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Testimony Submitted by Texas Alliance of Child and Family Services
Sunset Advisory Commission Staff Report: Texas Department of Family and Protective Services
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I appreciate the opportunity to comment on the Sunset Advisory Commission Staff Report regarding the Texas Department of Family and Protective Services (DFPS). I am Nancy Holman, Executive Director of the Texas Alliance of Child and Family Services (Alliance), a 39-year-old statewide association representing the private organizations that contract with DFPS to provide services and treatment to the children in DFPS conservatorship. I serve on the Public/Private Partnership Committee (PPP) that developed the Redesign model and also serve on the Committee for Advancing Residential Practices that advises on the legacy system.

The Alliance membership represents every service type, including foster care, residential group care, residential treatment services, emergency shelters, adoption services, human trafficking services, and prevention services. Current membership includes: the two Single Source Continuum Contractors (SSCCs); the majority of agencies operating as subcontractors under the SSCC; agencies that contract directly with DFPS to provide services through the existing (legacy) system; and agencies that operate under no pay contracts with the state, or serve children and families outside the DFPS network. My testimony will address Issue 3 and Issue 4 of the staff report.

ISSUE 3: DFPS FACES SIGNIFICANT CHALLENGES AND RISKS IN ITS EFFORTS TO REFORM THE STATE'S FOSTER CARE SYSTEM

The shortcomings of the Texas Foster Care System outlined in the Sunset Staff Report can be grouped into two categories: capacity development and performance-based contracting. **Addressing both of these issues in the Foster Care Redesign model required inclusion of certain specific features in the model.**

CAPACITY DEVELOPMENT

DFPS contracts through an open enrollment process that does not direct where resources are developed. Consequently, the development of specialized resources has been guided by zoning laws and community resources, rather than through a planned process of matching resources to the needs of the children in a community. This process has a cascading effect as out-of-region placements can fill up a community's capacity, in turn, forcing the children in those communities to be placed out of their home region. Addressing the capacity issue required three specific features be included in the model:

No-Eject/Reject Requirement: To ensure children are placed within 50 miles of their home community, a contractor must be required to accept and keep every child referred to them by DFPS. To manage the risk inherent in this approach, a contractor needs a large enough pool of children under contract to accommodate the risk of serving a disproportionate share of very high need children. (Under the legacy system, providers can refuse to accept a child or ask that a child they cannot serve be removed.)

SSCC: The size and nature of DFPS contracts had to change to address the additional risks assumed by the contractor under this new shared risk model. The SSCC contractor bids on services for a pre-determined catchment, or geographic area, that is specifically sized to manage the risk of a no-eject/reject contract. In addition, the SSCC has a specific area within which to develop services to meet the needs of the community.

Placement Authority: The success of this shared risk model depends on DFPS relinquishing control over key decisions that directly impact the contractor's ability to bear the risk. Under a no-reject/eject model, the contractor needs the authority to assess and place the child, determine what and how services are delivered, and

manage any placement moves. While DFPS retains ultimate placement approval, this authority has transferred to the SSCC in their catchment area, a significant change from the legacy system operation.

PERFORMANCE-BASED CONTRACTS / QUALITY OUTCOMES

Performance-based contracting focuses on quality through the purchase of results rather than services. Performance-based contracts that shift more authority to the contractor allow the state to develop contract outcomes related to its state and federal mandates.

The key to successful performance-based contracting is making sure DFPS relinquishes the control necessary for the contractor to manage the risk and have the authority to deliver the outcome. Foster care redesign expands the contractor's authority in several ways: expanded placement authority, determination of services delivered, working with birth parents, management of service delivery network.

The one critical feature not vested in the Texas redesign system that exists in most other privatized models with a case rate payment is the transfer of case management services. As the project unfolds, this duplication of service (implemented in Stage III) may prove to be expensive and ineffective. We believe the evaluation of each stage is needed to make this determination.

These changes are significant in determining the type of outcomes that can be placed in a contract under foster care redesign versus a contract in the legacy system. The distinctions are important to understanding the value of some of the key changes offered by the redesign model.

