

HOUSE BILL REPORT

E2SHB 2264

As Amended by the Senate

Title: An act relating to performance-based contracting for certain services provided to children and families in the child welfare system.

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).

Brief History:

Committee Activity:

Early Learning & Human Services: 1/17/12, 1/27/12 [DPS];

Ways & Means: 2/1/12, 2/7/12 [DP2S(w/o sub ELHS)].

Floor Activity:

Passed House: 2/14/12, 77-21.

Senate Amended.

Passed Senate: 3/1/12, 47-1.

House Refused to Concur.

Senate Amended.

Passed Senate: 3/7/12, 47-2.

Brief Summary of Engrossed Second Substitute Bill

- Repeals provisions established by Second Substitute House Bill 2106 (2009) related to performance-based contracting and the establishment of demonstration sites to contract for child welfare services, including case management.
- Requires the Department of Social and Health Services (DSHS) to execute a new procurement in active consultation with relevant experts.
- Specifies that the procurement may not include case management services.
- Requires the Office of Financial Management to approve a Request for Proposal prior to its issuance.
- Requires the DSHS to enter into performance-based contracts with one or more network administrators for the provision of family support and related services by December 1, 2013.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Requires the DSHS to consult with specified stakeholders to identify the array of family support and related services for inclusion in the procurement.
- Clarifies that the DSHS may enter into performance-based contracts for additional services, other than case management, in future procurements.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Dickerson, Johnson, Orwall and Overstreet.

Minority Report: Do not pass. Signed by 1 member: Representative Goodman.

Staff: Megan Palchak (786-7120).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Early Learning & Human Services. Signed by 19 members: Representatives Hunter, Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Carlyle, Cody, Dickerson, Haigh, Haler, Hinkle, Kagi, Parker, Pettigrew, Ross, Seaquist, Springer, Sullivan and Wilcox.

Minority Report: Do not pass. Signed by 8 members: Representatives Darneille, Vice Chair; Hasegawa, Vice Chair; Chandler, Hudgins, Hunt, Kenney, Ormsby and Schmick.

Staff: Melissa Palmer (786-7388).

Background:

In 2009 the Legislature passed Second Substitute House Bill 2106 (2SHB 2106), 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 the Legislature passed Substitute Senate Bill 6832, 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 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 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 of 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 of Engrossed Second Substitute Bill:

Second Substitute House Bill 2106 (2009): Repealed.

Provisions originating from 2SHB 2106 that would have culminated in demonstration sites privatizing child welfare services, including case management, are repealed. References to supervising agencies throughout the child welfare related statutes are removed.

Performance-based Contracting Mandate.

Scope and Timing.

By December 1, 2013, the DSHS is expressly mandated to enter into performance-based contracts with one or more network administrators for family support and related services. The DSHS may enter into performance-based contracts for additional services, other than case management, in future procurements. 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, 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.

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.

Identifying the Service Array.

As part of the procurement process, the DSHS must consult with specified stakeholders to assist in identifying the array 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, and must prioritize services that are most critical to the mitigation of child safety concerns and are evidence-based or research-based. Expenditures for the family support services must remain within appropriated levels.

Case Management.

The procurement may not include the provision of case management services. Under this act, 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. (Definitions of network administrator, provider network, evidence-based, and other terms are also provided.)

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.

Performance-based 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 result from improved performances. If the DSHS receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the network administrator must reinvest the savings in enhanced services.

Department of Social and Health Services and Network Administrator Roles.

Network administrators must, directly or through subcontracts with service providers: (a) assist caseworkers in meeting their responsibility for implementation of case plans and ISSPs, and (b) provide the family support and related 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 based upon data collected and provided by the network administrator. If a reasonably qualified provider is not available through the network, then at the request of the DSHS case worker, a provider who is not currently contracted may be offered a provisional contract, pending demonstration that such provider meets applicable qualifications to participate.

The DSHS is required to develop a dispute resolution process to be used when the network administrator disagrees with the DSHS caseworker's choice of service provider due to factors such as the service provider's performance history or ability to serve culturally diverse families. 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 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 stakeholder when conducting the annual review.

Washington State Institute for Public Policy Evaluations.

The Washington State Institute for Public Policy (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 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 are required to respond to the WSIPP's requests for data and other information to complete reports in a timely manner.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- removes the legislative finding that a 2007 Washington children's administration workload study found significant gaps in the number of case-carrying social workers relative to the demands of their workload;
- removes legislative intent to phase in implementation of performance-based contracting in order to develop the contracting experience and other capacity necessary for statewide implementation;
- moves sections regarding performance-based contracted into a new chapter in RCW 74; and
 - copies definitions from section 2 of the House bill (which amends definitions provided in RCW 74.13.020) into a new section and removes definitions of various services including: child protective services, extended foster care services, out-of-home care services, permanency services, and primary prevention services;

