
SUBSTITUTE HOUSE BILL 3121

State of Washington

61st Legislature

2010 Regular Session

By House Early Learning & Children's Services (originally sponsored by Representative Kagi; by request of Department of Social and Health Services)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to the implementation of delivery of child welfare
2 services through performance-based contracts; amending RCW 74.13.368,
3 74.13.360, 74.13.364, 74.13.366, 74.13.370, and 74.13.372; and
4 reenacting and amending RCW 74.13.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 74.13.368 and 2009 c 520 s 8 are each amended to read
7 as follows:

8 (1)(a) The child welfare transformation design committee is
9 established, with members as provided in this subsection.

10 (i) The governor or the governor's designee;

11 (ii) Four private agencies that, as of May 18, 2009, provide child
12 welfare services to children and families referred to them by the
13 department. Two agencies must be headquartered in western Washington
14 and two must be headquartered in eastern Washington. Two agencies must
15 have an annual budget of at least one million state-contracted dollars
16 and two must have an annual budget of less than one million state-
17 contracted dollars;

18 (iii) The assistant secretary of the children's administration in
19 the department;

1 (iv) Two regional administrators in the children's administration
2 selected by the assistant secretary, one from one of the department's
3 administrative regions one or two, and one from one of the department's
4 administrative regions three, four, five, or six;

5 (v) The administrator for the division of licensed resources in the
6 children's administration;

7 (vi) Two nationally recognized experts in performance-based
8 contracts;

9 (vii) The attorney general or the attorney general's designee;

10 (viii) A representative of the collective bargaining unit that
11 represents the largest number of employees in the children's
12 administration;

13 (ix) A representative from the office of the family and children's
14 ombudsman;

15 (x) Four representatives from the Indian policy advisory committee
16 convened by the department's office of Indian policy and support
17 services;

18 (xi) Two currently elected or former superior court judges with
19 significant experience in dependency matters, selected by the superior
20 court judge's association;

21 (xii) One representative from partners for our children affiliated
22 with the University of Washington school of social work;

23 (xiii) A member of the Washington state racial disproportionality
24 advisory committee;

25 (xiv) A foster parent; ~~((and))~~

26 (xv) A youth currently in, or a recent alumnus of, the state foster
27 care system, to be designated by the cochairs of the committee; and

28 (xvi) A parent representative who has had personal experience with
29 the dependency system.

30 (b) The president of the senate and the speaker of the house of
31 representatives shall jointly appoint the members under (a)(ii), (xiv),
32 and ~~((+xv+))~~ (xvi) of this subsection.

33 (c) The representative from partners for our children shall convene
34 the initial meeting of the committee no later than June 15, 2009.

35 (d) The cochairs of the committee shall be the assistant secretary
36 for the children's administration and another member selected by a
37 majority vote of those members present at the initial meeting.

1 (2) The committee shall establish a transition plan containing
2 recommendations to the legislature and the governor consistent with
3 this section for the provision of child welfare services by supervising
4 agencies pursuant to RCW 74.13.360.

5 (3) The plan shall be delivered to the governor and the legislature
6 by January 1, 2012, and include the following:

7 (a) A model or framework for performance-based contracts to be used
8 by the department that clearly defines:

9 (i) The target population;

10 (ii) The referral and exit criteria for the services;

11 (iii) The child welfare services including the use of evidence-
12 based services and practices to be provided by contractors;

13 (iv) The roles and responsibilities of public and private agency
14 workers in key case decisions;

15 (v) Contract performance and outcomes, including those related to
16 eliminating racial disparities in child outcomes;

17 (vi) That supervising agencies will provide culturally competent
18 service;

19 (vii) How to measure whether each contractor has met the goals
20 listed in RCW 74.13.360(~~(+5)~~) (6); and

21 (viii) Incentives to meet performance outcomes;

22 (b) A method by which the department will substantially reduce its
23 current number of contracts for child welfare services;

24 (c) A method or methods by which clients will access community-
25 based services, how private supervising agencies will engage other
26 services or form local service networks, develop subcontracts, and
27 share information and supervision of children;

