely motion to dismiss the suit under this subchapter waives the right to object to the court's failure to dismiss the suit. A motion to dismiss under this subsection is timely if the motion is made before the trial on the merits commences.]~~

SECTION 29. Section 263.403, Family Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) Notwithstanding Section 263.401, the court may retain jurisdiction and not dismiss the suit or render a final order as required by that section if the court renders a temporary order that:

(1) finds that retaining jurisdiction under this section is in the best interest of the child;

(2) orders the department to:

(A) return the child to the child's parent; or

(B) transition the child, according to a schedule determined by the department or court, from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child's return;

(3) orders the department to continue to serve as temporary managing conservator of the child; and

(4) orders the department to monitor the child's placement to ensure that the child is in a safe environment.

(a-1) Unless the court has granted an extension under Section 263.401(b), the department or the parent may request the court to retain jurisdiction for an additional six months as necessary for a parent to complete the remaining requirements in a service plan and specified in the temporary order that are mandatory for the child's return.

(c) If before the dismissal of the suit or the commencement of the trial on the merits a child placed with a parent under this section must be moved from that home by the department or the court renders a temporary order terminating the transition order issued under Subsection (a)(2)(B) ~~[before the dismissal of the suit or the commencement of the trial on the merits]~~, the court shall, at the time of the move or order, schedule a new date for dismissal of the suit ~~[unless a trial on the merits has commenced]~~. The new dismissal date may not be later than the original dismissal date established under Section 263.401 or the 180th day after the date the child is moved or the order is rendered under this subsection, whichever

date is later.

SECTION 30. Subchapter E, Chapter 263, Family Code, is amended by adding Section 263.4055 to read as follows:

Sec. 263.4055. SUPREME COURT RULES. The supreme court by rule shall establish civil and appellate procedures to address:

(1) conflicts between the filing of a motion for new trial and the filing of an appeal of a final order rendered under this chapter; and

(2) the period, including an extension of at least 20 days, for a court reporter to submit the reporter's record of a trial to an appellate court following a final order rendered under this chapter.

SECTION 31. Section 263.5031, Family Code, is amended to read as follows:

Sec. 263.5031. PERMANENCY HEARINGS FOLLOWING FINAL ORDER. At each permanency hearing after the court renders a final order, the court shall:

(1) identify all persons and parties present at the hearing;

(2) review the efforts of the department or other agency in notifying persons entitled to notice under Section 263.0021; and

(3) review the permanency progress report to determine:

(A) the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

(B) whether the department placed the child with a relative or other designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;

(C) if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs;

(D) the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:

(i) the department has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or

(ii) another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

(E) for a child whose permanency goal is another planned permanent living arrangement:

(i) the desired permanency outcome for the child, by asking the child; and

(ii) whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:

(a) return home;

(b) be placed for adoption;

(c) be placed with a legal guardian; or

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- (d) be placed with a fit and willing relative;
- (F) if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;
- (G) whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;
- (H) for a child receiving psychotropic medication, whether the child:
 - (i) has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or
 - (ii) has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
- (I) whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;
- (J) for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, whether to order the department to provide services to a parent for not more than six months after the date of the permanency hearing if:
 - (i) the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
 - (ii) the court determines that further efforts at reunification with a parent are:
 - (a) in the best interest of the child; and
 - (b) likely to result in the child's safe return to the child's parent; and
- (K) whether the department has identified a family or other caring adult who has made a permanent commitment to the child.

SECTION 32. Section 264.0111(a), Family Code, is amended to read as follows:

- (a) A child for whom the department has been appointed managing conservator and who has been placed by the department in a residential ~~[foster home or]~~ child-care facility ~~[institution]~~ as defined by Chapter 42, Human Resources Code, is entitled to keep any money earned by the child during the time of the child's placement.

SECTION 33. Section 264.018, Family Code, is amended by adding Subsection (d-1) and amending Subsection (f) to read as follows:

(d-1) As soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, the department shall give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the primary care physician listed in the child's health passport before the end of the second business day after the day the organization receives the notification

from the department.

- (f) Except as provided by Subsection (d-1), as [As] soon as possible but not later than the 10th day after the date the department becomes aware of a significant event affecting a child in the conservatorship of the department, the department shall provide notice of the significant event to:
 - (1) the child's parent;
 - (2) an attorney ad litem appointed for the child under Chapter 107;
 - (3) a guardian ad litem appointed for the child under Chapter 107;
 - (4) a volunteer advocate appointed for the child under Chapter 107;
 - (5) the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;
 - (6) a foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
 - (7) any other person determined by a court to have an interest in the child's welfare.

SECTION 34. Sections 264.751(1) and (3), Family Code, are amended to read as follows:

(1) "Designated caregiver" means an individual who has a longstanding and significant relationship with a child for whom the department has been appointed managing conservator and who:

(A) is appointed to provide substitute care for the child, but is not ~~[licensed by the department or]~~ verified by a licensed child-placing agency ~~[or the department]~~ to operate an an ~~[a foster home, foster group home,]~~ agency foster home~~[-or agency foster group home]~~ under Chapter 42, Human Resources Code; or

(B) is subsequently appointed permanent managing conservator of the child after providing the care described by Paragraph (A).

(3) "Relative caregiver" means a relative who:

(A) provides substitute care for a child for whom the department has been appointed managing conservator, but who is not ~~[licensed by the department or]~~ verified by a licensed child-placing agency ~~[or the department]~~ to operate an an ~~[a foster home, foster group home,]~~ agency foster home~~[-or agency foster group home]~~ under Chapter 42, Human Resources Code; or

(B) is subsequently appointed permanent managing conservator of the child after providing the care described by Paragraph (A).

SECTION 35. Section 264.760, Family Code, is amended to read as follows:

Sec. 264.760. ELIGIBILITY FOR FOSTER CARE PAYMENTS AND PERMANENCY CARE ASSISTANCE. Notwithstanding any other provision of this subchapter, a relative or other designated caregiver who becomes ~~[licensed by the department or]~~ verified by a licensed child-placing agency ~~[or the department]~~ to operate an an ~~[a foster home, foster group home,]~~ agency foster home~~[-or agency foster group home]~~ under Chapter 42, Human Resources Code, may receive foster care payments in lieu

of the benefits provided by this subchapter, beginning with the first month in which the relative or other designated caregiver becomes licensed or is verified.

SECTION 36. Section 264.8521, Family Code, is amended to read as follows:

Sec. 264.8521. NOTICE TO APPLICANTS. At the time a person applies to become ~~[licensed by the department or]~~ verified by a licensed child-placing agency ~~[or the department]~~ to provide foster care in order to qualify for the permanency care assistance program, the department or the child-placing agency shall:

- (1) notify the applicant that a background check, including a criminal history record check, will be conducted on the individual; and
 - (2) inform the applicant about criminal convictions that:
- (A) preclude an individual from becoming a ~~[licensed foster home or]~~ verified agency foster home; and
 - (B) may also be considered in evaluating the individual's application.

SECTION 37. The heading to Chapter 266, Family Code, is amended to read as follows:

CHAPTER 266. MEDICAL CARE AND
EDUCATIONAL SERVICES FOR CHILDREN IN
CONSERVATORSHIP OF DEPARTMENT OF FAMILY
AND PROTECTIVE SERVICES ~~[FOSTER CARE]~~

SECTION 38. Chapter 266, Family Code, is amended by adding Section 266.005 to read as follows:

Sec. 266.005. FINDING ON HEALTH CARE CONSULTATION. If a court finds that a health care professional has been consulted regarding a health care service, procedure, or treatment for a child in the conservatorship of the department and the court declines to follow the recommendation of the health care professional, the court shall make findings in the record supporting the court's order.

SECTION 39. Section 531.151(3), Government Code, is amended to read as follows:

- (3) "Institution" means:
- (A) an ICF-IID, as defined by Section 531.002, Health and Safety Code;
 - (B) a group home operated under the authority of the commission ~~[Department of Aging and Disability Services]~~, including a residential service provider under a Medicaid waiver program authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, that provides services at a residence other than the child's home or agency foster home;
 - (C) ~~[a foster group home or an agency foster group home as defined by Section 42.002, Human Resources Code;~~
 - ~~[(D)]~~ a nursing facility;
 - ~~[(D)]~~ a general residential operation for children with an intellectual disability that is licensed by the commission ~~[Department of Family and Protective Services]~~; or
 - ~~[(E)]~~ another residential arrangement other than a foster home as defined by Section 42.002, Human Resources Code, that provides care to four or more children who are unrelated to each other.

SECTION 40. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0056

to read as follows:

Sec. 533.0056. STAR HEALTH PROGRAM: NOTIFICATION OF PLACEMENT CHANGE. A contract between a managed care organization and the commission for the organization to provide health care services to recipients under the STAR Health program must require the organization to ensure continuity of care for a child whose placement has changed by:

(1) notifying each specialist treating the child of the placement change; and

(2) coordinating the transition of care from the child's previous treating primary care physician and treating specialists to the child's new treating primary care physician and treating specialists, if any.

(b) The changes in law made by this section apply only to a contract for the provision of health care services under the STAR Health program between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into, renewed, or extended on or after the effective date of this section.

(c) If before implementing Section 533.0056, Government Code, as added by this section, the Health and Human Services Commission determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the health and human services agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 41. Effective September 1, 2018, Section 572.001, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (c-2), (c-3), and (c-4) to read as follows:

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age to an inpatient mental health facility ~~[only with the person's consent. If the person does not consent, the person may be admitted for inpatient services]~~ only as provided by Subsection (c-2) or pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-2) The Department of Family and Protective Services may request the admission to an inpatient mental health facility of a minor in the managing conservatorship of that department only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person:

(1) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(2) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(c-3) The admission to an inpatient mental health facility under Subsection (c-2) of a minor in the managing conservatorship of the Department of Family and Protective Services is a significant event for purposes of Section 264.018, Family Code, and the Department of Family and

Protective Services shall provide notice of the significant event:

(1) in accordance with that section to all parties entitled to notice under that section; and

(2) to the court with continuing jurisdiction before the expiration of three business days after the minor's admission.

(c-4) The Department of Family and Protective Services periodically shall review the need for continued inpatient treatment of a minor admitted to an inpatient mental health facility under Subsection (c-2). If following the review that department determines there is no longer a need for continued inpatient treatment, that department shall notify the facility administrator designated to detain the minor that the minor may no longer be detained unless an application for court-ordered mental health services is filed.

SECTION 42. Section 31.002(b), Human Resources Code, is amended to read as follows:

(b) In this chapter, the term "dependent child" also applies to a child:

(1) who meets the specifications set forth in Subsections

(a)(1)-(4);

(2) who has been removed from the home of a relative specified in Subsection (a)(5) as a result of a judicial determination that the child's residence there is contrary to his or her welfare;

(3) whose placement and care are the responsibility of the Department of Family and Protective Services or an agency with which the Department of Family and Protective Services has entered into an agreement for the care and supervision of the child;

(4) who has been placed in a residential [~~foster home or~~] child-care facility [~~institution~~] by the Department of Family and Protective Services; and

(5) for whom the state may receive federal funds for the purpose of providing foster care in accordance with rules promulgated by the executive commissioner.

