

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 385

BY SENATOR MARONEY

[Introduced February 22, 2021; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §49-2-111a of the Code of West Virginia Code, 1931, as amended,
 2 relating to clarifying the definition of “performance-based contracting”; and eliminating the
 3 requirement of the procurement process in performance-based contracts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN

§49-2-111a. Performance based contracting for child placing agencies.

1 (a) For purposes of this section:

2 (1) “Child” means:

3 (A) A person of less than 18 years of age; or

4 (B) A person 18 to 21 years of age who is eligible to receive the extended foster care
 5 services.

6 (2) “Child-placing agency” means an agency licensed by the department to place a child
 7 in a foster care home.

8 (3) “Department” means the Department of Health and Human Resources.

9 (4) “Evidence-based” means a program or practice that is cost-effective and includes at
 10 least two randomized or statistically controlled evaluations that have demonstrated improved
 11 outcomes for its intended population.

12 (5) “Performance-based contracting” means structuring all aspects of the ~~procurement of~~
 13 ~~services~~ service contract around the purpose of the work to be performed and the desired results
 14 with the contract requirements set forth in clear, specific, and objective terms with measurable
 15 outcomes and linking payment for services to contractor performance.

16 (6) “Promising practice” means a practice that presents, based upon preliminary
 17 information, potential for becoming a research-based or consensus-based practice.

18 (7) “Research-based” means a program or practice that has some research demonstrating
 19 effectiveness, but that does not yet meet the standard of evidence-based practices.

20 (b) No later than ~~December 1, 2020~~ July 1, 2021, the department shall enter into

21 performance-based contracts with child placing agencies.

22 (c) ~~In conducting the procurement,~~ The department shall actively consult with other state
23 agencies and other entities with expertise in performance-based contracting with child placing
24 agencies to develop the requirements of the performance-based contract.

25 (d) ~~The procurement process~~ performance-based contract shall be developed and
26 implemented in a manner that complies with applicable provisions of this code. Due to the unique
27 requirements of placing child in foster homes, contracts for child placing agencies shall be exempt
28 from §5A-3-1 of this code.

29 (e) ~~The procurement and~~ resulting contracts shall include, but are not limited to, the
30 following:

31 (1) Adequate capacity to meet the anticipated service needs in the contracted service area
32 of the child placing agency;

33 (2) The use of evidence-based, research-based, and promising practices, where
34 appropriate, including fidelity and quality assurance provisions;

35 (3) Child placing agency data reporting, including data on performance and service
36 outcomes, including, but not limited to:

37 (A) Safety outcomes;

38 (B) Permanency outcomes;

39 (C) Well-being outcomes;

40 (D) Incentives earned;

41 (E) Placement of older children;

42 (F) Placement of children with special needs; and

43 (G) Recruitment and retention of foster parents; and

44 (4) A hold harmless period to determine a baseline for evaluation.

45 (f) ~~As part of the procurement process under this section, the department shall issue the~~
46 ~~request for proposals no later than July 1, 2020. The department shall notify the apparently~~

47 ~~successful bidders no later than September 1, 2020~~

48 (g) Performance-based payment methodologies must be used in child placing agency
49 contracting. Performance measures should relate to successful engagement by a child or parent
50 in services included in their case plan, and resulting improvement in identified problem behaviors
51 and interactions. For the first year of implementation of performance-based contracting, the
52 department may transfer financial risk for the provision of services to the child placing agency
53 only to the limited extent necessary to implement a performance-based payment methodology,
54 such as phased payment for services. However, the department may develop a shared savings
55 methodology through which the child placing agency will receive a defined share of any savings
56 that result from improved performance. If the department receives a Title IV-E waiver, the shared
57 savings methodology must be consistent with the terms of the waiver. If a shared savings
58 methodology is adopted, the child placing agency shall reinvest the savings in enhanced services
59 to better meet the needs of the families and children they serve.

60 (h) (g) The department shall actively monitor the child placing agency's compliance with
61 the terms of contracts executed under this section.

62 (i) (h) The use of performance-based contracts under this section shall be done in a
63 manner that does not adversely affect the state's ability to continue to obtain federal funding for
64 child welfare-related functions currently performed by the state and with consideration of options
65 to further maximize federal funding opportunities and increase flexibility in the use of such funds,
66 including use for preventive and in-home child welfare services.

67 (j) (i) The department shall pay child placing agencies contracted to provide adoption
68 services to foster families a minimum of \$1,000 per child for each adoption finalized.

69 (k) (j) The rate of payment to foster parents and child placing agencies shall be reviewed
70 by the department, at a minimum of every two years, to determine whether the level of foster care
71 payments facilitates or hinders the efficient placement of foster children with West Virginia
72 families. The department shall remit payments to foster parents on the same week each month

73 to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of
74 the children in their custody.

75 ~~(j)~~ (k) The department shall report the performance of the child placing agency to the
76 Legislative Oversight Commission on Health and Human Resources Accountability by December
77 31, annually.

NOTE: The purpose of this bill is to clarify the definition of performance-based contracting and eliminate the requirement of the procurement process in performance-based contracting.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.