

BILL SUMMARY

BILL NUMBER: Com. Sub. for H.B.2010

SHORT TITLE: Relating to foster care

SPONSORS: Kessinger, Ellington, Hill, Summers, Pack, Storch, Rowan, Sypolt, Harshbarger, Phillips, Capito

CODE REFERENCE: §9-5-27; §49-2-111a and §49-2-111b – New; §49-1-206; §49-2-107; §49-2-113; §49-2-708; §49-4-108; §49-4-406; §49-4-413; §49-4-604; §49-4-608; §49-4-711; §49-4-714 and §49-4-724

This bill updates the regulation of foster care. The foster care system has approximately 6,400 children with that population increasing significantly in the last 2 years.

This bill does nine things:

1. Mandates the transition of the foster care population into managed care;
 - The bill requires that the DHHR transition the foster care system into a managed care system by January 1, 2020.
 - This transition would require payments for eligible services including home and community-based services to be made using a managed care model
 - In designing the program, DHHR shall ensure:
 - Reduces fragmentation and offers a seamless approach to meeting needs
 - Delivers needed supports and services in the most integrated, appropriate, and cost-effective way possible;
 - Offers a continuum of acute care services, which includes an array of home and community-based options;
 - Includes a comprehensive quality approach across the entire continuum of care services; and
 - Consults with stakeholders in the program development process, and the managed care organization that is awarded the contract shall create a voluntary advisory group of foster parents which shall meet every six months to discuss issues they are encountering with managed care.
 - 80% of the managed care company's workforce allocated to manage foster care children in WV must have a primary work place in WV
 - The Dept. shall evaluate the transition to managed care by July 1, 2022 and report its findings to LOCHHRA and the Foster Care Ombudsman. The report shall include: the number claims submitted, the number of claims approved, the number of claims denied, the number of claims appealed, the resolution of the appealed claims, the average time of the appeal, the average length of stay in a child residential care center, and health outcomes. The initial report shall be filed July 1, 2021 and the final report shall be filed July 1, 2023.
 - The transition to managed care shall terminate on June 30, 2024 unless cancelled at earlier date
 - The bill prohibits employees of the department who as a function of that employment has engaged in the development of any contract developed pursuant to the requirements of this section may not for a period of two years thereafter be employed by any agency or company.

2. Creates a foster care child and parent ombudsman;
 - The bill provides for the creation of a foster care ombudsman whose job it is to advocate for foster children and foster parents, participate in any procedure to investigate and resolve complaints filed on behalf of the foster child, monitor development of federal and state legislation with respect to foster care services, establishing and maintaining a statewide uniform reporting system to collect data relating to complaints. The ombudsman shall participate in on-going training. The ombudsman shall have experience in the area of child welfare.
3. Implements performance-based contracting;
 - The bill requires DHHR to enter into performance-based contracts with child placing agencies. DHHR will be required to annually evaluate its child placing agencies based upon certain negotiated contractual factors. Those factors include safety outcomes, permanency outcomes, well-being outcomes, incentives earned, and recruitment and retention of foster parents. The implementation dates are currently, July 1, 2019 to issue the RFP, notify successful bidders September 1, 2020 and have the contracts in place December 1, 2020.
4. Studies kinship care;
 - The bill requires DHHR to conduct a study and make recommendations for improving services provided to kinship foster families. This shall include at a minimum: (1) a review of the best practices in other states; (2) a proposal for an alternative system of regulation for kinship foster care that includes the same reimbursement as other foster care families as well as a reasonable time for obtaining certification; (3) an evaluation of what training and supports are needed to ensure that kinship care homes are successful; the results shall be shared by October 1, 2019
5. Requires DHHR to review and update their legislative rule to a reasonably prudent parent standard and to ensure normalcy for the foster child
 - The bill extends the time a foster family is certified from 1 year to 3 years, unless a substantial change occurs. A new criminal background check will occur at the time of recertification process. A home safety assessment is performed at least annually. DHHR has the sole authority to determine if a substantial change has occurred.
 - The bill provides that the rules may not prevent the placement or cause the removal of a foster child for cosmetic damage to a home.
 - The bill provides that the rule shall permit the use of dedicated sleeping spaces as appropriate for the child's needs, age, and similar to other household members.
 - The bill provides rules shall be updated while considering normalcy and the reasonable and prudent parent standard.
 - The reasonable and prudent parent standard calls for the foster parent to consider factors in making decisions on behalf of the child. Foster children should be given the same opportunities as children not in foster care. These could include, but are not limited to:
 - i. Having an impromptu visit at a friend's house.
 - ii. Playing in a pickup basketball game.
 - iii. Going on an out-of-state trip to a camp or dance event.
 - iv. Other activities that non-foster children participate in as part of growing up.
 - The foster parent needs to use their judgment in giving opportunities to the foster children and should not worry about being sued for allowing children to