SECTION 43. Section 31.008(d), Human Resources Code, is amended to read as follows:

(d) The commission may make payments on behalf of a dependent child residing in a residential [~~foster family home or a~~] child-care facility [~~institution~~] in accordance with the provisions of this chapter and commission rules.

SECTION 44. Section 42.002, Human Resources Code, is amended by amending Subdivisions (4), (5), (6), (10), (11), (12), (13), and (19) and adding Subdivision (24) to read as follows:

(4) "General residential operation" means a child-care facility that provides care for seven or more [~~than 12~~] children for 24 hours a day, including facilities known as [~~children's homes, halfway houses,~~] residential treatment centers and [~~and~~] emergency shelters [~~and therapeutic camps~~].

(5) "Continuum-of-care residential operation" means a group of residential child-care facilities that operate under the same license or certification to provide a continuum of services to children [~~"Foster group home" means a child-care facility that provides care for 7 to 12 children for 24 hours a day~~].

(6) "Cottage [~~Foster~~] home operation" means cottage

family homes that:

(A) are identified on the operation's license;

(B) share a child-care administrator who is responsible for oversight for all homes within the operation; and

(C) are all in or near the same location as defined by department rule [a child-care facility that provides care for not more than six children for 24 hours a day].

(10) "Cottage family home" means a family residential setting with one or more homes operating under the license of a cottage home operation and in which:

(A) each home has at least one houseparent who lives at the home while children are in care; and

(B) based on the size of the home and the children's needs, each home cares for not more than six children [~~"Agency foster group home" means a facility that provides care for seven to 12 children for 24 hours a day, is used only by a licensed child-placing agency, and meets department standards~~].

(11) "Agency foster home" means a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets department standards.

(12) "Child-placing agency" means a person, including an organization, other than the natural parents or guardian of a child who plans for the placement of or places a child in a child-care facility, agency foster home, [~~agency foster group home,~~] or adoptive home.

(13) "Facilities" includes child-care facilities, and child-placing agencies, and continuum-of-care residential operations.

(19) "Residential child-care facility" means a facility licensed or certified by the department that operates for all of the 24-hour day. The term includes general residential operations, child-placing agencies, specialized child-care [~~foster group~~] homes, cottage home operations [~~foster homes~~], continuum-of-care residential operations [~~agency foster group homes~~], and agency foster homes.

(24) "Specialized child-care home" means a child-care facility that:

(A) based on the size of the home and the children's needs, provides care for not more than six children for 24 hours a day; and

(B) has a director and has at least one houseparent who lives at the home while children are in care.

SECTION 45. Subchapter A, Chapter 42, Human Resources Code, is amended by adding Section 42.0031 to read as follows:

Sec. 42.0031. REFERENCE TO PART OF CONTINUUM-OF-CARE OPERATION. With respect to a continuum-of-care operation, a reference in this code or in any other law to a type of residential child-care facility that is a part of a continuum-of-care operation shall be construed as a reference to that portion of the continuum-of-care operation, and the department may take all regulatory action with respect to the continuum-of-care operation that the department could take with respect to the type of residential child-care facility, as further specified in department rule.

SECTION 46. Section 42.041(b), Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

- (1) a state-operated facility;
- (2) an agency foster home ~~[or agency foster group home]~~;
- (3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the state;
- (4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;
- (5) a youth camp licensed by the Department of State Health Services;
- (6) a facility licensed, operated, certified, or registered by another state agency;
- (7) an educational facility that is accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten and above, a before-school or after-school program operated directly by an accredited educational facility, or a before-school or after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school or after-school program operated under the contract;
- (8) an educational facility that operates solely for educational purposes for prekindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;
- (9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;
- (10) a family home, whether registered or listed;
- (11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers an educational program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades;
- (12) an emergency shelter facility, other than a facility that

would otherwise require a license as a child-care facility under this section, that provides shelter or care to a minor and the minor's child or children, if any, under Section 32.201, Family Code, if the facility:

- (A) is currently under a contract with a state or federal agency; or
- (B) meets the requirements listed under Section 51.005(b)(3);
- (13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional facility certified under Section 51.125, Family Code, a juvenile facility providing services solely for the Texas Juvenile Justice Department, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;
- (14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;
- (15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless;
- (16) a food distribution program that:
 - (A) serves an evening meal to children two years of age or older; and
 - (B) is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days;
- (17) a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;
- (18) a program:
 - (A) in which a child receives direct instruction in a single skill, talent, ability, expertise, or proficiency;
 - (B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;
 - (C) that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;
 - (D) that informs the parent or guardian:
 - (i) that the program is not licensed by the state; and
 - (ii) about the physical risks a child may face while participating in the program; and
 - (E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

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(19) an elementary-age (ages 5-13) recreation program that:

(A) adopts standards of care, including standards relating to staff ratios, staff training, health, and safety;

(B) provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children;

(C) does not advertise as or otherwise represent the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) informs parents that the program is not licensed by the state;

(E) is organized as a nonprofit organization or is located on the premises of a participant's residence;

(F) does not accept any remuneration other than a nominal annual membership fee;

(G) does not solicit donations as compensation or payment for any good or service provided as part of the program; and

(H) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(20) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker:

(A) had a prior relationship with the child or sibling group or other family members of the child or sibling group;

(B) does not care for more than one unrelated child or sibling group;

(C) does not receive compensation or solicit donations for the care of the child or sibling group; and

(D) has a written agreement with the parent to care for the child or sibling group;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A) the department is the managing conservator of the child or sibling group;

(B) the department placed the child or sibling group in the caretaker's home; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group before the child or sibling group was placed with the caretaker;

(22) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization; ~~or~~

(23) a facility operated by a nonprofit organization that:

(A) does not otherwise operate as a child-care facility that is required to be licensed under this section;

(B) provides emergency shelter and care for not more than 15 days to children 13 years of age or older but younger than 18 years of age who are victims of human trafficking alleged under Section 20A.02, Penal Code;

(C) is located in a municipality with a population of at least 600,000 that is in a county on an international border; and

(D) meets one of the following criteria:

(i) is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(ii) meets the eligibility requirements for a contract under Section 51.005(b)(3); or

(24) a facility that provides respite care exclusively for a local mental health authority under a contract with the local mental health authority.

SECTION 47. Section 42.042, Human Resources Code, is amended by amending Subsections (e-1), (g), and (h-1) and adding Subsection (s) to read as follows:

(e-1) The department may not prohibit possession of lawfully permitted firearms and ammunition in ~~[a foster home of any type, including a foster group home, a foster home, an agency foster group home, and]~~ an agency foster home. Minimum standards may be adopted under this section relating to safety and proper storage of firearms and ammunition, including standards requiring firearms and ammunition to be stored separately in locked locations.

(g) In promulgating minimum standards the executive commissioner may recognize and treat differently the types of services provided by the following:

(1) registered family homes;

(2) child-care facilities, including general residential operations, cottage home operations ~~[foster group homes]~~, specialized child-care ~~[foster]~~ homes, group day-care homes, and day-care centers;

(3) child-placing agencies;

(4) agency foster homes;

(5) continuum-of-care residential operations ~~[agency foster group homes]~~;

(6) before-school or after-school programs; and

(7) school-age programs.

(h-1) The executive commissioner shall adopt rules governing:

(1) the placement and care of children by a child-placing agency, as necessary to ensure the health and safety of those children;

(2) the verification and monitoring of agency foster homes~~[-, agency foster group homes,]~~ and adoptive homes by a child-placing agency; and

(3) if appropriate, child-placing agency staffing levels, office locations, and administration.

(s) A continuum-of-care residential operation shall ensure that each residential child-care facility operating under the operation's license complies with this chapter and any standards and rules adopted under this chapter that apply to the facility. The executive commissioner by rule may prescribe the actions a continuum-of-care residential operation must take to comply with the minimum standards for each facility type.

SECTION 48. Section 42.0421(e), Human Resources Code, is amended to read as follows:

(e) In addition to other training required by this section, the executive commissioner by rule shall require an owner, operator, or employee of a day-care center, group day-care home, registered family home, general residential operation, cottage home operation ~~[foster group home]~~, or

specialized child-care [~~agency foster group~~] home who transports a child under the care of the facility whose chronological or developmental age is younger than nine years of age to complete at least two hours of annual training on transportation safety.

SECTION 49. Section 42.044(e), Human Resources Code, is amended to read as follows:

(e) In addition to the department's responsibility to investigate an agency foster home [~~or agency foster group home~~] under Subsection (c), the department shall:

(1) periodically conduct inspections of a random sample of agency foster homes [~~and agency foster group homes~~];

(2) investigate any report of a serious incident in an agency foster home [~~or agency foster group home~~] that pertains to a child under the age of six;

(3) investigate any alleged violation of a minimum standard by an agency foster home [~~or agency foster group home~~] that poses a high degree of risk to a child in the care of the home who is under the age of six; and

(4) conduct at least one annual enforcement team conference for each child-placing agency to thoroughly review the investigations or inspections of the child-placing agency and all of its agency foster homes to monitor and enforce compliance by a child-placing agency with rules and standards established under Section 42.042.

SECTION 50. Section 42.0448, Human Resources Code, is amended to read as follows:

Sec. 42.0448. NOTIFICATION OF FAMILY VIOLENCE CALLS. The department shall notify a child-placing agency or a continuum-of-care residential operation that includes a child-placing agency of each family violence report the department receives under Article 5.05, Code of Criminal Procedure, that:

(1) occurred at an agency foster home [~~verified by the child-placing agency~~]; or

(2) involves a person who resides at an agency foster home [~~verified by the child-placing agency~~].

SECTION 51. Section 42.0449, Human Resources Code, is amended to read as follows:

Sec. 42.0449. REQUIRED ACTIONS AFTER NOTICE OF FAMILY VIOLENCE CALL. The executive commissioner shall adopt rules specifying the actions that the department, [~~an independent foster home, and~~] a child-placing agency, and a continuum-of-care residential operation that includes a child-placing agency shall take after receiving notice of a family violence report under Article 5.05, Code of Criminal Procedure, or Section 42.0448 to ensure the health, safety, and welfare of each child residing in the [~~licensed foster home or~~] verified agency foster home.

SECTION 52. Section 42.045(d), Human Resources Code, is amended to read as follows:

(d) A [~~An independent foster home and a~~] child-placing agency shall notify the department of any change of address for an [~~a licensed foster home or a verified~~] agency foster home. The [~~independent foster home and~~] child-placing agency shall notify the department of the address change within the earlier of two business days or 72 hours of the date the agency foster home changes its address.

SECTION 53. The heading to Section 42.0451, Human Resources Code, is amended to read as follows:

Sec. 42.0451. DATABASE OF AGENCY FOSTER HOMES; INFORMATION PROVIDED TO DEPARTMENT OF PUBLIC SAFETY.