- clarifies the definition of case management (matches the definition provided in House bill and makes consistent throughout);
- upholds authority for the DSHS to enter into performance-based contracts for services in addition to family support and related services, other than case management, but removes the specification that the DSHS may do so in future procurements;
- clarifies that the DSHS must consult with specified stakeholders to assist in identifying "categories of family support and related services" that will be included in the procurement, rather than identifying the "array of family support and related services;"
- removes the requirement for the DSHS to prioritize services that are most critical to mitigate child safety concerns and are evidence-based or research-based. Instead the DSHS must identify services that mitigate child safety concerns and promote permanency, including reunification, and child well-being;
- clarifies that network administrators must provide family support and related services within the categories of contracted services;
- provides the following deadlines:
 - Categories of family support and related services must be defined no later than July 15, 2012.
 - The DSHS must issue the request for proposal no later than December 31, 2012.
 - The DSHS must notify the apparently successful bidders by June 30, 2013;
- modifies the contracting preference to provide that for the purposes of the provision of child welfare services by provider networks, when all other elements of the responses to any procurement under section 3 of this act are equal, private nonprofit entities and federally recognized Indian tribes located in this state receive primary preference over private entities. (Note: The stated preference to contract with state employees is removed from the express mandate); and
- restores provisions established by Second Substitute House Bill 2106 (2009) related to the establishment of demonstration sites to enter into performance-based contracts with supervising agencies for child welfare services (excluding child protection functions and services) contained in:
 - RCW 74.13.360 regarding performance-based contracting in demonstration sites. (Note: Phase I language regarding conversion to performance-based contract conversion is stricken);
 - RCW 74.13.362 regarding the legislative mandate for performance-based contracting;
 - RCW 74.13.364 regarding the authority for the selection of demonstration sites;
 - RCW 74.13.368 regarding the Child Welfare Transformation Design Committee (Committee);
 - RCW 74.13.372 regarding the Governor's duty to determine whether to expand the delivery of child welfare services by contractors.

In restoring and amending the statutes referenced above:

- The implementation date for the demonstration sites is extended from December 1, 2012, to December 1, 2015.
- References to supervising agencies are restored, but the definition is not applicable until December 30, 2015.

- The Committee is restored and must prepare its recommendation so that full implementation is achieved no later than December 30, 2015 (rather than 2012). The Committee must report to the Governor and Children's Legislative Oversight Committee until December 30, 2015. The Committee no longer must be staffed jointly by partners for our children and legislative staff. The Committee is no longer required to identify a method which reduce the number of current contracts for child welfare services. The expiration date for the statutes regarding the Committee is extended to 2016.
- The related Washington State Institute for Public Policy Report on measureable effects is extended to 2018.
- No later than June 1, 2018, the Governor must make a decision regarding statewide implementation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Early Learning & Human Services):

(In support) The state needs to continue to improve services for children and families and performance-based contracting is a critical step in the right direction. Public funds are being wasted on inefficiencies. Paying providers based on their performance is a good way to create change in the system; it promotes efficiency and accountability. Performance-based contracting also provides an opportunity to support veteran parents, which would increase families' engagement with the child welfare system. Previous elements of 2SHB 2106 can be used to support House Bill 2264; the time and effort spent will not be wasted. There are some networks already in place that could move forward under this legislation. Some providers would like to see this bill move forward.

(Information only) There are many benefits to performance-based contracting. By clearly defining expectations related to the provision of services and how service delivery will be evaluated, performance-based contracting offers a way to make responsible use of public funds. Performance-based contracting can support case workers rather than detract from their work. In Ohio, case workers are able to connect with a referral unit (developed with case worker input) that had relationships with providers. The referral unit was supportive, and did not replace case workers. Monitoring and evaluating contracts is critical. As data is provided, then confidence in providers can grow. In Ohio, contracted service providers were invited to Family Team Decision Meetings, which was also supportive to case workers.

(Neutral) Any large scale reform requires funding, and there does not seem to be funding for implementation. This effort will take several million dollars. There are concerns about implementing one system on top of another system, especially while the state is in the process of cutting funding. Some providers are concerned about bankruptcy. It is imperative to look at a fiscal note and appropriate funding correctly. Private funding could be used instead of public funds. It is unclear how much risk network providers should take on if they

are not conducting case management. The timeframe is overly ambitious; there is no way to transform a system this quickly. There needs to be more time to work out the specifics. Also, the network size and scope is not clearly articulated in this bill. Developing smaller networks makes sense. It makes sense to put infrastructure in selected areas.

(With concerns) Tribes need a way to participate in this. The Indian Child Welfare Act needs to be reinforced with potential network administrators and providers. Tribes need the right to perform the initial assessments, if the assessment includes the assessment under House Bill 2289.

(Opposed) Union members see this effort as an unnecessary layer of privatization that could increase, rather than decrease, case workers' workload. Contracting out service coordination means that hundreds of public jobs could be lost. This bill feels like a repackaged House Bill 2122 (pushing 2SHB 2106 at all costs will not work). It suggests that this effort is less about child welfare reform and more about promises made to others. The start-up costs are significant, and during this great recession, state employees cannot afford to have new service coordinators making mistakes for which state workers are held accountable. The child welfare system needs strong leaders with fortitude to stay the course. Repealing phase II of 2SHB 2106 is appreciated; however, the definition of case management in this bill does not capture the work done by case workers; nuances are missed. Networking with providers is an ongoing work conducted by case workers. The concept of having an in-house resource or plan may work, but must connect with day-to-day realities.