28 (d) Methods to address the effects of racial disproportionality, as
29 identified in the 2008 Racial Disproportionality Advisory Committee
30 Report published by the Washington state institute for public policy in
31 June 2008;

32 (e) Methods for inclusion of the principles and requirements of the
33 centennial accord executed in November 2001, executed between the state
34 of Washington and federally recognized tribes in Washington state;

35 (f) Methods for assuring performance-based contracts adhere to the
36 letter and intent of the federal Indian child welfare act;

37 (g) Contract monitoring and evaluation procedures that will ensure

1 that children and families are receiving timely and quality services
2 and that contract terms are being implemented;

3 (h) A method or methods by which to ensure that the children's
4 administration has sufficiently trained and experienced staff to
5 monitor and manage performance-based contracts;

6 (i) A process by which to expand the capacity of supervising and
7 other private agencies to meet the service needs of children and
8 families in a performance-based contractual arrangement;

9 (j) A method or methods by which supervising and other private
10 agencies can expand services in underserved areas of the state;

11 (k) The appropriate amounts and procedures for the reimbursement of
12 supervising agencies given the proposed services restructuring;

13 (l) A method by which to access and enhance existing data systems
14 to include contract performance information;

15 (m) A financing arrangement for the contracts that examines:

16 (i) The use of case rates or performance-based fee-for-service
17 contracts that include incentive payments or payment schedules that
18 link reimbursement to outcomes; and

19 (ii) Ways to reduce a contractor's financial risk that could
20 jeopardize the solvency of the contractor, including consideration of
21 the use of a risk-reward corridor that limits risk of loss and
22 potential profits or the establishment of a statewide risk pool;

23 (n) A description of how the transition will impact the state's
24 ability to obtain federal funding and examine options to further
25 maximize federal funding opportunities and increased flexibility;

26 (o) A review of whether current administrative staffing levels in
27 the regions should be continued when the majority of child welfare
28 services are being provided by supervising agencies;

29 (p) A description of the costs of the transition, the initial
30 start-up costs and the mechanisms to periodically assess the overall
31 adequacy of funds and the fiscal impact of the changes, and the
32 feasibility of the plan and the impact of the plan on department
33 employees during the transition; and

34 (q) Identification of any statutory and regulatory revisions
35 necessary to accomplish the transition.

36 (4)(a) The committee, with the assistance of the department, shall
37 select two demonstration sites within which to implement chapter 520,
38 Laws of 2009. One site must be located on the eastern side of the

1 state. The other site must be located on the western side of the
2 state. Neither site must be wholly located in any of the department's
3 administrative regions. The committee may, in selecting the
4 demonstration sites, define a geographic area in which cases must be
5 randomly assigned by an independent entity to either a supervising
6 agency or the department. Any random assignment process must include
7 provisions to reflect those cases when random assignment may not be in
8 the child's best interests, according to factors to be determined by
9 the committee.

10 (b) The committee shall develop two sets of performance outcomes to
11 be included in the performance-based contracts the department enters
12 into with supervising agencies. The first set of outcomes shall be
13 used for those cases transferred to a supervising agency over time.
14 The second set of outcomes shall be used for new entrants to the child
15 welfare system.

16 (c) The committee shall also identify methods for ensuring that
17 comparison of performance between supervising agencies and the existing
18 service delivery system takes into account the variation in the
19 characteristics of the populations being served as well as historical
20 trends in outcomes for those populations.

21 (5) The committee shall determine the appropriate size of the child
22 and family populations to be provided services under performance-based
23 contracts with supervising agencies. The committee shall also identify
24 the time frame within which cases will be transferred to supervising
25 agencies. The performance-based contracts entered into with
26 supervising agencies shall encompass the provision of child welfare
27 services to enough children and families in each demonstration site to
28 allow for the assessment of whether there are meaningful differences,
29 to be defined by the committee, between the outcomes achieved in the
30 demonstration sites and the comparison sites or populations. To ensure
31 adequate statistical power to assess these differences, the populations
32 served shall be large enough to provide a probability greater than
33 seventy percent that meaningful difference will be detected and a
34 ninety-five percent probability that observed differences are not due
35 to chance alone.