SECTION 54. Sections 42.0451(a) and (c), Human Resources Code, are amended to read as follows:

(a) The department shall maintain a database of [~~licensed foster homes and verified~~] agency foster homes including the current address for each agency foster [~~licensed or verified~~] home as reported to the department. The database must be updated on a regular basis.

(c) The Department of Public Safety shall include the information provided under Subsection (b) in the Texas Crime Information Center database and establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a street address is automatically provided information as to whether the address is [~~licensed as a foster home or~~] verified as an agency foster home under this chapter.

SECTION 55. Section 42.0452, Human Resources Code, is amended to read as follows:

Sec. 42.0452. FOSTER PARENT RIGHTS AND RESPONSIBILITIES STATEMENT. (a) The department shall develop a statement that lists the rights and responsibilities of a foster parent in [~~a foster home or~~] an agency foster home and [~~of the department or~~] a child-placing agency, as applicable.

(b) The department shall provide a written copy of the statement developed under Subsection (a) to each foster parent in an agency [~~a~~] foster home and to each child-placing agency licensed by the department. A child-placing agency shall provide a written copy of the statement developed under Subsection (a) to each foster parent in an agency foster home verified by the child-placing agency.

SECTION 56. Section 42.046(a), Human Resources Code, is amended to read as follows:

(a) An applicant for a license to operate a child-care facility, [~~or~~] child-placing agency, or continuum-of-care residential operation or for a listing or registration to operate a family home shall submit to the department the appropriate fee prescribed by Section 42.054 and a completed application on a form provided by the department.

SECTION 57. The heading to Section 42.0461, Human Resources Code, is amended to read as follows:

Sec. 42.0461. PUBLIC NOTICE AND HEARING [~~IN CERTAIN COUNTIES~~]: RESIDENTIAL CHILD CARE.

SECTION 58. Sections 42.0461(a), (d), and (e), Human Resources Code, are amended to read as follows:

(a) Before the department may issue a license or certificate for the operation or the expansion of the capacity [~~of a foster group home or foster family home that is located in a county with a population of less than 300,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or~~] of a general residential operation, a cottage home operation, or a continuum-of-care residential operation that is located in a county with a population of less than 300,000, the

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applicant for the license, certificate, or expansion shall, at the applicant's expense:

(1) conduct a public hearing on the application in accordance with department rules after notifying the department of the date, time, and location of the hearing; and

(2) publish notice of the application in a newspaper of general circulation in the community in which the child-care services are proposed to be provided.

(d) Before issuing a license or certificate described by Subsection (a), the department shall consider written information provided by an interested party directly to the department's representative at the public hearing concerning:

(1) the amount of local resources available to support children proposed to be served by the applicant;

(2) the impact of the proposed child-care services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children proposed to be served by the applicant; and

(3) the impact of the proposed child-care services on the community and the effect on opportunities for social interaction for the children proposed to be served by the applicant.

(e) Based on the written information provided to the department's representative at the public hearing, the [The] department may deny the application if the department determines that:

(1) the community has insufficient resources to support children proposed to be served by the applicant;

(2) granting the application would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the increase would adversely affect the children proposed to be served by the applicant; or

(3) granting the application would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

SECTION 59. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0463 to read as follows:

Sec. 42.0463. EXPANSION OF CAPACITY. (a) Notwithstanding the limitations established by Section 42.002, the department may:

(1) develop, by rule, criteria to determine when it may be appropriate to exclude children who are related to a caretaker in determining a residential child-care facility's total capacity; and

(2) issue an exception in accordance with department rules allowing an agency foster home, cottage family home, or specialized child-care home to expand its capacity and care for not more than eight children.

(b) The department may include children who are related to a caretaker when determining under Subsection (a)(1) whether a residential child-care facility complies with the standards relating to total capacity or child-to-caregiver ratios for the facility.

SECTION 60. Section 42.048(e), Human Resources Code, is amended to read as follows:

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. Except as provided by this subsection, a change in location or ownership automatically revokes a license. A change in location of a child-placing agency does not automatically revoke the license to operate the child-placing agency. A residential child-care facility operating under the license of a continuum-of-care residential operation that changes location may not continue to operate under that license unless the department approves the new location after the continuum-of-care residential operation meets all requirements related to the new location.

SECTION 61. Section 42.053, Human Resources Code, is amended to read as follows:

Sec. 42.053. AGENCY FOSTER HOMES [~~AND AGENCY FOSTER GROUP HOMES~~]. (a) An agency foster home [~~or agency foster group home~~] is considered part of the child-placing agency that operates the agency foster home [~~or agency foster group home~~] for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency foster home [~~or agency foster group home~~] used by the agency.

(c) An agency foster home [~~or agency foster group home~~] shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The department shall revoke or suspend the license of a child-placing agency if an agency foster home [~~or agency foster group home~~] operated by the licensed agency fails to comply with Subsection (c).

(e) Before verifying an agency foster home, a child-placing agency may issue a provisional verification to the home. The executive commissioner by rule may establish the criteria for a child-placing agency to issue a provisional verification to a prospective agency foster home.

(f) If a child-placing agency under contract with the division to provide services as an integrated care coordinator places children with caregivers described by Subchapter I, Chapter 264, Family Code, those caregivers are not considered a part of the child-placing agency for purposes of licensing.

SECTION 62. Section 42.0531, Human Resources Code, is amended to read as follows:

Sec. 42.0531. SECURE AGENCY FOSTER HOMES [~~AND SECURE AGENCY FOSTER GROUP HOMES~~].

(a) The commissioner's court of a county or governing body of a municipality may contract with a child-placing agency to verify a secure agency foster home [~~or secure agency foster group home~~] to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking.

(b) A child-placing agency may not verify a secure agency foster home [~~or secure agency foster group home~~] to provide services under this section unless the child-placing

agency holds a license issued under this chapter that authorizes the agency to provide services to victims of trafficking in accordance with department standards adopted under this chapter for child-placing agencies.

(c) A secure agency foster home [~~or secure agency foster group home~~] verified under this section must provide:

(1) mental health and other services specifically designed to assist children who are victims of trafficking under Section 20A.02 or 20A.03, Penal Code, including:

- (A) victim and family counseling;
 - (B) behavioral health care;
 - (C) treatment and intervention for sexual assault;
 - (D) education tailored to the child's needs;
 - (E) life skills training;
 - (F) mentoring; and
 - (G) substance abuse screening and treatment as needed;
- (2) individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;
- (3) 24-hour services; and
- (4) appropriate security through facility design, hardware, technology, and staffing.

SECTION 63. Sections 42.0535(a), (b), (d), and (e), Human Resources Code, are amended to read as follows:

(a) A child-placing agency that seeks to verify an agency foster home [~~or an agency group home~~] shall request background information about the agency foster home [~~or group home~~] from a child-placing agency that has previously verified the home as an [that] agency foster home or agency foster group home.

(b) Notwithstanding Section 261.201, Family Code, a child-placing agency that has verified an agency foster home or an agency foster group home is required to release to another child-placing agency background information requested under Subsection (a).

(d) For purposes of this section, background information means the home study under which the agency foster home or agency foster group home was verified by the previous child-placing agency and any record of noncompliance with state minimum standards received and the resolution of any such noncompliance by the previous child-placing agency.

(e) The executive commissioner by rule shall develop a process by which a child-placing agency shall report to the department:

- (1) the name of any agency [~~verified~~] foster home [~~or foster group home~~] that has been closed for any reason, including a voluntary closure;
- (2) information regarding the reasons for the closure of the agency foster home [~~or foster group home~~]; and
- (3) the name and other contact information of a person who may be contacted by another child-placing agency to obtain the records relating to the closed agency foster home [~~or foster group home~~] that are required to be maintained and made available under this section.

SECTION 64. Sections 42.054(a), (b), (d), and (g), Human Resources Code, are amended to read as follows:

(a) The department shall charge an applicant a nonrefundable application fee for an initial license to operate a child-care facility, ~~or~~ a child-placing agency, or

a continuum-of-care residential operation.

(b) The department shall charge each child-care facility a fee for an initial license. The department shall charge each child-placing agency and continuum-of-care residential operation a fee for an initial license.

(d) The department shall charge each licensed child-placing agency and continuum-of-care residential operation an annual license fee. The fee is due on the date on which the department issues the [~~child-placing agency's~~] initial license to the child-placing agency or continuum-of-care residential operation and on the anniversary of that date.

(g) The provisions of Subsections (b) through (f) do not apply to:

(1) [~~licensed foster homes and licensed foster group homes;~~

[~~2~~] nonprofit facilities regulated under this chapter that provided 24-hour care for children in the managing conservatorship of the department during the 12-month period immediately preceding the anniversary date of the facility's license;

[~~2~~] [~~3~~] facilities operated by a nonprofit corporation or foundation that provides 24-hour residential care and does not charge for the care provided; or

[~~3~~] [~~4~~] a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

SECTION 65. Section 42.0561, Human Resources Code, is amended to read as follows:

Sec. 42.0561. INFORMATION RELATING TO FAMILY VIOLENCE REPORTS. Before [~~the department may issue a license or registration for a foster home or~~] a child-placing agency may issue a verification certificate for an agency foster home, the [~~department or~~] child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.

SECTION 66. Section 42.063(d), Human Resources Code, is amended to read as follows:

(d) An employee or volunteer of a general residential operation, child-placing agency, continuum-of-care residential operation, cottage home operation [foster home], or specialized child-care [foster group] home shall report any serious incident directly to the department if the incident involves a child under the care of the operation, agency, or home.

SECTION 67. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.066 to read as follows:

Sec. 42.066. REQUIRED SUBMISSION OF INFORMATION REQUESTED BY COURT. A general residential operation that provides mental health treatment or services to a child in the managing conservatorship of the department shall timely submit to the court in a suit affecting the parent-child relationship under Subtitle E, Title 5, Family Code, all information requested by that court.

SECTION 68. The heading to Section 25.07, Penal Code,

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is amended to read as follows:

Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING CASE.

SECTION 69. Section 25.07(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Chapter 7A, Code of Criminal Procedure, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, [ø] Chapter 85, Family Code, or Subchapter F, Chapter 261, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 20A.02, 22.011, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

(4) possesses a firearm;

(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order or condition of bond; or

(6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.

SECTION 70. The heading to Section 25.072, Penal Code, is amended to read as follows:

Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING CASE.

SECTION 71. Sections 42.0461(f) and (g), Human Resources Code, are repealed.

SECTION 72. (a) In this section:

(1) "Attorney ad litem" has the meaning assigned by Section 107.001, Family Code.

