

# HOUSE BILL REPORT

## HB 2264

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**As Reported by House Committee On:**  
Early Learning & Human Services  
Ways & Means

**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:** 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)].

**Brief Summary of 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 in two initial implementation sites by July 1, 2013.
- Provides that further implementation of performance-based contracting must be phased in statewide by July 1, 2017.

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**HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES**

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*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.*

**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).

**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 (SSB 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.

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**Summary of Substitute Bill:**

By July 1, 2013, the DSHS may not renew its current contracts with providers of child welfare services, and must enter into performance-based contracts (PBC) with one or more

network administrators in two initial implementation sites. The sites must include at least one urban and one rural area. Further implementation of PBC must be phased in, with contracts in place statewide by July 1, 2017, unless the Legislature takes affirmative action in law to extend or modify implementation.

The DSHS's procurement process must be developed and implemented in a manner that complies with applicable provisions of department administrative policy 7.01 (regarding Native American Indian policy). The DSHS must actively consult with other state agencies with relevant expertise, such as the Health Care Authority, and with 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. Procurement and contracting standards are provided.

Performance-based payment methodologies must be used in network administrator contracting, and qualifications are provided. For the initial three-year period, the DSHS is prohibited from transferring full risk for the provision of services to network administrators. The DSHS must actively monitor network administrator compliance with terms of contracts. The use of PBC may not be executed in a manner that adversely affects the state's ability to continue to obtain federal funding.

The procurement may not include the provision of case management services. The definition of case management is convening family meetings; developing, revising, and monitoring implementation of any case plan or individual service and safety plan (ISSP) in collaboration with network administrators; 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.)

The DSHS is expressly mandated to contract with network administrators to arrange, coordinate, and provide services needed by children and families in the child welfare system, and is exempt from the competitive bidding process.

The DSHS and network administrators must enter into a collaborative relationship as provided under this act. While the DSHS caseworkers retain responsibility for case management, nothing limits the ability of the DSHS to continue to contract for the provision of case management services by child-placing agencies, behavior rehabilitation services agencies, or other entities that provided case management under contract with the DSHS prior to July 1, 2005. References to supervising agencies throughout the child welfare related statutes are removed.

The DSHS caseworkers also must develop case plans and service plans, in collaboration with the network administrator responsible for providing services to families and for the quality of the outcomes. Services must be chosen from the network administrator's network, but a non-network provider is authorized under certain conditions. The DSHS is required to develop a dispute resolution process to be used when the DSHS and the network administrator are unable to reach agreement on the nature, intensity, and duration of services.

The Washington State Institute for Public Policy (WSIPP) must report to the Legislature and Governor by June 30, 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.

### **Substitute Bill Compared to Original Bill:**

Legislative findings are modified to:

- clarify that the state's legal responsibility is to care for *abused or neglected children* when their parents or caregivers are *unable or unwilling* to adequately provide for their safety, health, and welfare;
- clarify that Washington has a strong history of partnership between the DSHS and *contracted service providers*; and
- add that the DSHS caseworkers and contracted service providers each play a critical and complementary role in the child welfare system. A 2007 Washington State Children's Administration Workload Study found significant gaps in the number of case-carrying social workers relative to the demands of their workload. Case workers should have more time to devote to core case management responsibilities.

Legislative intent is modified to:

- clarify that the Legislature intends to achieve improved child safety, child permanency, including reunification, and child well-being outcomes through the collaborative efforts of the DSHS and *contracted service providers*;
- remove the requirement for the DSHS and provider networks to collaboratively achieve the specific goals in order of importance;
- add that in order to develop the contracting experience and other capacity necessary for statewide implementation, performance-based contracting must be phased in;
- add that performance-based contracting under this act must be implemented in a manner that supports and complies with the federal and Washington state Indian Child Welfare Act; and
- add that improved child safety, child permanency (including reunification) and child well-being outcomes must be achieved through the collaborative efforts of the DSHS and contracted service providers and the prioritization of these goals in performance-based contracting.

