

# SENATE BILL REPORT

## E2SHB 2264

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As of February 25, 2012

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

**Committee Activity:** Human Services & Corrections: 2/23/12 [DPA-WM, w/oRec].  
Ways & Means:

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell, Harper and McAuliffe.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden.

**Staff:** Jennifer Strus (786-7316)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Jenny Greenlee (786-7711)

**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 DSHS had to convert its contracts from January 1, 2011, to July 1, 2011. It also

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extended the implementation date of demonstration sites from June 30, 2012, to December 30, 2012.

On February 18, 2011, DSHS issued a Request for Proposal (RFP) to implement the provisions in the bill requiring DSHS to use performance-based contracts with which to purchase services and, as part of that process, to consolidate the number of contracts they issue. 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.

After the issuance of the RFP, the Washington Federation of State Employees (WFSE) filed a motion for preliminary injunction in Thurston County Superior Court, asking the court to enjoin 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 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 DSHS complied with the requirements of the competitive bidding process. DSHS retracted the RFP.

**Summary of Bill (Recommended Amendments):** Performance-based Contracting Mandate. By December 1, 2013, DSHS is expressly mandated to enter into performance-based contracts with one or more network administrators for family support and related services. DSHS may enter into performance-based contracts for additional services, other than case management, in future procurements. Beginning December 1, 2013, 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 DSHS and the network administrator to allow for the successful transition of services that meet the needs of children and families.

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. 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, DSHS must consult with specified stakeholders to assist in identifying the array of family support and related services that are included in the procurement. In identifying services, 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.

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.

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 must be used in network administrator contracting. 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. DSHS may develop a shared savings methodology through which the network administrator receives a defined share of any savings that result from improved performances. If 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.

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 included in a child or family's case plan within funds available under contract. 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 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.

DSHS must develop a dispute resolution process to be used when the network administrator disagrees with 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 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.

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.

Beginning in the 2015-17 biennium, 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.

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

The provisions related to the performance-based contracting mandate are moved to a separate chapter in Title 74.

The deadline for DSHS to begin the demonstration sites in which child welfare services, including case management, are provided by private agencies pursuant to 2SHB 2106 (2009) is extended to December 1, 2015.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments):** Removes the language repealing Phase II of 2SHB 2106 (2009). Continues the repeal of performance-based contracting provision that conflicts with the new performance-based contracting provisions in the bill. Moves the provisions related to performance-based contracting to a new chapter in Title 74. Extends the deadline for the demonstration sites (2SHB 2106) to begin from December 1, 2012 to December 1, 2015.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony as Heard in Committee (Human Services & Corrections):** PRO: Trying to put in place a contract management system and this bill should go a long way towards accomplishing that. The bill is making sure that providers are qualified and will hold them accountable for outcomes for the services they provide. Want to make sure we are funding effective practices. This bill should result in improved outcomes for children and families in the child welfare system. Child welfare agencies are heavily

dependent upon their private partners to get their work done. Often the system provides families what it has available rather than what the family needs and this bill will take a huge step forward to providing appropriate and needed services to child and families. If the bill is implemented well, we should see measurable results. Veteran parents help break down barriers for families in the child welfare system to achieve success. Need to match parents with services they need and that work and this bill will help tremendously in achieving this goal. Clear, objective performance measures tied to payments for services are best for the clients of the child welfare system. FamLink does not help social workers choose appropriate services and having network administrators contract with appropriate entities to provide a host of services will be extremely helpful to social workers trying to implement case plans.

**Persons Testifying (Human Services & Corrections):** PRO: Representative Kagi, prime sponsor; Danielle Goodwin, Parent Advisory Committee; Laurie Lippold, Children's Home Society; Alia Griffing, WFSE; Joyce Murphy, WFSE; Charles Shelan, Washington State Coalition of Children in Care; Linda Thomas, Catholic Community Services; Ben de Haan, Partners for our Children.