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HOUSE BILL 3121

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State of Washington

61st Legislature

2010 Regular Session

By Representative Kagi; by request of Department of Social and Health Services

Read first time 01/25/10. Referred to Committee on Early Learning & Children's Services.

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, and 74.13.366; and reenacting and amending RCW  
4 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 alumni of the Washington  
27 state foster care system, to be designated by the cochairs of the  
28 committee; and

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

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

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

36 (d) The cochairs of the committee shall be the assistant secretary  
37 for the children's administration and another member selected by a  
38 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 include the following:

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

8 (i) The target population;

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

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

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

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

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

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

20 (viii) Incentives to meet performance outcomes;

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

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

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

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

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

36 (g) Contract monitoring and evaluation procedures that will ensure  
37 that children and families are receiving timely and quality services  
38 and that contract terms are being implemented;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 state. Neither site must be wholly located in any of the department's  
2 administrative regions.

3 (b) The committee shall develop two sets of performance outcomes to  
4 be included in the performance-based contracts the department enters  
5 into with supervising agencies. The first set of outcomes shall be  
6 used for those cases transferred to a supervising agency over time.  
7 The second set of outcomes shall be used for new entrants to the child  
8 welfare system.

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

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

29 (6) The committee shall also prepare as part of the plan a  
30 recommendation as to how to implement chapter 520, Laws of 2009 so that  
31 full implementation of chapter 520, Laws of 2009 is achieved no later  
32 than June 30, 2012.

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

36 (8) Beginning June 30, 2009, the committee shall report quarterly  
37 to the governor and the legislative children's oversight committee  
38 established in RCW 44.04.220. From June 30, 2012, until January 1,

1 2015, the committee need only report twice a year. The committee shall  
2 report on its progress in meeting its duties under subsections (2) and  
3 (3) of this section and on any other matters the committee or the  
4 legislative children's oversight committee or the governor deems  
5 appropriate. The portion of the plan required in subsection (6) of  
6 this section shall be due to the legislative children's oversight  
7 committee on or before June 1, 2010. The reports shall be in written  
8 form.

9 (9) After the two demonstration sites have been selected and are in  
10 operation, the committee shall develop recommendations for a  
11 competitive contract bidding process to allow state employees to bid  
12 for performance-based contracts for provision of case management and  
13 child welfare services if the demonstration sites are continued beyond  
14 the pilot period or further expanded under RCW 74.13.372. The  
15 committee shall report its recommendations to the governor and the  
16 legislative children's oversight committee.

17 (10) The committee, by majority vote, may establish advisory  
18 committees as it deems necessary.

19 ~~((+10+))~~ (11) All state executive branch agencies and the agencies  
20 with whom the department contracts for child welfare services shall  
21 cooperate with the committee and provide timely information as the  
22 chair or cochairs may request. Cooperation by the children's  
23 administration must include developing and scheduling training for  
24 supervising agencies to access data and information necessary to  
25 implement and monitor the contracts.

26 ~~((+11+))~~ (12) It is expected that the administrative costs for the  
27 committee will be supported through private funds.

28 ~~((+12+))~~ (13) Staff support for the committee shall be provided  
29 jointly by partners for our children and legislative staff.

30 ~~((+13+))~~ (14) The committee is subject to chapters 42.30 (open  
31 public meetings act) and 42.52 (ethics in public service) RCW.

32 ~~((+14+))~~ (15) This section expires July 1, 2015.

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

35 For purposes of this chapter:

36 (1) "Case management" means the management of services delivered to  
37 children and families in the child welfare system, including permanency

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

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

10 (3) "Child protective services" has the same meaning as in RCW  
11 26.44.020.

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

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

19 (b) Protecting and caring for dependent, abused, or neglected  
20 children;

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

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

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

29 "Child welfare services" does not include child protection  
30 services.

31 (5) "Committee" means the child welfare transformation design  
32 committee.

33 (6) "Department" means the department of social and health  
34 services.

35 (7) "Measurable effects" means a statistically significant change  
36 which occurs as a result of the service or services a supervising  
37 agency is assigned in a performance-based contract, in time periods  
38 established in the contract.

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

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

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

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

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

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

30 (1) No later than (~~January~~) July 1, 2011, the department shall  
31 convert its current contracts with providers of child welfare services  
32 into performance-based contracts. In accomplishing this conversion,  
33 the department shall decrease the total number of contracts it uses to  
34 purchase child welfare services from providers. The conversion of  
35 contracts for the provision of child welfare services to performance-  
36 based contracts must be done in a manner that does not adversely affect  
37 the state's ability to continue to obtain federal funding for child



1 welfare related functions currently performed by the state and with  
2 consideration of options to further maximize federal funding  
3 opportunities and increase flexibility in the use of such funds,  
4 including use for preventive and in-home child welfare services.

5 (2) No later than July 1, 2012:

6 (a) In the demonstration sites selected under RCW 74.13.368(4)(a),  
7 child welfare services shall be provided by supervising agencies with  
8 whom the department has entered into performance-based contracts.  
9 Supervising agencies may enter into subcontracts with other licensed  
10 agencies; and

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

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

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

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

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

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

30 (4) No later than July 1, 2012, for families and children provided  
31 child welfare services by supervising agencies in the demonstration  
32 sites selected under RCW 74.13.368(4)(a), the department may provide  
33 child welfare services only in an emergency or as a provider of last  
34 resort. The department shall adopt rules describing the circumstances  
35 under which the department may provide those services. For purposes of  
36 this section, "provider of last resort" means the department is unable  
37 to contract with a private agency to provide child welfare services in

1 a particular geographic area or, after entering into a contract with a  
2 private agency, either the contractor or the department terminates the  
3 contract.

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

9 (6) A federally recognized tribe located in this state may enter  
10 into a performance-based contract with the department to provide child  
11 welfare services to Indian children whether or not they reside on a  
12 reservation. Nothing in this section prohibits a federally recognized  
13 Indian tribe located in this state from providing child welfare  
14 services to its members or other Indian children pursuant to existing  
15 tribal law, regulation, or custom, or from directly entering into  
16 agreements for the provision of such services with the department, if  
17 the department continues to otherwise provide such services, or with  
18 federal agencies.

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

21 Children whose cases are managed by a supervising agency as defined  
22 in RCW 74.13.020 remain under the care and placement authority of the  
23 state. The child welfare transformation design committee, in selecting  
24 demonstration sites for the provision of child welfare services under  
25 RCW 74.13.368(4), shall maintain the placement and care authority of  
26 the state over children receiving child welfare services at a level  
27 that does not adversely affect the state's ability to continue to  
28 obtain federal funding for child welfare related functions currently  
29 performed by the state and with consideration of options to further  
30 maximize federal funding opportunities and increase flexibility in the  
31 use of such funds, including use for preventive and in-home child  
32 welfare services.

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

35 ~~((Performance based contracts with private nonprofit entities who~~  
36 ~~otherwise meet the definition of supervising agency shall receive~~

1 ~~primary preference. This section does not apply to Indian tribes.))~~  
2 For the purposes of the provision of child welfare services by  
3 supervising agencies under this act, the department shall give primary  
4 preference for performance-based contracts to private nonprofit  
5 entities, including federally recognized Indian tribes located in this  
6 state, who otherwise meet the definition of supervising agency under  
7 RCW 74.13.020. In any continuation or expansion of delivery of child  
8 welfare services purchased through the use of performance-based  
9 contracts under the provisions of RCW 74.13.372, private nonprofit  
10 entities, federally recognized Indian tribes located in this state, and  
11 state employees shall receive primary preference over private for  
12 profit entities.

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