(2) "Commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(b) The commission shall study the appointment and use of attorneys ad litem in cases involving the Department of Family and Protective Services. The commission shall:

(1) examine:

(A) the method for appointing attorneys ad litem;

(B) the oversight and accountability measures used across the state to monitor attorneys ad litem;

(C) the methods by which qualifications for appointment as an attorney ad litem and training requirements for an attorney ad litem are established and enforced;

(D) the timing of and duration of appointments;

(E) the rate of compensation for appointments and the method for establishing compensation rates across the state;

(F) the quality of representation and methods for assessing performance of attorneys ad litem;

(G) the pretrial and posttrial client satisfaction with representation by attorneys ad litem representing parents and attorneys ad litem representing children;

(H) organizational studies and national standards related to the workload of attorneys ad litem;

(I) the best practices for attorneys ad litem; and

(J) the estimated and average costs associated with legal representation by an attorney ad litem per child compared with the costs associated with foster care per child;

(2) conduct a survey of attorneys ad litem about the attorney's training, including:

(A) the attorney's legal education;

(B) whether the attorney is certified as a specialist by the Texas Board of Legal Specialization in any area of law; and

(C) the professional standards followed by the attorney;

(3) perform a statistical analysis of the data and information collected under Subdivisions (1) and (2) of this subsection; and

(4) develop policy recommendations for improving the attorney ad litem appointment process.

(c) The commission shall prepare a report based on the findings of the study conducted under this section and shall submit the report to each member of the legislature not later than September 1, 2018.

SECTION 73. (a) The changes in law made by this Act apply only to a service plan filed for a full adversary hearing held under Section 262.201, Family Code, or a status hearing held under Chapter 263, Family Code, on or after January 1, 2018. A hearing held before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) The changes made by this Act to Section 263.401, Family Code, apply only to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after the effective date of this Act. A suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was

rendered, and the former law is continued in effect for that purpose.

(c) Except as otherwise provided by this section, the changes in law made by this Act apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is subject to the law in effect at the time the suit was filed, and the former law is continued in effect for that purpose.

SECTION 74. Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature.

SECTION 75. Subject to an appropriation of funds for this purpose, the executive commissioner of the Health and Human Services Commission shall adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes as provided by Section 42.042, Human Resources Code, as amended by this Act, as soon as practicable after the effective date of this Act.

SECTION 76. (a) The executive commissioner of the Health and Human Services Commission shall develop and implement a procedure by which a residential child-care facility that holds a license or certification issued under Chapter 42, Human Resources Code, may convert the license or certification to a new type of residential child-care facility license or certification created by this Act.

(b) With respect to a residential child-care facility converting a license or certification under Subsection (a) of this section, the Health and Human Services Commission may waive requirements for an initial inspection, an initial background and criminal history check, or a family violence report, or for notice and hearing if the commission determines that previous inspections, background and criminal history checks, family violence reports, or notice and hearing, as applicable, were conducted and are sufficient to ensure the safety of children receiving care at the residential child-care facility converting a license or certification.

SECTION 77. (a) The executive commissioner of the Health and Human Services Commission shall develop and implement a procedure that requires a foster home or a foster group home that holds a license issued by the Department of Family and Protective Services under Chapter 42, Human Resources Code, before September 1, 2017, to convert the license to another residential child-care facility license issued under Chapter 42, Human Resources Code, or relinquish the license.

(b) With respect to a foster home or foster group home converting a license under Subsection (a) of this section, the Health and Human Services Commission may waive requirements for an initial inspection, an initial background and criminal history check, or a family violence report, or for notice and hearing if the commission determines that

previous inspections, background and criminal history checks, family violence reports, or notice and hearing, as applicable, were conducted and are sufficient to ensure the safety of children receiving care at the foster home or foster group home converting a license or certification.

(c) The Department of Family and Protective Services may not issue a license or certification to a foster home or foster group home after August 31, 2017.

(d) A foster home or a foster group home that was licensed by the department before September 1, 2017, may continue to operate under the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose, until each foster home and foster group home has been converted to another residential child-care facility license or the license has been relinquished.

SECTION 78. (a) The executive commissioner of the Health and Human Services Commission shall develop and implement a procedure that requires a child-placing agency that verified, before September 1, 2017, an agency foster group home according to the Minimum Standards for Child-Placing Agencies to convert the agency foster group home to an agency foster home or to close the agency foster group home.

(b) With respect to a child-placing agency converting an agency foster group home under Subsection (a) of this section, the Health and Human Services Commission may waive requirements for an initial inspection, an initial background and criminal history check, or a family violence report, if the commission determines that previous inspections, background and criminal history checks, or family violence reports, as applicable, were conducted and are sufficient to ensure the safety of children receiving care at the agency foster home.

(c) A child-placing agency may not verify an agency foster group home after August 31, 2017.

(d) An agency foster group home that was verified by a child-placing agency before September 1, 2017, may continue to operate under the child-placing agency that verified the home and under the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose, until each agency foster group home has been converted to a verified foster home or has been closed.

SECTION 79. Except as otherwise provided by this Act, this Act takes effect September 1, 2017.

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President of the Senate

Speaker of the House

I certify that H.B. No. 7 was passed by the House on May 9, 2017, by the following vote: Yeas 145, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 7 on May 26, 2017, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 7 was passed by the Senate, with amendments, on May 24, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor

ATTACHMENT 2 – SENATE BILL 11

AN ACT

relating to the provision of child protective services and other health and human services by certain state agencies or under contract with a state agency, including foster care, child protective, relative and kinship caregiver support, prevention and early intervention health care, and adoption services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 71.004, Family Code, is amended to read as follows:

Sec. 71.004. FAMILY VIOLENCE. "Family violence" means:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), ~~[and]~~ (K), and (M), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

SECTION 2. Section 107.002(b-1), Family Code, is amended to read as follows:

(b-1) In addition to the duties required by Subsection (b), a guardian ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall:

(1) review the medical care provided to the child; ~~and~~

(2) in a developmentally appropriate manner, seek to elicit the child's opinion on the medical care provided; and

(3) for a child at least 16 years of age, ascertain whether the child has received the following documents:

(A) a certified copy of the child's birth certificate;

(B) a social security card or a replacement social security card;

(C) a driver's license or personal identification certificate under Chapter 521, Transportation Code; and

(D) any other personal document the Department of Family and Protective Services determines appropriate.

SECTION 3. Section 107.003(b), Family Code, is amended to read as follows:

(b) In addition to the duties required by Subsection (a), an attorney ad litem appointed for a child in a proceeding under Chapter 262 or 263 shall:

(1) review the medical care provided to the child;

(2) in a developmentally appropriate

manner, seek to elicit the child's ~~opinion~~ opinion on the medical care provided; and

(3) for a child at least 16 years of age;

(A) [:] advise the child of the child's right to request the court to authorize the child to consent to the child's own medical care under Section 266.010; and

(B) ascertain whether the child has received the following documents:

(i) a certified copy of the child's birth certificate;

(ii) a social security card or a replacement social security card;

(iii) a driver's license or personal identification certificate under Chapter 521, Transportation Code; and

(iv) any other personal document the Department of Family and Protective Services determines appropriate.

SECTION 4. Section 162.005, Family Code, is amended by adding Subsection (c) to read as follows:

(c) The department shall ensure that each licensed child-placing agency, single source continuum contractor, or other person placing a child for adoption receives a copy of any portion of the report prepared by the department.

SECTION 5. Section 162.0062, Family Code, is amended by adding Subsections (a-1) and (c-1) to read as follows:

(a-1) If a child is placed with a prospective adoptive parent prior to adoption, the prospective adoptive parent is entitled to examine any record or other information relating to the child's health history, including the portion of the report prepared under Section 162.005 for the child that relates to the child's health. The department, licensed child-placing agency, single source continuum contractor, or other person placing a child for adoption shall inform the prospective adoptive parent of the prospective adoptive parent's right to examine the records and other information relating to the child's health history. The department, licensed child-placing agency, single source continuum contractor, or other person placing the child for adoption shall edit the records and information to protect the identity of the biological parents and any other person whose identity is confidential.

(c-1) If the prospective adoptive parents of a child indicate they want to proceed with the adoption under Subsection (c), the department, licensed child-placing agency, or single source continuum contractor shall provide the prospective adoptive parents with access to research regarding underlying health issues and other conditions of trauma that could impact child development and permanency.

SECTION 6. Section 162.007, Family Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) The health history of the child must include information about:

(1) the child's health status at the time of placement;

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(2) the child's birth, neonatal, and other medical, psychological, psychiatric, and dental history information, including to the extent known by the department:

(A) whether the child's birth mother consumed alcohol during pregnancy; and

(B) whether the child has been diagnosed with fetal alcohol spectrum disorder;

(3) a record of immunizations for the child; and

(4) the available results of medical, psychological, psychiatric, and dental examinations of the child.

(g) In this section, "fetal alcohol spectrum disorder" means any of a group of conditions that can occur in a person whose mother consumed alcohol during pregnancy.

SECTION 7. Section 261.001, Family Code, is amended by amending Subdivisions (1), (4), and (5) and adding Subdivision (3) to read as follows:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; ~~or~~

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

(M) forcing or coercing a child to enter into a marriage.

(3) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(4) "Neglect":

(A) includes:

(i) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(ii) the following acts or omissions by a person:

(a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services

had been offered and refused;

(d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; ~~or~~

(iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(iv) a negligent 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 served by the facility or program as further described by rule or policy; and

(B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:

(i) the child has a severe emotional disturbance;

(ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

(iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).

(5) "Person responsible for a child's care, custody, or welfare" means a person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school; ~~or~~

(E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides; or

(F) 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.

SECTION 8. Subchapter A, Chapter 261, Family Code, is amended by adding Section 261.004 to read as follows:

Sec. 261.004. TRACKING OF RECURRENCE OF CHILD ABUSE OR NEGLECT REPORTS. (a) The department shall collect and monitor data regarding repeated reports of abuse or neglect:

(1) involving the same child, including reports of abuse or neglect of the child made while the child resided in other households and reports of abuse or neglect of the child by different alleged perpetrators made while the child resided in the same household; or

(2) by the same alleged perpetrator.

(b) In monitoring reports of abuse or neglect under Subsection (a), the department shall group together separate reports involving different children residing in the same household.

(c) The department shall consider any report collected under Subsection (a) involving any child or adult who is a part of a child's household when making case priority determinations or when conducting service or safety planning for the child or the child's family.

SECTION 9. Sections 261.301(b) and (c), Family Code, are amended to read as follows:

(b) A state agency shall investigate a report that alleges abuse, ~~or~~ neglect, or exploitation occurred in a facility operated, licensed, certified, or registered by that agency as provided by Subchapter E. In conducting an investigation for a facility operated, licensed, certified, registered, or listed by the department, the department shall perform the investigation as provided by:

(1) Subchapter E; and

(2) the Human Resources Code.

(c) The department is not required to investigate a report that alleges child abuse, ~~or~~ neglect, or exploitation by a person other than a person responsible for a child's care, custody, or welfare. The appropriate state or local law enforcement agency shall investigate that report if the agency determines an investigation should be conducted.