36 (6) The committee shall also prepare as part of the plan a
37 recommendation as to how to implement chapter 520, Laws of 2009 so that
38 full implementation of chapter 520, Laws of 2009 is achieved no later

1 than June 30, (~~2012~~) 2013. The recommendation must reflect an
2 appropriate date to begin implementation to assure there is adequate
3 time for the transfer of existing cases from the department to a
4 supervising agency.

5 (7) The committee shall prepare the plan to manage the delivery of
6 child welfare services in a manner that achieves coordination of the
7 services and programs that deliver primary prevention services.

8 (8) Beginning June 30, 2009, the committee shall report quarterly
9 to the governor and the legislative children's oversight committee
10 established in RCW 44.04.220. From June 30, (~~2012~~) 2013, until
11 January 1, (~~2015~~) 2016, the committee need only report twice a year.
12 The committee shall report on its progress in meeting its duties under
13 subsections (2) and (3) of this section and on any other matters the
14 committee or the legislative children's oversight committee or the
15 governor deems appropriate. The portion of the plan required in
16 subsection (6) of this section shall be due to the legislative
17 children's oversight committee on or before (~~June 1~~) October 15,
18 2010. The reports shall be in written form.

19 (9) The committee, by majority vote, may establish advisory
20 committees as it deems necessary.

21 (10) All state executive branch agencies and the agencies with whom
22 the department contracts for child welfare services shall cooperate
23 with the committee and provide timely information as the chair or
24 cochairs may request. Cooperation by the children's administration
25 must include developing and scheduling training for supervising
26 agencies to access data and information necessary to implement and
27 monitor the contracts.

28 (11) It is expected that the administrative costs for the committee
29 will be supported through private funds.

30 (12) Staff support for the committee shall be provided jointly by
31 partners for our children and legislative staff.

32 (13) The committee is subject to chapters 42.30 (open public
33 meetings act) and 42.52 (ethics in public service) RCW.

34 (14) This section expires July 1, (~~2015~~) 2016.

35 **Sec. 2.** RCW 74.13.020 and 2009 c 520 s 2 and 2009 c 235 s 3 are
36 each reenacted and amended to read as follows:

37 For purposes of this chapter:

1 (1) "Case management" means the management of services delivered to
2 children and families in the child welfare system, including permanency
3 services, caseworker-child visits, family visits, the convening of
4 family group conferences, the development and revision of the case
5 plan, the coordination and monitoring of services needed by the child
6 and family, and the assumption of court-related duties, excluding legal
7 representation, including preparing court reports, attending judicial
8 hearings and permanency hearings, and ensuring that the child is
9 progressing toward permanency within state and federal mandates,
10 including the Indian child welfare act.

11 (2) "Child" means a person less than eighteen years of age.

12 (3) "Child protective services" has the same meaning as in RCW
13 26.44.020.

14 (4) "Child welfare services" means social services including
15 voluntary and in-home services, out-of-home care, case management, and
16 adoption services which strengthen, supplement, or substitute for,
17 parental care and supervision for the purpose of:

18 (a) Preventing or remedying, or assisting in the solution of
19 problems which may result in families in conflict, or the neglect,
20 abuse, exploitation, or criminal behavior of children;

21 (b) Protecting and caring for dependent, abused, or neglected
22 children;

23 (c) Assisting children who are in conflict with their parents, and
24 assisting parents who are in conflict with their children, with
25 services designed to resolve such conflicts;

26 (d) Protecting and promoting the welfare of children, including the
27 strengthening of their own homes where possible, or, where needed;

28 (e) Providing adequate care of children away from their homes in
29 foster family homes or day care or other child care agencies or
30 facilities.

31 "Child welfare services" does not include child protection
32 services.

33 (5) "Committee" means the child welfare transformation design
34 committee.

35 (6) "Department" means the department of social and health
36 services.

37 (7) "Measurable effects" means a statistically significant change

1 which occurs as a result of the service or services a supervising
2 agency is assigned in a performance-based contract, in time periods
3 established in the contract.

4 (8) "Out-of-home care services" means services provided after the
5 shelter care hearing to or for children in out-of-home care, as that
6 term is defined in RCW 13.34.030, and their families, including the
7 recruitment, training, and management of foster parents, the
8 recruitment of adoptive families, and the facilitation of the adoption
9 process, family reunification, independent living, emergency shelter,
10 residential group care, and foster care, including relative placement.

