

FINAL BILL REPORT

E2SHB 2264

C 205 L 12
Synopsis as Enacted

Brief Description: Concerning performance-based contracting related to child welfare services.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Kagi, Walsh, Hinkle, Carlyle, Darneille, Jinkins, Roberts, Dickerson and Ryu).

House Committee on Early Learning & Human Services

House Committee on Ways & Means

Senate Committee on Human Services & Corrections

Senate Committee on Ways & Means

Background:

In 2009 Second Substitute House Bill 2106 (2SHB 2106) was enacted, which directed the Department of Social and Health Services (DSHS) to: (1) convert its existing contracts for child welfare services to performance-based contracts by January 1, 2011; and (2) contract with supervising agencies for child welfare services, including case management functions, in selected demonstration sites by June 30, 2012.

In 2010 Substitute Senate Bill 6832 was enacted, which extended the date by which the DSHS had to convert its contracts from January 1, 2011, to July 1, 2011. It also extended the implementation date of demonstration sites from June 30, 2012, to December 30, 2012.

On February 18, 2011, the DSHS issued a Request for Proposal (RFP) for performance-based contracts. Under the Personnel System Reform Act of 2002, state agencies may contract for services customarily and historically performed by state employees if the agency provides 90-day notice to the affected employees, who have 60 days to offer alternatives to the purchase of services by contract and then may compete for the contract if the agency does not accept the alternatives. However, if the contracting is expressly mandated by the Legislature, then for those contracts the agency is not subject to these requirements. Under 2SHB 2106, the Legislature expressly mandated performance-based contracting and declared that it was not subject to the competitive bidding process.

Upon issuance of the RFP, affected employees were not offered alternatives to the purchase of services by contract. On May 5, 2011, the Washington Federation of State Employees (WFSE) filed a motion for preliminary injunction in Thurston County Superior Court, asking

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the court to stop the DSHS from proceeding with the RFP. On May 13, 2011, the court issued an oral ruling granting the WFSE's motion for preliminary injunction, and enjoining the DSHS from proceeding with its solicitations under the February RFP. The court found that the scope of the RFP exceeded the legislative mandate, and as a result, the issuance of the RFP was not exempt from the competitive bidding process. The injunction was ordered to remain in place until the DSHS complied with the requirements of the competitive bidding process.

Summary:

Changes to Second Substitute House Bill 2106 (2009).

Provisions originating in 2SHB 2106 which mandated the conversion of contracts for child welfare services to performance-based contracts are repealed. Multiple implementation dates related to demonstration sites are extended. Child welfare services, including case management, must be provided by supervising agencies in demonstration sites by December 30, 2015. The definition of supervising agency is applicable on or after December 30, 2015. The related Washington State Institute for Public Policy (WSIPP) report is extended to April 1, 2018. The Governor must make a decision regarding statewide implementation no later than June 1, 2018.

Performance-based Contracting Express Mandate.

Scope and Timing.

A new chapter is added to the Washington Code containing a new mandate regarding performance based contracting. Under this new chapter, beginning December 1, 2013, the DSHS may not renew its current contracts with individuals or entities for the provision of child welfare services in geographic areas served by network administrators (definition provided under this act), except as mutually agreed upon between the DSHS and the network administrator to allow for the successful transition of services that meet the needs of children and families.

The DSHS is expressly mandated to enter into performance-based contracts with one or more network administrators for family support and related services by December 1, 2013. The DSHS may enter into performance-based contracts for additional services other than case management. The DSHS must issue its request for proposal no later than December 31, 2012, and must notify the apparently successful bidders by June 30, 2013. When all other elements of the responses to any procurement under this act are equal, contracting with private nonprofit entities and federally recognized Indian tribes located in this state is preferred.

The procurement for family support and related services may not include case management services. Case management means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan (ISSP), coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian Child Welfare Act.

Procurement Process.

The DSHS's procurement process must be developed and implemented in a manner that complies with applicable provisions of intergovernmental agreements between the state and tribal governments. The DSHS must actively consult with other state agencies and philanthropic entities with expertise in performance-based contracting for child welfare services. The Director of the Office of Financial Management must approve the RFP prior to its issuance.

As part of the procurement process, the DSHS must consult with specified stakeholders to assist in identifying the categories of family support and related services that will be included in the procurement. In identifying services, the DSHS must review current data and research related to the effectiveness of family support and related services that mitigate child safety concerns and promote permanency, including reunification and child well-being. Expenditures for the family support services must remain within appropriated levels. Categories of family support and related services must be defined no later than July 15, 2012.

Requirements and Standards.

The procurement and resulting contracts must include:

- the use of family engagement approaches;
- the use of parents and youth who are veterans of the child welfare system;
- service provider qualifications;
- adequate provider capacity to meet anticipated service needs;
- fiscal solvency of network administrators;
- the use of evidence-based, research-based, and promising practices;
- network administrator quality assurance activities;
- network administrator data reporting; and
- network administrator compliance with applicable provisions of intergovernmental agreements between the state and tribes.

Payment Methodologies.

Performance-based payment methodologies must be used in network administrator contracting. The DSHS may transfer financial risk for the provision of services to network administrators only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. The DSHS may develop a shared savings methodology through which the network administrator will receive a defined share of any savings that results from improved performance.

Department of Social and Health Services and Network Administrator Roles.

Network administrators must, directly or through subcontracts with service providers: (1) assist caseworkers in meeting their responsibility for implementation of case plans and ISSPs, and (2) provide the family support and related services within the categories of contracted services included in a child or family's case plan within funds available under contract.

The DSHS caseworkers must choose service providers from among providers in the network administrator's network. The criteria for provider selection must include geographic proximity of the provider to the child or family, and the performance of the provider. If a

reasonably qualified provider is not available through the network, then at the request of the DSHS caseworker, a provider who is not currently contracted may be offered a provisional contract, if such provider meets applicable qualifications to participate.

The DSHS must develop a dispute resolution process to be used when the network administrator disagrees with the DSHS caseworker's choice of service provider. The mediator or decision maker must be a neutral employee of the DSHS who has not been previously involved in the case. The dispute resolution process must not result in more than a two-day delay of services needed by the child or family.

The DSHS must actively monitor network administrator compliance with the terms of contracts. The use of performance-based contracts may not be executed in a manner that adversely affects the state's ability to continue to obtain federal funding.

Annual Service Review.

Beginning in the 2015-17 biennium, the DSHS and network administrators must annually review and update the services offered through performance-based contracts, review service utilization and outcome data to determine changes needed, and consult with a variety of specified stakeholders when conducting the review.

Washington State Institute for Public Policy.

The WSIPP must report to the Legislature and Governor by December 1, 2014, on the DSHS's conversion to performance-based contracting. The WSIPP must submit a second report on specific outcomes achieved through performance-based contracting by June 30, 2016. The WSIPP must consult with a university-based child welfare research entity in Washington. The DSHS and network administrators must respond to the WSIPP's requests for data and other information needed to complete reports in a timely manner.

Votes on Final Passage:

House	77	21	
Senate	47	1	(Senate amended)
House			(House refused to concur)
Senate	47	2	(Senate amended)
House	93	4	(House concurred)

Effective: June 7, 2012