SECTION 10. Section 261.401(b), Family Code, is amended to read as follows:

(b) Except as provided by Section 261.404 of this code and Section 531.02013(1)(D), Government Code, a state agency that operates, licenses, certifies, registers, or lists a facility in which children are located or provides oversight of a program that serves children shall make a prompt, thorough investigation of a report that a child has been or may be abused, neglected, or exploited in the facility or program. The primary purpose of the investigation shall be the protection of the child.

SECTION 11. Sections 261.405(a) and (c), Family Code, are amended to read as follows:

(a) Notwithstanding Section 261.001, in ~~the~~ this section:

(1) "Abuse" means an intentional, knowing, or reckless act or omission by an employee,

volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

(2) "Exploitation" means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

(3) "Juvenile justice facility" means a facility operated wholly or partly by the juvenile board, by another governmental unit, or by a private vendor under a contract with the juvenile board, county, or other governmental unit that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a public or private juvenile pre-adjudication secure detention facility, including a holdover facility;

(B) a public or private juvenile post-adjudication secure correctional facility except for a facility operated solely for children committed to the Texas Juvenile Justice Department; and

(C) a public or private non-secure juvenile post-adjudication residential treatment facility that is not licensed by the Department of Family and Protective Services or the Department of State Health Services.

(4) ~~(2)~~ "Juvenile justice program" means a program or department operated wholly or partly by the juvenile board or by a private vendor under a contract with a juvenile board that serves juveniles under juvenile court jurisdiction. The term includes:

(A) a juvenile justice alternative education program;

(B) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court; and

(C) a juvenile probation department.

(5) "Neglect" means a negligent 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 served by the facility or program as further described by rule or policy.

(c) The Texas Juvenile Justice Department shall make a prompt, thorough ~~conduct an~~ investigation as provided by this chapter if that department receives a report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility. The primary purpose of the investigation shall be the protection of the child.

SECTION 12. Section 263.401, Family Code, is amended to read as follows:

Sec. 263.401. DISMISSAL AFTER ONE YEAR; NEW TRIALS; EXTENSION. (a) Unless the court has

commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court's jurisdiction over ~~[court shall dismiss]~~ the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order.

(b) Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the time described by Subsection (a) unless the court finds that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the time described by Subsection (a). If the court retains the suit on the court's docket, the court shall render an order in which the court:

(1) schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by Subsection (a);

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the trial on the merits on a date not later than the date specified under Subdivision (1).

(b-1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court:

(1) schedules a new date on which the suit will be automatically dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date on which:

(A) the motion for a new trial or mistrial is granted; or

(B) the appellate court remanded the case;

(2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and

(3) sets the new trial on the merits for a date not later than the date specified under Subdivision (1).

(c) If the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, the court's jurisdiction over ~~[court shall dismiss]~~ the suit is terminated and the suit is automatically dismissed without a court order. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b-1), as applicable.

SECTION 13. Section 263.402, Family Code, is amended to read as follows:

Sec. 263.402. LIMIT ON EXTENSION[; ~~WAIVER~~]. ~~[(a)]~~ The parties to a suit under this chapter may not extend the deadlines set by the court under this subchapter by agreement or otherwise.

~~[(b) A party to a suit under this chapter who fails to make a timely motion to dismiss the suit under this subchapter waives the right to object to the court's failure to dismiss the suit. A motion to dismiss under this subsection is timely if the motion is made before the trial on the merits commences.]~~

SECTION 14. Section 264.018, Family Code, is amended by adding Subsections (d-1) and (d-2) to read as follows:

(d-1) Except as provided by Subsection (d-2), as soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, the department shall give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the primary care physician listed in the child's health passport before the end of the second business day after the day the organization receives the notification from the department.

(d-2) In this subsection, "catchment area" has the meaning assigned by Section 264.152. In a catchment area in which community-based care has been implemented, the single source continuum contractor that has contracted with the commission to provide foster care services in that catchment area shall, as soon as possible but not later than 24 hours after a change in placement of a child in the conservatorship of the department, give notice of the placement change to the managed care organization that contracts with the commission to provide health care services to the child under the STAR Health program. The managed care organization shall give notice of the placement change to the child's primary care physician in accordance with Subsection (d-1).

SECTION 15. (a) Subchapter B, Chapter 264, Family Code, is amended by adding Section 264.1076 to read as follows:

Sec. 264.1076. MEDICAL EXAMINATION REQUIRED. (a) This section applies only to a child who has been taken into the conservatorship of the department and remains in the conservatorship of the department for more than three business days.

(b) The department shall ensure that each child described by Subsection (a) receives an initial medical examination from a physician or other health care provider authorized under state law to conduct medical examinations not later than the end of the third business day after the date the child is removed from the child's home, if the child:

(1) is removed as the result of sexual abuse, physical abuse, or an obvious physical injury to the child; or

(2) has a chronic medical condition, a

medically complex condition, or a diagnosed mental illness.

(c) Notwithstanding Subsection (b), the department shall ensure that any child who enters the conservatorship of the department receives any necessary emergency medical care as soon as possible.

(d) A physician or other health care provider conducting an examination under Subsection (b) may not administer a vaccination as part of the examination without parental consent, except that a physician or other health care provider may administer a tetanus vaccination to a child in a commercially available preparation if the physician or other health care provider determines that an emergency circumstance requires the administration of the vaccination. The prohibition on the administration of a vaccination under this subsection does not apply after the department has been named managing conservator of the child after a hearing conducted under Subchapter C, Chapter 262.

(e) Whenever possible, the department shall schedule the medical examination for a child before the last business day of the appropriate time frame provided under Subsection (b).

(f) The department shall collaborate with the commission and selected physicians and other health care providers authorized under state law to conduct medical examinations to develop guidelines for the medical examination conducted under this section, including guidelines on the components to be included in the examination. The guidelines developed under this subsection must provide assistance and guidance regarding:

(1) assessing a child for:

(A) signs and symptoms of child abuse and neglect;

(B) the presence of acute or chronic illness; and

(C) signs of acute or severe mental health conditions;

(2) monitoring a child's adjustment to being in the conservatorship of the department;

(3) ensuring a child has necessary medical equipment and any medication prescribed to the child or needed by the child; and

(4) providing appropriate support and education to a child's caregivers.

(g) Notwithstanding any other law, the guidelines developed under Subsection (f) do not create a standard of care for a physician or other health care provider authorized under state law to conduct medical examinations, and a physician or other health care provider may not be subject to criminal, civil, or administrative penalty or civil liability for failure to adhere to the guidelines.

(h) The department shall make a good faith effort to contact a child's primary care physician to ensure continuity of care for the child regarding medication prescribed to the child and the treatment of any chronic medical condition.

(i) Not later than December 31, 2019, the department shall submit a report to the standing committees of the house of representatives and the senate with primary

jurisdiction over child protective services and foster care evaluating the statewide implementation of the medical examination required by this section. The report must include the level of compliance with the requirements of this section in each region of the state.

(b) Section 264.1076, Family Code, as added by this section, applies only to a child who enters the conservatorship of the Department of Family and Protective Services on or after the effective date of this Act. A child who enters the conservatorship of the Department of Family and Protective Services before the effective date of this Act is governed by the law in effect on the date the child entered the conservatorship of the department, and the former law is continued in effect for that purpose.

(c) The Department of Family and Protective Services shall implement Section 264.1076, Family Code, as added by this section, not later than December 31, 2018.

SECTION 16. (a) Subchapter B, Chapter 264, Family Code, is amended by adding Section 264.1252 to read as follows:

Sec. 264.1252. FOSTER PARENT RECRUITMENT STUDY. (a) In this section, "young adult caregiver" means a person who:

(1) is at least 21 years of age but younger than 36 years of age; and

(2) provides foster care for children who are 14 years of age and older.

(b) The department shall conduct a study on the feasibility of developing a program to recruit and provide training for young adult caregivers.

(c) The department shall complete the study not later than December 31, 2018. In evaluating the feasibility of the program, the department shall consider methods to recruit young adult caregivers and the potential impact that the program will have on the foster children participating in the program, including whether the program may result in:

(1) increased placement stability;

(2) fewer behavioral issues;

(3) fewer instances of foster children running away from a placement;

(4) increased satisfactory academic progress in school;

(5) increased acquisition of independent living skills; and

(6) an improved sense of well-being.

(d) The department shall report the results of the study to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature as soon as possible after the study is completed.

(e) This section expires September 1, 2019.

(b) As soon as practicable after the effective date of this Act, the Department of Family and Protective Services shall begin the study required by Section 264.1252, Family Code, as added by this section.

SECTION 17. (a) Subchapter B, Chapter 264, Family Code, is amended by adding Sections 264.1261 and 264.128 to read as follows:

Sec. 264.1261. FOSTER CARE CAPACITY NEEDS PLAN. (a) In this section, "community-based

care" has the meaning assigned by Section 264.152.

(b) Appropriate department management personnel from a child protective services region in which community-based care has not been implemented, in collaboration with foster care providers, faith-based entities, and child advocates in that region, shall use data collected by the department on foster care capacity needs and availability of each type of foster care and kinship placement in the region to create a plan to address the substitute care capacity needs in the region. The plan must identify both short-term and long-term goals and strategies for addressing those capacity needs.

(c) A foster care capacity needs plan developed under Subsection (b) must be:

(1) submitted to and approved by the commissioner; and

(2) updated annually.

(d) The department shall publish each initial foster care capacity needs plan and each annual update to a plan on the department's Internet website.

Sec. 264.128. SINGLE CHILD PLAN OF SERVICE INITIATIVE. (a) In this section, "community-based care" has the meaning assigned by Section 264.152.

(b) In regions of the state where community-based care has not been implemented, the department shall:

(1) collaborate with child-placing agencies to implement the single child plan of service model developed under the single child plan of service initiative; and

(2) ensure that a single child plan of service is developed for each child in foster care in those regions.

(b) Notwithstanding Section 264.128(b), Family Code, as added by this section, the Department of Family and Protective Services shall develop and implement a single child plan of service for each child in foster care in a region of the state described by that section not later than September 1, 2017.

SECTION 18. (a) Chapter 264, Family Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. COMMUNITY-BASED CARE

Sec. 264.151. LEGISLATIVE INTENT. (a) It is the intent of the legislature that the department contract with community-based nonprofit and local governmental entities that have the ability to provide child welfare services. The services provided by the entities must include direct case management to ensure child safety, permanency, and well-being, in accordance with state and federal child welfare goals.

(b) It is the intent of the legislature that the provision of community-based care for children be implemented with measurable goals relating to:

(1) the safety of children in placements;

(2) the placement of children in each child's home community;

(3) the provision of services to children in the least restrictive environment possible and, if possible, in a family home environment;

(4) minimal placement changes for

children;

(5) the maintenance of contact between children and their families and other important persons;

(6) the placement of children with siblings;

(7) the provision of services that respect each child's culture;

(8) the preparation of children and youth in foster care for adulthood;

(9) the provision of opportunities, experiences, and activities for children and youth in foster care that are available to children and youth who are not in foster care;

(10) the participation by children and youth in making decisions relating to their own lives;

(11) the reunification of children with the biological parents of the children when possible; and

(12) the promotion of the placement of children with relative or kinship caregivers if reunification is not possible.