11 (9) "Performance-based contracting" means the structuring of all
12 aspects of the procurement of services around the purpose of the work
13 to be performed and the desired results with the contract requirements
14 set forth in clear, specific, and objective terms with measurable
15 outcomes. Contracts shall also include provisions that link the
16 performance of the contractor to the level and timing of reimbursement.

17 (10) "Permanency services" means long-term services provided to
18 secure a child's safety, permanency, and well-being, including foster
19 care services, family reunification services, adoption services, and
20 preparation for independent living services.

21 (11) "Primary prevention services" means services which are
22 designed and delivered for the primary purpose of enhancing child and
23 family well-being and are shown, by analysis of outcomes, to reduce the
24 risk to the likelihood of the initial need for child welfare services.

25 (12) "Supervising agency" means an agency licensed by the state
26 under RCW 74.15.090, or (~~an~~) licensed by a federally recognized
27 Indian tribe located in this state under RCW 74.15.190, that has
28 entered into a performance-based contract with the department to
29 provide case management for the delivery and documentation of child
30 welfare services, as defined in this section.

31 **Sec. 3.** RCW 74.13.360 and 2009 c 520 s 3 are each amended to read
32 as follows:

33 (1) No later than (~~January~~) July 1, 2011, the department shall
34 convert its current contracts with providers of child welfare services
35 into performance-based contracts. In accomplishing this conversion,
36 the department shall decrease the total number of contracts it uses to
37 purchase child welfare services from providers. The conversion of

1 contracts for the provision of child welfare services to performance-
2 based contracts must be done in a manner that does not adversely affect
3 the state's ability to continue to obtain federal funding for child
4 welfare related functions currently performed by the state and with
5 consideration of options to further maximize federal funding
6 opportunities and increase flexibility in the use of such funds,
7 including use for preventive and in-home child welfare services.

8 (2) No later than July 1, (~~2012~~) 2013:

9 (a) In the demonstration sites selected under RCW 74.13.368(4)(a),
10 case management for the delivery and documentation of child welfare
11 services shall also be provided by supervising agencies (~~(with whom the~~
12 ~~department has entered into performance-based contracts)~~). Supervising
13 agencies may enter into subcontracts with other licensed agencies; and

14 (b) Except as provided in subsection (4) of this section, and
15 notwithstanding any law to the contrary, the department may not
16 directly provide child welfare services to families and children
17 (~~(provided child welfare services)~~) served by supervising agencies in
18 the demonstration sites selected under RCW 74.13.368(4)(a).

19 (3) No later than July 1, (~~2012~~) 2013, for families and children
20 (~~(provided child welfare services)~~) served by supervising agencies in
21 the demonstration sites selected under RCW 74.13.368(4)(a), the
22 department is responsible for only the following:

23 (a) Monitoring the quality of services for which the department
24 contracts under this chapter;

25 (b) Ensuring that the services are provided in accordance with
26 federal law and the laws of this state, including the Indian child
27 welfare act;

28 (c) Providing child protection functions and services, including
29 intake and investigation of allegations of child abuse or neglect,
30 emergency shelter care functions under RCW 13.34.050, and referrals to
31 appropriate providers; and

32 (d) Issuing licenses pursuant to chapter 74.15 RCW.

33 (4) No later than July 1, (~~2012~~) 2013, for families and children
34 (~~(provided child welfare services)~~) served by supervising agencies in
35 the demonstration sites selected under RCW 74.13.368(4)(a), the
36 department may provide child welfare services only in an emergency or
37 as a provider of last resort. The department shall adopt rules
38 describing the circumstances under which the department may provide

1 those services. For purposes of this section, "provider of last
2 resort" means the department is unable to contract with a private
3 agency to provide child welfare services in a particular geographic
4 area or, after entering into a contract with a private agency, either
5 the contractor or the department terminates the contract.

6 (5) When implementing performance-based contracts, including
7 establishing the demonstration sites, the department shall build upon
8 and expand the evidence-based practices being delivered throughout the
9 state. Every reasonable effort must be made to incorporate evidence-
10 based practices into child welfare transformation efforts.