Definitions are modified as follows:

- Monitoring is added to the definition of case management.
- A reference to the existing definition of child-placing agency in RCW 74.15.020 is added.

The substitute bill adds that while the DSHS caseworkers retain responsibility for case management, nothing limits the ability of the DSHS to continue to contract for the provision of case management services by child-placing agencies, behavior rehabilitation services agencies, or other entities that provided case management under contract with the DSHS

prior to July 1, 2005. References to supervising agencies throughout the child welfare related statutes are removed. "Child placing agency" replaces "supervising agency" in areas related to out-of-home care for dependent children. "Contracted agencies" replaces "supervising agency" with regard to voluntary Family Reconciliation Services, foster care and adoptive home recruitment, and specific foster parent retention and support services.

The date by which the DSHS must enter into performance-based contracts is extended from December 2012, to July 1, 2013. The DSHS must begin implementing PBC with network administrators in two initial [implementation] sites, rather than beginning with statewide implementation. The sites must include at least one urban and one rural area. Further implementation of performance-based contracting must be phased in, with contracts in place statewide by July 1, 2017, unless the Legislature takes affirmative action in law to extend or modify implementation. The DSHS is prohibited from transferring full risk for the provision of services to network administrators for the initial implementation period, which is extended from two years to three years.

The DSHS must actively consult with other state agencies with relevant expertise, such as the Health Care Authority, and with 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. The procurement process must be developed and implemented in a manner that complies with applicable provisions of department administrative policy 7.01.

Standards required in the procurement process and resulting contracts are modified to add that the procurement and resulting contracts must include, but are not limited to:

- family engagement approaches that include disclosure of assessment results (rather than full disclosure of assessment data);
- fiscal solvency of providers participating in the network (rather than just the fiscal solvency of network administrators); and
- network administrators comply with applicable provisions of department administrative policy 7.01.

The substitute bill specifies that network administrators must directly or through subcontracts with service providers:

- collaborate with caseworkers to help caseworkers meet their responsibility to develop case plans and ISSPs;
- arrange and provide the child welfare services included in the case plans for children and families served by the network administrator, including any court ordered services; and
- provide information on family progress, as requested by the DSHS caseworkers, including information necessary for the purpose of caseworker reports to the court.

The DSHS and network administrators (rather than provider networks) must enter into a collaborative relationship as follows:

- The DSHS/caseworker must:
  - conduct the initial assessment of safety threats or risks to a child, and parents' protective capacity, resources, and needs (rather than an initial family assessment); and

- develop the case plan or ISSP; however, the caseworker must provide the network administrator with an opportunity to provide input into the nature and intensity of services.
- The network administrator must:
  - choose, in consultation with the DSHS caseworker, providers from its network; and
  - refer families to providers who are qualified to provide court-ordered services or services in the case plan and must support engagement of families in needed services.

Disputes between the DSHS caseworkers and network administrators regarding services must not result in the delay of more than two business days in the receipt of needed services by the child or family.

The date of the initial WSIPP report is extended from July 30, 2011, to June 30, 2014. The second WSIPP report is extended from June 30, 2012, to June 30, 2016. The WSIPP must collaborate specifically with a university-based child welfare research entity in Washington (rather than the child welfare research community). Wraparound services are removed from the list of items to be evaluated. Network administrators must respond to the WSIPP's request for data and other information.

If the DSHS receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

**Staff Summary of Public Testimony:**

(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.

**Persons Testifying:** (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 Signed In To Testify But Not Testifying:** None.

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## 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).

### **Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Early Learning & Human Services:**

The references to the Department of Social and Health Services (DSHS) administrative policy 7.01 are removed and replaced with references to intergovernmental agreements between the state and tribal government.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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

### **Staff Summary of Public Testimony:**

(In support) There continues to be an attempt to reform the child welfare system. The Department of Social and Health Services (DSHS) had 1,600 to 1,800 individual contracts when the Legislature passed Second Substitute House Bill 2106 (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 Request for Proposal (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:** (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:** None.