Sec. 264.152. DEFINITIONS. Except as otherwise provided, in this subchapter:

(1) "Alternative caregiver" means a person who is not the foster parent of the child and who provides temporary care for the child for more than 12 hours but less than 60 days.

(2) "Case management" means the provision of case management services to a child for whom the department has been appointed temporary or permanent managing conservator or to the child's family, a young adult in extended foster care, a relative or kinship caregiver, or a child who has been placed in the catchment area through the Interstate Compact on the Placement of Children, and includes:

(A) caseworker visits with the child;

(B) family and caregiver visits;

(C) convening and conducting permanency planning meetings;

(D) the development and revision of child and family plans of service, including a permanency plan and goals for a child or young adult in care;

(E) the coordination and monitoring of services required by the child and the child's family;

(F) the assumption of court-related duties regarding the child, including:

(i) providing any required notifications or consultations;

(ii) preparing court reports;

(iii) attending judicial and permanency hearings, trials, and mediations;

(iv) complying with applicable court orders; and

(v) ensuring the child is progressing toward the goal of permanency within state and federally mandated guidelines; and

(G) any other function or service that the department determines necessary to allow a single source continuum contractor to assume responsibility for case management.

(3) "Catchment area" means a geographic service area for providing child protective services that is identified as part of community-based care.

(4) "Community-based care" means the foster care redesign required by Chapter 598 (S.B. 218), Acts of the 82nd Legislature, Regular Session, 2011, as designed and implemented in accordance with the plan required by Section 264.153.

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

(a) To enter into a contract with the commission or department to serve as a single source continuum contractor to provide foster care service delivery, an entity must be a nonprofit entity that has an organizational mission focused on child welfare or a governmental entity.

(b) In selecting a single source continuum contractor, the department shall consider whether a prospective contractor for a catchment area has demonstrated experience in providing services to children and families in the catchment area.

Sec. 264.155. REQUIRED CONTRACT PROVISIONS. A contract with a single source continuum contractor to provide community-based care services in a catchment area must include provisions that:

(1) establish a timeline for the implementation of community-based care in the catchment area, including a timeline for implementing:

(A) case management services for children, families, and relative and kinship caregivers receiving services in the catchment area; and

(B) family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family;

(2) establish conditions for the single source continuum contractor's access to relevant department data and require the participation of the contractor in the data access and standards governance council created under Section 264.159;

(3) require the single source continuum contractor to create a single process for the training and use of alternative caregivers for all child-placing agencies in the catchment area to facilitate reciprocity of licenses for alternative caregivers between agencies, including respite and overnight care providers, as those terms are defined by department rule;

(4) require the single source continuum contractor to maintain a diverse network of service providers that offer a range of foster capacity options and that can accommodate children from diverse cultural backgrounds;

(5) allow the department to conduct a performance review of the contractor beginning 18 months after the contractor has begun providing case management and family reunification support services to all children and families in the catchment area and determine if the

contractor has achieved any performance outcomes specified in the contract;

(6) following the review under Subdivision (5), allow the department to:

(A) impose financial penalties on the contractor for failing to meet any specified performance outcomes; or

(B) award financial incentives to the contractor for exceeding any specified performance outcomes;

(7) require the contractor to give preference for employment to employees of the department:

(A) whose position at the department is impacted by the implementation of community-based care; and

(B) who are considered by the department to be employees in good standing;

(8) require the contractor to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area, including any of the following:

(A) community faith-based entities;

(B) the judiciary;

(C) court-appointed special advocates;

(D) child advocacy centers;

(E) service providers;

(F) foster families;

(G) biological parents;

(H) foster youth and former

foster youth;

(I) relative or kinship

caregivers;

(J) child welfare boards, if

applicable;

(K) attorneys ad litem;

(L) attorneys that represent parents involved in suits filed by the department; and

(M) any other stakeholders, as determined by the contractor; and

(9) require that the contractor comply with any applicable court order issued by a court of competent jurisdiction in the case of a child for whom the contractor has assumed case management responsibilities or an order imposing a requirement on the department that relates to functions assumed by the contractor.

Sec. 264.156. READINESS REVIEW PROCESS FOR COMMUNITY-BASED CARE CONTRACTOR.

(a) The department shall develop a formal review process to assess the ability of a single source continuum contractor to satisfy the responsibilities and administrative requirements of delivering foster care services and services for relative and kinship caregivers, including the contractor's ability to provide:

(1) case management services for children and families;

(2) evidence-based, promising practice,

or evidence-informed supports for children and families; and

(3) sufficient available capacity for inpatient and outpatient services and supports for children at all service levels who have previously been placed in the catchment area.

(b) As part of the readiness review process, the single source continuum contractor must prepare a plan detailing the methods by which the contractor will avoid or eliminate conflicts of interest. The department may not transfer services to the contractor until the department has determined the plan is adequate.

(c) The department and commission must develop the review process under Subsection (a) before the department may expand community-based care outside of the initial catchment areas where community-based care has been implemented.

(d) If after conducting the review process developed under Subsection (a) the department determines that a single source continuum contractor is able to adequately deliver foster care services and services for relative and kinship caregivers in advance of the projected dates stated in the timeline included in the contract with the contractor, the department may adjust the timeline to allow for an earlier transition of service delivery to the contractor.

Sec. 264.157. EXPANSION OF COMMUNITY-BASED CARE. (a) Not later than December 31, 2019, the department shall:

(1) identify not more than eight catchment areas in the state that are best suited to implement community-based care; and

(2) following the implementation of community-based care services in those catchment areas, evaluate the implementation process and single source continuum contractor performance in each catchment area.

(b) Notwithstanding the process for the expansion of community-based care described in Subsection (a), and in accordance with the community-based care implementation plan developed under Section 264.153, beginning September 1, 2017, the department shall begin accepting applications from entities to provide community-based care services in a designated catchment area.

(c) In expanding community-based care, the department may change the geographic boundaries of catchment areas as necessary to align with specific communities.

(d) The department shall ensure the continuity of services for children and families during the transition period to community-based care in a catchment area.

Sec. 264.158. TRANSFER OF CASE MANAGEMENT SERVICES TO SINGLE SOURCE CONTINUUM CONTRACTOR.

(a) In each initial catchment area where community-based care has been implemented or a contract with a single source continuum contractor has been executed before September 1, 2017, the department shall transfer to the single source continuum contractor providing foster care services in that area:

(1) the case management of children, relative and kinship caregivers, and families receiving

services from that contractor; and

(2) family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family for the period of time ordered by the court.

(b) The commission shall include a provision in a contract with a single source continuum contractor to provide foster care services and services for relative and kinship caregivers in a catchment area to which community-based care is expanded after September 1, 2017, that requires the transfer to the contractor of the provision of:

(1) the case management services for children, relative and kinship caregivers, and families in the catchment area where the contractor will be operating; and

(2) family reunification support services to be provided after a child receiving services from the contractor is returned to the child's family.

(c) The department shall collaborate with a single source continuum contractor to establish an initial case transfer planning team to:

(1) address any necessary data transfer;

(2) establish file transfer procedures; and

(3) notify relevant persons regarding the transfer of services to the contractor.

Sec. 264.159. DATA ACCESS AND STANDARDS GOVERNANCE COUNCIL. (a) The department shall create a data access and standards governance council to develop protocols for the electronic transfer of data from single source continuum contractors to the department to allow the contractors to perform case management functions.

(b) The council shall develop protocols for the access, management, and security of case data that is electronically shared by a single source continuum contractor with the department.

Sec. 264.160. LIABILITY INSURANCE REQUIREMENTS. A single source continuum contractor and any subcontractor of the single source continuum contractor providing community-based care services shall maintain minimum insurance coverage, as required in the contract with the department, to minimize the risk of insolvency and protect against damages. The executive commissioner may adopt rules to implement this section.

Sec. 264.161. STATUTORY DUTIES ASSUMED BY CONTRACTOR. Except as provided by Section 264.163, a single source continuum contractor providing foster care services and services for relative and kinship caregivers in a catchment area must, either directly or through subcontractors, assume the statutory duties of the department in connection with the delivery of foster care services and services for relative and kinship caregivers in that catchment area.

Sec. 264.162. REVIEW OF CONTRACTOR PERFORMANCE. The department shall develop a formal review process to evaluate a single source continuum contractor's implementation of placement services and case management services in a catchment area.

Sec. 264.163. CONTINUING DUTIES OF

DEPARTMENT. In a catchment area in which a single source continuum contractor is providing family-based safety services or community-based care services, legal representation of the department in an action under this code shall be provided in accordance with Section 264.009.

Sec. 264.164. CONFIDENTIALITY. (a) The records of a single source continuum contractor relating to the provision of community-based care services in a catchment area are subject to Chapter 552, Government Code, in the same manner as the records of the department are subject to that chapter.

(b) Subchapter C, Chapter 261, regarding the confidentiality of certain case information, applies to the records of a single source continuum contractor in relation to the provision of services by the contractor.

Sec. 264.165. NOTICE REQUIRED FOR EARLY TERMINATION OF CONTRACT. (a) A single source continuum contractor may terminate a contract entered into under this subchapter by providing notice to the department and the commission of the contractor's intent to terminate the contract not later than the 60th day before the date of the termination.

(b) The department may terminate a contract entered into with a single source continuum contractor under this subchapter by providing notice to the contractor of the department's intent to terminate the contract not later than the 30th day before the date of termination.

Sec. 264.166. CONTINGENCY PLAN IN EVENT OF EARLY CONTRACT TERMINATION. (a) In each catchment area in which community-based care is implemented, the department shall create a contingency plan to ensure the continuity of services for children and families in the catchment area in the event of an early termination of the contract with the single source continuum contractor providing foster care services in that catchment area.

(b) To support each contingency plan, the single source continuum contractor providing foster care services in that catchment area, subject to approval by the department, shall develop a transfer plan to ensure the continuity of services for children and families in the catchment area in the event of an early termination of the contract with the department. The contractor shall submit an updated transfer plan each year and six months before the end of the contract period, including any extension. The department is not limited or restricted in requiring additional information from the contractor or requiring the contractor to modify the transfer plan as necessary.

(c) If a single source continuum contractor gives notice to the department of an early contract termination, the department may enter into a contract with a different contractor for the sole purpose of assuming the contract that is being terminated.

Sec. 264.167. ATTORNEY-CLIENT PRIVILEGE. An employee, agent, or representative of a single source continuum contractor is considered to be a client's representative of the department for purposes of the privilege under Rule 503, Texas Rules of Evidence, as that privilege applies to communications with a prosecuting

attorney or other attorney representing the department, or the attorney's representatives, in a proceeding under this subtitle.

Sec. 264.168. REVIEW OF CONTRACTOR RECOMMENDATIONS BY DEPARTMENT.