11 (6) For purposes of this chapter, on and after September 1, 2010,
12 performance-based contracts shall be structured to hold the supervising
13 agencies accountable for achieving the following goals in order of
14 importance: Child safety; child permanency, including reunification;
15 and child well-being.

16 ~~((+6+))~~ (7) A federally recognized tribe located in this state may
17 enter into a performance-based contract with the department to provide
18 child welfare services to Indian children whether or not they reside on
19 a reservation. Nothing in this section prohibits a federally
20 recognized Indian tribe located in this state from providing child
21 welfare services to its members or other Indian children pursuant to
22 existing tribal law, regulation, or custom, or from directly entering
23 into agreements for the provision of such services with the department,
24 if the department continues to otherwise provide such services, or with
25 federal agencies.

26 **Sec. 4.** RCW 74.13.364 and 2009 c 520 s 5 are each amended to read
27 as follows:

28 Children whose cases are managed by a supervising agency as defined
29 in RCW 74.13.020 remain under the care and placement authority of the
30 state. The child welfare transformation design committee, in selecting
31 demonstration sites for the provision of child welfare services under
32 RCW 74.13.368(4), shall maintain the placement and care authority of
33 the state over children receiving child welfare services at a level
34 that does not adversely affect the state's ability to continue to
35 obtain federal funding for child welfare related functions currently
36 performed by the state and with consideration of options to further

1 maximize federal funding opportunities and increase flexibility in the
2 use of such funds, including use for preventive and in-home child
3 welfare services.

4 **Sec. 5.** RCW 74.13.366 and 2009 c 520 s 6 are each amended to read
5 as follows:

6 ~~((Performance based contracts with private nonprofit entities who~~
7 ~~otherwise meet the definition of supervising agency shall receive~~
8 ~~primary preference. This section does not apply to Indian tribes.))~~
9 For the purposes of the provision of child welfare services by
10 supervising agencies under this act, the department shall give primary
11 preference for performance-based contracts to private nonprofit
12 entities, including federally recognized Indian tribes located in this
13 state, who otherwise meet the definition of supervising agency under
14 RCW 74.13.020. In any continuation or expansion of delivery of child
15 welfare services purchased through the use of performance-based
16 contracts under the provisions of RCW 74.13.372, private nonprofit
17 entities, federally recognized Indian tribes located in this state, and
18 state employee business units shall receive primary preference over
19 private for profit entities.

20 **Sec. 6.** RCW 74.13.370 and 2009 c 520 s 9 are each amended to read
21 as follows:

22 (1) Based upon the recommendations of the child welfare
23 transformation design committee, including the two sets of outcomes
24 developed by the committee under RCW 74.13.368(4)(b), the Washington
25 state institute for public policy is to conduct a review of measurable
26 effects achieved by the supervising agencies and compare those
27 measurable effects with the existing services offered by the state.
28 The report on the measurable effects shall be provided to the governor
29 and the legislature no later than April 1, ~~((2015))~~ 2016.

30 (2) No later than ~~((June 30))~~ December 1, 2011, the Washington
31 state institute for public policy shall provide the legislature and the
32 governor an initial report on the department's conversion to the use of
33 performance-based contracts as provided in RCW 74.13.360(1). No later
34 than June 30, 2012, the Washington state institute for public policy
35 shall provide the governor and the legislature with a second report on

1 the department's conversion of its contracts to performance-based
2 contracts.

3 (3) The department shall respond to the Washington institute for
4 public policy's request for data and other information with which to
5 complete these reports in a timely manner.

6 **Sec. 7.** RCW 74.13.372 and 2009 c 520 s 10 are each amended to read
7 as follows:

8 Not later than June 1, ((2015)) 2016, the governor shall, based on
9 the report by the Washington state institute for public policy,
10 determine whether to expand chapter 520, Laws of 2009 to the remainder
11 of the state or terminate chapter 520, Laws of 2009. The governor
12 shall inform the legislature of his or her decision within seven days
13 of the decision. The department shall, regardless of the decision of
14 the governor regarding the delivery of child welfare services, continue
15 to purchase services through the use of performance-based contracts.

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