Staff Summary of Public Testimony (Ways & Means):

(In support) There continues to be an attempt to reform the child welfare system. The DSHS had 1,600 to 1,800 individual contracts when the Legislature passed 2SHB 2106. The current system is not managed by outcomes. There is no quality assurance and this needs to be changed. The court did not agree with how the DSHS was implementing performance-based contracts. Objective information regarding the quality of services does not exist for a caseworker to use when assessing the services for a family. The reform effort needs to focus on the quality of services. Additionally, this approach will assure coordinated services.

The major objection to this policy is that it will cost money, but it costs money to provide services under the current inefficient system. The second concern with this policy is that it privatizes services; however, all services that would be under performance-based contracts are currently contracted services. The social worker still would have case management responsibility, including the responsibility for assessing the needs of the family and identifying services. The Networker Administrator would be responsible for providing the services and ensuring the quality of those services. That coordination will be done by the Network Administrator.

If this bill does not pass, 2SHB 2106 remains in law and the DSHS will have to continue Phase II, which includes contracting out for case management. The next Governor would then decide if caseworker jobs should be contracted out on an ongoing basis. This bill is not privatizing any services that are not currently provided through contracts.

Requirements for performance-based contracts to use veteran parents will help families stay together. Currently, there is not always access to veteran parents. The use of veteran parents will assist parents in engaging in services under performance-based contracts.

The focus and intent is to improve outcomes for children and families in the child welfare system. Performance-based contracts are critical to achieving improved outcomes and better matching services for families. This policy is about increasing accountability. As a not-for-profit in this state since 1896, this policy is not about making a profit and it is not about privatization. This approach is an extremely promising way to move to performance-based contracts.

(Neutral) The key to performance-based contracts is performance. Performance measures should be applied to the Children's Administration. This will encourage the DSHS to find their own efficiencies. There are 130 project managers and many staff with master's degrees in social work. As a result, the DSHS can use its own knowledge base to find efficiencies. There is great value in public and private partnerships. But by not having performance measures at the Children's Administration, there is a missed opportunity.

(With concerns) The Chehalis Tribes generally support the intent to phase in the implementation of performance-based contracts but ask for some additional considerations. Under this approach, there is a potential for more evenly distributed services to be assessable to families, regardless of which side of the mountains a family is located. The repeal of 2SHB 2106 is appreciated. This bill does not recognize government-to-government relationships or the fact that tribes may be able to contract with the state for service delivery.

(Opposed) The harm under this policy is due to privatization. During these budget times, it is important to have the competitive bidding process. The increased costs of implementation of the bill will lead to increased cuts in services. The state does retain case management, but the definition is narrowed.

This has the same service coordination as the RFP) that the DSHS released for 2SHB 2106. Based on that RFP, it was estimated that there would be a need for 70 additional staff in one region to meet the service coordination requirements. The private sector will need the Legislature to roll out funding to support the implementation. The DSHS has spent \$1.6 million to date, but did not receive funding for implementation of 2SHB 2106. As a result, the DSHS had to find this funding within its existing budget. In addition to the amount that has already been spent, the cost to proceed to Phase II would require an additional \$17.6 million. This estimate does not include information technology-related costs. Similar costs can be expected under the policy before you. Nebraska implemented this model on a statewide bases and a recent audit found that it cost \$50 million more than what was originally projected. This model does not have proven outcomes. A 2010 study found costs increased 100 percent over 10 years.

The social workers are monitoring and assessing needs of families. This is a relationship between the social worker and the family. When the Network Administrator is brought in, there will be too many people involved with a case, making the system harder to navigate. Help is really needed and the social worker caseload ratios should be lowered.

Persons Testifying (Early Learning & Human Services): (In support) Representative Kagi, prime sponsor; Brenda Kaufman; Danielle Goodwin, Washington State Parent Advocacy Committee; Laurie Lippold, Children's Home Society; and Sasha Kobel.

(Information only) Eric Fenner, Casey Family Programs.

(Neutral) Charles Shelan, Community Youth Services; and Brian Carroll, Secret Harbor.

(With concerns) Darlene Zacherle, Colville Tribe.

(Opposed) Greg Devereux, Washington Federation of State Employees; Jeanine Livingston, Washington Federation of State Employees; and Sandie Reynolds, Washington Federation of State Employees.

Persons Testifying (Ways & Means): (In support) Representative Kagi, prime sponsor; Gina Enochs, Washington State Parent Advocacy Committee; and Laurie Lippold, Children's Home Society of Washington.

(Neutral) David Minor.

(With concerns) Nancy Dufraime, Confederated Tribes of the Chehalis Reservation.

(Opposed) Matt Zuvich, Molly Rowe, and Alia Griffing, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying (Early Learning & Human Services): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.