(a) Notwithstanding any other provision of this subchapter governing the transfer of case management authority to a single source continuum contractor, the department may review, approve, or disapprove a contractor's recommendation with respect to a child's permanency goal.

(b) Subsection (a) may not be construed to limit or restrict the authority of the department to include necessary oversight measures and review processes to maintain compliance with federal and state requirements in a contract with a single source continuum contractor.

(c) The department shall develop an internal dispute resolution process to decide disagreements between a single source continuum contractor and the department.

Sec. 264.169. PILOT PROGRAM FOR FAMILY-BASED SAFETY SERVICES. (a) In this section, "case management services" means the direct delivery and coordination of a network of formal and informal activities and services in a catchment area where the department has entered into, or is in the process of entering into, a contract with a single source continuum contractor to provide family-based safety services and case management and includes:

(1) caseworker visits with the child and all caregivers;

(2) family visits;

(3) family group conferencing or family group decision-making;

(4) development of the family plan of service;

(5) monitoring, developing, securing, and coordinating services;

(6) evaluating the progress of children, caregivers, and families receiving services;

(7) assuring that the rights of children, caregivers, and families receiving services are protected;

(8) duties relating to family-based safety services ordered by a court, including:

(A) providing any required notifications or consultations;

(B) preparing court reports;

(C) attending judicial hearings, trials, and mediations;

(D) complying with applicable court orders; and

(E) ensuring the child is progressing toward the goal of permanency within state and federally mandated guidelines; and

(9) any other function or service that the department determines is necessary to allow a single source continuum contractor to assume responsibility for case management.

(b) The department shall develop and implement in two child protective services regions of the state a pilot program under which the commission contracts with a

single nonprofit entity that has an organizational mission focused on child welfare or a governmental entity in each region to provide family-based safety services and case management for children and families receiving family-based safety services. The contract must include a transition plan for the provision of services that ensures the continuity of services for children and families in the selected regions.

(c) The contract with an entity must include performance-based provisions that require the entity to achieve the following outcomes for families receiving services from the entity:

(1) a decrease in recidivism;

(2) an increase in protective factors; and

(3) any other performance-based outcome specified by the department.

(d) The commission may only contract for implementation of the pilot program with entities that the department considers to have the capacity to provide, either directly or through subcontractors, an array of evidence-based, promising practice, or evidence-informed services and support programs to children and families in the selected child protective services regions.

(e) The contracted entity must perform all statutory duties of the department in connection with the delivery of the services specified in Subsection (b).

(f) The contracted entity must give preference for employment to employees of the department:

(1) whose position at the department is impacted by the implementation of community-based care; and

(2) who are considered by the department to be employees in good standing.

(g) Not later than December 31, 2018, the department shall report to the appropriate standing committees of the legislature having jurisdiction over child protective services and foster care matters on the progress of the pilot program. The report must include:

(1) an evaluation of each contracted entity's success in achieving the outcomes described by Subsection (c); and

(2) a recommendation as to whether the pilot program should be continued, expanded, or terminated.

(b) Section 264.126, Family Code, is transferred to Subchapter B-1, Chapter 264, Family Code, as added by this section, redesignated as Section 264.153, Family Code, and amended to read as follows:

Sec. 264.153 [264.126]. COMMUNITY-BASED CARE [REDESIGN] IMPLEMENTATION PLAN.

(a) The department shall develop and maintain a plan for implementing community-based [the foster] care [redesign required by Chapter 598 (S.B. 218), Acts of the 82nd Legislature, Regular Session, 2011]. The plan must:

(1) describe the department's expectations, goals, and approach to implementing community-based [foster] care [redesign];

(2) include a timeline for implementing community-based [the foster] care [redesign] throughout

this state, any limitations related to the implementation, and a progressive intervention plan and a contingency plan to provide continuity of the delivery of foster care services and services for relative and kinship caregivers [~~service delivery~~] if a contract with a single source continuum contractor ends prematurely;

(3) delineate and define the case management roles and responsibilities of the department and the department's contractors and the duties, employees, and related funding that will be transferred to the contractor by the department;

(4) identify any training needs and include long-range and continuous plans for training and cross-training staff, including plans to train caseworkers using the standardized curriculum created by the human trafficking prevention task force under Section 402.035(d)(6), Government Code, as that section existed on August 31, 2017;

(5) include a plan for evaluating the costs and tasks associated with each contract procurement, including the initial and ongoing contract costs for the department and contractor;

(6) include the department's contract monitoring approach and a plan for evaluating the performance of each contractor and the community-based [~~foster~~] care [~~redesign~~] system as a whole that includes an independent evaluation of each contractor's processes and fiscal and qualitative outcomes; and

(7) include a report on transition issues resulting from implementation of community-based [~~the foster~~] care [~~redesign~~].

(b) The department shall annually:

(1) update the implementation plan developed under this section and post the updated plan on the department's Internet website; and

(2) post on the department's Internet website the progress the department has made toward its goals for implementing community-based [~~the foster~~] care [~~redesign~~].

(c) Section 264.154, Family Code, as added by this section, applies only to a contract entered into with a single source continuum contractor on or after the effective date of this section.

SECTION 19. (a) Subchapter C, Chapter 264, Family Code, is amended by adding Section 264.2042 to read as follows:

Sec. 264.2042. GRANTS FOR FAITH-BASED COMMUNITY COLLABORATIVE PROGRAMS.

(a) Using available funds or private donations, the governor shall establish and administer an innovation grant program to award grants to support faith-based community programs that collaborate with the department and the commission to improve foster care and the placement of children in foster care.

(b) A faith-based community program is eligible for a grant under this section if:

(1) the effectiveness of the program is supported by empirical evidence; and

(2) the program has demonstrated the

ability to build connections between faith-based, secular, and government stakeholders.

(c) The regional director for the department in the region where a grant recipient program is located, or the regional director's designee, shall serve as the liaison between the department and the program for collaborative purposes. For a program that operates in a larger region, the department may designate a liaison in each county where the program is operating. The department or the commission may not direct or manage the operation of the program.

(d) The initial duration of a grant under this section is two years. The governor may renew a grant awarded to a program under this section if funds are available and the governor determines that the program is successful.

(e) The governor may not award to a program grants under this section totaling more than \$300,000.

(f) The governor shall adopt rules to implement the grant program created under this section.

(b) As soon as practicable after the effective date of this section, the governor shall adopt rules for the implementation and administration of the innovation grant program established under Section 264.2042, Family Code, as added by this Act, and begin to award grants under the program.

SECTION 20. Subchapter A, Chapter 265, Family Code, is amended by adding Section 265.0041 to read as follows:

Sec. 265.0041. COLLABORATION WITH

INSTITUTIONS OF HIGHER EDUCATION. (a) Subject to the availability of funds, the Health and Human Services Commission, on behalf of the department, shall enter into agreements with institutions of higher education to conduct efficacy reviews of any prevention and early intervention programs that have not previously been evaluated for effectiveness through a scientific research evaluation process.

(b) Subject to the availability of funds, the department shall collaborate with an institution of higher education to create and track indicators of child well-being to determine the effectiveness of prevention and early intervention services.

SECTION 21. Section 265.005(b), Family Code, is amended to read as follows:

(b) A strategic plan required under this section must:

(1) identify methods to leverage other sources of funding or provide support for existing community-based prevention efforts;

(2) include a needs assessment that identifies programs to best target the needs of the highest risk populations and geographic areas;

(3) identify the goals and priorities for the department's overall prevention efforts;

(4) report the results of previous prevention efforts using available information in the plan;

(5) identify additional methods of measuring program effectiveness and results or outcomes;

(6) identify methods to collaborate with other state agencies on prevention efforts; ~~and~~

(7) identify specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals; and

(8) identify specific strategies to increase local capacity for the delivery of prevention and early intervention services through collaboration with communities and stakeholders.

SECTION 22. Section 266.012, Family Code, is amended by adding Subsection (c) to read as follows:

(c) A single source continuum contractor under Subchapter B-1, Chapter 264, providing therapeutic foster care services to a child shall ensure that the child receives a comprehensive assessment under this section at least once every 90 days.

SECTION 23. (a) Section 531.02013, Government Code, is amended to read as follows:

Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN AGENCIES. The following functions are not subject to transfer under Sections 531.0201 and 531.02011:

(1) the functions of the Department of Family and Protective Services, including the statewide intake of reports and other information, related to the following:

(A) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(B) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(i) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(ii) by a provider that has contracted to provide home and community-based services; ~~and~~

(C) prevention and early intervention services; and

(D) investigations of alleged abuse, neglect, or exploitation occurring at a child-care facility, as that term is defined in Section 40.042, Human Resources Code; and

(2) the public health functions of the Department of State Health Services, including health care data collection and maintenance of the Texas Health Care Information Collection program.

(b) Notwithstanding any provision of Subchapter A-1, Chapter 531, Government Code, or any other law, the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility, as that term is defined in Section 40.042, Human Resources Code, as added by this Act, may not be transferred to the Health and Human Services Commission and remains the responsibility of the Department of Family and Protective Services.

(c) As soon as possible after the effective date of this section, the commissioner of the Department of Family

and Protective Services shall transfer the responsibility for conducting investigations of reports of abuse, neglect, or exploitation occurring at a child-care facility, as that term is defined in Section 40.042, Human Resources Code, as added by this Act, to the child protective services division of the department. The commissioner shall transfer appropriate investigators and staff as necessary to implement this section.

(d) This section takes effect immediately if this Act receives a vote of two-thirds of all the members of each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this section to take immediate effect, this section takes effect on the 91st day after the last day of the legislative session.

SECTION 24. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0054 to read as follows:

Sec. 533.0054. HEALTH SCREENING REQUIREMENTS FOR ENROLLEE UNDER STAR HEALTH PROGRAM. (a) A managed care organization that contracts with the commission to provide health care services to recipients under the STAR Health program must ensure that enrollees receive a complete early and periodic screening, diagnosis, and treatment checkup in accordance with the requirements specified in the contract between the managed care organization and the commission.

(b) The commission shall include a provision in a contract with a managed care organization to provide health care services to recipients under the STAR Health program specifying progressive monetary penalties for the organization's failure to comply with Subsection (a).

(b) The Health and Human Services Commission shall, in a contract for the provision of health care services under the STAR Health program between the commission and a managed care organization under Chapter 533, Government Code, that is entered into, renewed, or extended on or after the effective date of this section, require that the managed care organization comply with Section 533.0054, Government Code, as added by this section.

(c) The Health and Human Services Commission may not impose a monetary penalty for noncompliance with a contract provision described by Section 533.0054(b), Government Code, as added by this section, until September 1, 2018.

(d) If before implementing Section 533.0054, Government Code, as added by this section, the Health and Human Services Commission determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 25. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0056 to read as follows:

Sec. 533.0056. STAR HEALTH PROGRAM: NOTIFICATION OF PLACEMENT CHANGE. A

contract between a managed care organization and the commission for the organization to provide health care services to recipients under the STAR Health program must require the organization to ensure continuity of care for a child whose placement has changed by:

(1) notifying each specialist treating the child of the placement change; and

(2) coordinating the transition of care from the child's previous treating primary care physician and treating specialists to the child's new treating primary care physician and treating specialists, if any.