participate in normal activities based on the child's age and developmental abilities.

- The reasonable and prudent parent standard should not infringe on parents' rights. Parents should be included in decision making especially around education and health care.
- The second requirement is the need for normalcy for the foster child. A foster child's inability to participate in age or developmentally appropriate activities affects a child's healthy development and decision making. It also increases the likelihood negative outcomes for that foster child. Children in foster care need to be able to participate in regular childhood activities and foster parents need to make daily decisions on issues such as:
 - i. Afterschool clubs and activities
 - ii. Reasonable and age-appropriate electronic use
 - iii. Reasonable curfews and rules for dating and socializing
 - iv. School or community-based sports
 - v. Cultural activities
 - vi. Social activities with friends and peers, including unsupervised social activities, such as:
 - vii. Going to the movies
 - viii. Athletic events
 - ix. Dating
 - x. Visiting friends' houses
 - xi. Use of cell phones, internet and social media
 - xii. Job opportunities
 - xiii. Travel, driver's licenses and learner's permits

6. Clarifies the amount that DHHR will pay for court ordered services
 - To provide better cost certainty for DHHR, 2 provisions were added to the code. If a service is currently covered by Medicaid, the court may not order DHHR to pay more than the Medicaid rate for that service. For example, if a court ordered a session with a psychologist, the court then could not order the DHHR to pay more than the Medicaid rate for that session.
 - The same is true for a service not covered by Medicaid and the court orders the service. An example is a drug test. The department shall create a policy which will determine how much more it will pay for the drug test and the court may not order the department to pay more.
 - An exception is placed in both of those sections. The exception permits the court to order a higher rate to be paid, if the services are not paid within 30 days. If the department disagrees, then the department may request a hearing
7. Changes policies with respect to child residential providers with the goal of retaining placement of children in WV and returning children to WV currently in out-of-state placement
 - The bill changes 2 policies which will affect how foster children are placed in a residential care facility. Residential care facilities are a live-in, out-of-home care placement in which staff are trained to work with children and youth whose specific needs are best addressed in a highly structured environment. These placements are time limited and offer a higher level of structure and supervision than what can be provided in the home.
 - The bill requires a residential child care center to accept a foster child if the child meets their program criteria. These types of facilities are licensed by tiers or levels. A child

placed in a tier 1 facility needs less service than a child placed in a tier 3 facility. This change would require a facility which holds itself out as a tier 3 facility to accept all children who need tier 3 services.

- The bill provides that any residential child care center who has entered into a contract with DHHR may not discharge any child in its program without the consent of the DHHR and the approval of the court. If DHHR does not consent, the residential care provider may petition the court to present evidence that the child does not meet the center's program criteria.
 - The bill provides the court may not order a child to be placed in an out-of-state facility unless the child is diagnosed with a health issue that no in-state facility or program serves, unless a placement out of state is in closer proximity to the child's family for the necessary care or the services are provided more timely.
8. Clarifies the type of assessment performed on a foster child
- The code did not differentiate between the type of assessment provided to a juvenile offender and the assessment provided to a foster child. This definition change clarifies that a different assessment should be given to each. A foster child will receive a Child and Adolescent Needs and Strengths Assessment (CANS). The CANS assessment is a multi-purpose assessment developed for children's services to support decision making, including level of care and service planning.
 - Juvenile offenders are assessed with the Youth Level of Service Assessment (YLS) Assessment.
9. States that the use of Medication Assisted Treatment may not be the sole reason parental rights may be terminated.

EFFECTIVE DATE: Passage

DATE OF PASSAGE: March 8, 2019

ACTION OF GOVERNOR: Approved 3/26/19