(b) The changes in law made by this section apply only to a contract for the provision of health care services under the STAR Health program between the Health and Human Services Commission and a managed care organization under Chapter 533, Government Code, that is entered into, renewed, or extended on or after the effective date of this section.

(c) If before implementing Section 533.0056, Government Code, as added by this section, the Health and Human Services Commission determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the health and human services agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 26. (a) Subchapter B, Chapter 40, Human Resources Code, is amended by adding Sections 40.039, 40.040, 40.041, and 40.042 to read as follows:

Sec. 40.039. REVIEW OF RECORDS RETENTION POLICY. The department shall periodically review the department's records retention policy with respect to case and intake records relating to department functions. The department shall make changes to the policy consistent with the records retention schedule submitted under Section 441.185, Government Code, that are necessary to improve case prioritization and the routing of cases to the appropriate division of the department. The department may adopt rules necessary to implement this section.

Sec. 40.040. CASE MANAGEMENT VENDOR QUALITY OVERSIGHT AND ASSURANCE DIVISION; MONITORING OF CONTRACT ADHERENCE. (a) In this section, "case management," "catchment area," and "community-based care" have the meanings assigned by Section 264.152, Family Code.

(b) The department shall create within the department the case management services vendor quality oversight and assurance division. The division shall:

(1) oversee quality and ensure accountability of any vendor that provides community-based care and full case management services for the department under community-based care;

(2) conduct assessments on the fiscal and qualitative performance of any vendor that provides foster care services for the department under community-based care;

(3) create and administer a dispute resolution process to resolve conflicts between vendors that

contract with the department to provide foster care services under community-based care and any subcontractor of a vendor; and

(4) monitor the transfer from the department to a vendor of full case management services for children and families receiving services from the vendor, including any transfer occurring under a pilot program.

(c) The commission shall contract with an outside vendor with expertise in quality assurance to develop, in coordination with the department, a contract monitoring system and standards for the continuous monitoring of the adherence of a vendor providing foster care services under community-based care to the terms of the contract entered into by the vendor and the commission. The standards must include performance benchmarks relating to the provision of case management services in the catchment area where the vendor operates.

(d) The division shall collect and analyze data comparing outcomes on performance measures between catchment areas where community-based care has been implemented and regions where community-based care has not been implemented.

Sec. 40.041. OFFICE OF DATA ANALYTICS. The department shall create an office of data analytics. The office shall report to the deputy commissioner and may perform any of the following functions, as determined by the department:

(1) monitor management trends;

(2) analyze employee exit surveys and interviews;

(3) evaluate the effectiveness of employee retention efforts, including merit pay;

(4) create and manage a system for handling employee complaints submitted by the employee outside of an employee's direct chain of command, including anonymous complaints;

(5) monitor and provide reports to department management personnel on:

(A) employee complaint data and trends in employee complaints;

(B) compliance with annual department performance evaluation requirements; and

(C) the department's use of positive performance levels for employees;

(6) track employee tenure and internal employee transfers within both the child protective services division and the department;

(7) use data analytics to predict workforce shortages and identify areas of the department with high rates of employee turnover, and develop a process to inform the deputy commissioner and other appropriate staff regarding the office's findings;

(8) create and monitor reports on key metrics of agency performance;

(9) analyze available data, including data on employee training, for historical and predictive department trends; and

(10) conduct any other data analysis the

department determines to be appropriate for improving performance, meeting the department's current business needs, or fulfilling the powers and duties of the department.

Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND EXPLOITATION. (a) In this section, "child-care facility" includes a facility, licensed or unlicensed child-care facility, family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42.

(b) For all investigations of child abuse, neglect, or exploitation conducted by the child protective services division of the department, the department shall adopt the definitions of abuse, neglect, and exploitation provided in Section 261.001, Family Code.

(c) The department shall establish standardized policies to be used during investigations.

(d) The commissioner shall establish units within the child protective services division of the department to specialize in investigating allegations of child abuse, neglect, and exploitation occurring at a child-care facility.

(e) The department may require that investigators who specialize in allegations of child abuse, neglect, and exploitation occurring at child-care facilities receive ongoing training on the minimum licensing standards for any facilities that are applicable to the investigator's specialization.

(f) After an investigation of abuse, neglect, or exploitation occurring at a child-care facility, the department shall provide the state agency responsible for regulating the facility with access to any information relating to the department's investigation. Providing access to confidential information under this subsection does not constitute a waiver of confidentiality.

(g) The department may adopt rules to implement this section.

(b) As soon as possible after the effective date of this Act, the commissioner of the Department of Family and Protective Services shall establish the office of data analytics required by Section 40.041, Human Resources Code, as added by this section. The commissioner and the executive commissioner of the Health and Human Services Commission shall transfer appropriate staff as necessary to conduct the duties of the office.

(c) The Department of Family and Protective Services must implement the standardized definitions and policies required under Sections 40.042(b) and (c), Human Resources Code, as added by this Act, not later than December 1, 2017.

SECTION 27. (a) Section 40.058(f), Human Resources Code, is amended to read as follows:

(f) A contract for residential child-care services provided by a general residential operation or by a child-placing agency must include provisions that:

(1) enable the department and commission to monitor the effectiveness of the services;

(2) specify performance outcomes, financial penalties for failing to meet any specified performance outcomes, and financial incentives for

exceeding any specified performance outcomes;

(3) authorize the department or commission to terminate the contract or impose monetary sanctions for a violation of a provision of the contract that specifies performance criteria or for underperformance in meeting any specified performance outcomes;

(4) authorize the department or commission, an agent of the department or commission, and the state auditor to inspect all books, records, and files maintained by a contractor relating to the contract; and

(5) are necessary, as determined by the department or commission, to ensure accountability for the delivery of services and for the expenditure of public funds.

(b) The Health and Human Services Commission shall, in a contract for residential child-care services between the commission and a general residential operation or child-placing agency that is entered into on or after the effective date of this section, including a renewal contract, include the provisions required by Section 40.058(f), Human Resources Code, as amended by this section.

(c) The Health and Human Services Commission shall seek to amend contracts for residential child-care services entered into with general residential operations or child-placing agencies before the effective date of this section to include the provisions required by Section 40.058(f), Human Resources Code, as amended by this section.

(d) The Department of Family and Protective Services and the Health and Human Services Commission may not impose a financial penalty against a general residential operation or child-placing agency under a contract provision described by Section 40.058(f)(2) or (3), Human Resources Code, as amended by this section, until September 1, 2018.

SECTION 28. (a) Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.0581 to read as follows:

Sec. 40.0581. PERFORMANCE MEASURES FOR CERTAIN SERVICE PROVIDER CONTRACTS.

(a) The commission, in collaboration with the department, shall contract with a vendor or enter into an agreement with an institution of higher education to develop, in coordination with the department, performance quality metrics for family-based safety services and post-adoption support services providers. The quality metrics must be included in each contract with those providers.

(b) Each provider whose contract with the commission to provide department services includes the quality metrics developed under Subsection (a) must prepare and submit to the department a report each calendar quarter regarding the provider's performance based on the quality metrics.

(c) The commissioner shall compile a summary of all reports prepared and submitted to the department by family-based safety services providers as required by Subsection (b) and distribute the summary to appropriate family-based safety services caseworkers and child protective services region management once each calendar quarter.

(d) The commissioner shall compile a summary of all reports prepared and submitted to the department by post-adoption support services providers as required by Subsection (b) and distribute the summary to appropriate conservatorship and adoption caseworkers and child protective services region management.

(e) The department shall make the summaries prepared under Subsections (c) and (d) available to families that are receiving family-based safety services and to adoptive families.

(f) This section does not apply to a provider that has entered into a contract with the commission to provide family-based safety services under Section 264.169, Family Code.

(b) The quality metrics required by Section 40.0581, Human Resources Code, as added by this section, must be developed not later than September 1, 2018, and included in any contract, including a renewal contract, entered into by the Health and Human Services Commission with a family-based safety services provider or a post-adoption support services provider on or after January 1, 2019, except as provided by Section 40.0581(f), Human Resources Code, as added by this section.

SECTION 29. Section 42.002(23), Human Resources Code, is amended to read as follows:

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001 [~~or 261.401~~], Family Code; or

(B) neglect, as defined by Section 261.001 [~~or 261.401~~], Family Code.

SECTION 30. (a) Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0432 to read as follows:

Sec. 42.0432. HEALTH SCREENING REQUIREMENTS FOR CHILD PLACED WITH CHILD-PLACING AGENCY. (a) A child-placing agency or general residential operation that contracts with the department to provide services must ensure that the children that are in the managing conservatorship of the department and are placed with the child-placing agency or general residential operation receive a complete early and periodic screening, diagnosis, and treatment checkup in accordance with the requirements specified in the contract between the child-placing agency or general residential operation and the department.

(b) The commission shall include a provision in a contract with a child-placing agency or general residential operation specifying progressive monetary penalties for the child-placing agency's or general residential operation's failure to comply with Subsection (a).

(b) A child-placing agency or general residential operation that contracts to provide services for the Department of Family and Protective Services must comply with the requirements of Section 42.0432, Human Resources Code, as added by this section, not later than August 31, 2018. The department and the Health and Human Services Commission may not impose a monetary penalty for noncompliance with a contract provision described by that section until September 1, 2018.

SECTION 31. Section 42.044(c-1), Human Resources Code, is amended to read as follows:

(c-1) The department:

(1) shall investigate a listed family home if the department receives a complaint that:

(A) a child in the home has been abused or neglected, as defined by Section 261.001 [261.401], Family Code; or

(B) otherwise alleges an immediate risk of danger to the health or safety of a child being cared for in the home; and

(2) may investigate a listed family home to ensure that the home is providing care for compensation to not more than three children, excluding children who are related to the caretaker.

SECTION 32. Section 261.401(a), Family Code, is repealed.

SECTION 33. The changes in law made by this Act to Section 263.401, Family Code, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 34. Except as otherwise provided by this Act, this Act takes effect September 1, 2017.

President of the
Senate Speaker of the
House

I hereby certify that S.B. No. 11 passed the Senate on March 1, 2017, by the following vote: Yeas 31, Nays 0; May 25, 2017, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2017, House granted request of the Senate; May 28, 2017, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

I hereby certify that S.B. No. 11 passed the House, with amendments, on May 19, 2017, by the following vote: Yeas 109, Nays 34, one present not voting; May 26, 2017, House granted request of the Senate for appointment of Conference Committee; May 28, 2017, House adopted Conference Committee Report by the following vote: Yeas 107, Nays 41, one present not voting.

ATTACHMENT 3: CODE CONSTRUCTION ACT - TEX. GOV'T CODE 311.025

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation of law.