ISSUE 3 RECOMMENDATIONS

3.1 Require DFPS to develop a long-range implementation plan to guide the transition efforts.

We support this recommendation, in part. We believe it would be beneficial for agencies and communities to know the blueprint for rolling out redesign statewide. Organizations could incorporate this information into their own strategic planning and engage their communities in the process. We recognize that developing a comprehensive timeline is challenging, because the ability to divide large urban counties into smaller catchment areas does not align with how HHSC and DFPS have historically collected data and developed forecasts. These hurdles may take time to resolve, but development of a plan can indicate when and how this will be resolved.

We do not think the timeline or specific objectives outlined in the staff report should be in statute. While these points are important, they may change through the continuous quality improvement process that is part of the redesign evaluation process. For example, a statutory delineation of case management roles and responsibilities on redesign could create issues for the implementation of family services in Stage II, and a case rate in Stage III.

As stated, risk sharing models require adequate relinquishment of control to the contractor, so they can bear the risk and deliver the necessary outcome. It is early in the process for the partners to understand how those roles and responsibilities will be delineated to accomplish that goal.

Cost is also an issue with redesign, as noted in the report. We recommend the Department seek additional funds to inject into the model to address new functions and outcome requirements, and to preserve adequate direct service provider rates. Additionally, the issue of duplication of services should be examined through the

LIMITATIONS ON IMPROVING QUALITY THROUGH THE LEGACY SYSTEM

- The legacy foster care system is a traditional fee-for-service cost-reimbursement model where the state pays a pre-determined daily rate linked to the intensity of services required for as long as the child resides in the placement.
- The contractor does not determine the initial or subsequent placements for the child. Those are managed by the DFPS caseworker.
- Any change to the level of service needs for the child is determined by an independent third party DFPS contractor.
- Contractors are limited to work only with the child and not their family, despite best practice models promoting that practice.

evaluation process. As stated, shared case management models are more expensive and less effective than performance-based contracting models that assign certain parameters of case management authority.

3.2 DFPS should thoroughly evaluate system data and cost before pursuing broad implementation of foster care redesign.

COST: Cost is an issue with redesign. The recommendations put forth by the PPP hoped for a cost neutral project; however, that was contingent on adequate DFPS administrative costs being transferred to the SSCC and adequate foster care rates. The reality under the current rollout is that DFPS has retained a significant administrative structure, providing inadequate support for SSCC management processes and direct service provision.

SSCC Costs: DFPS has not transferred resources to the SSCC that match the infrastructure they require to: build the capacity to keep children in their home communities; create utilization systems that ensure the right quantity of the right services to help children safely heal and improve; manage a network of providers who must operate under more robust performance-based systems; and properly assess and place children referred in a stable placement that meets their service needs. SSCCs have hired approximately three times the staff transferred by DFPS.

Foster Care Subcontractor Payments: When the SSCC is underfunded, the provider network absorbs that cost pressure. We are experiencing rate adjustments and rate reductions in the current catchment areas. In addition, these providers are experiencing increased costs for data collection, reporting, and achievement of outcomes.

RISK: The Sunset report focuses much attention on the risk assumed by the SSCC and the potential impact for the state should an SSCC be unable to continue in that role. We would add to that concern the risk that lower reimbursements pose for the viability of the subcontractor network. **Preserving a quality community-based network is as important as preserving the viability of the SSCC.**

PPP ROLLOUT RECOMMENDATION: The issue of cost must be addressed, and we hope that will happen in the upcoming legislative session. **While we understand the concern in moving forward with this issue outstanding, there are reasons to continue with a cascading rollout.** The diversity and size of Texas might be better served by having an additional catchment area from which to gather data to better evaluate the project. This can be done without adding substantial risk to the project.

An additional similarly sized catchment area would only increase the percent of children cared for under redesign slightly, but offer potential valuable data. In the end, there will be a multitude of differences in the various catchment areas and we will learn as much from these differences as we do from each individual catchment area.

The PPP called for a cascading implementation plan with new catchments rolling out after completion of each individual stage of implementation. This assumed a timely implementation, and Texas experienced a lengthy delay in the initial rollout process. The PPP also made clear that this is not a pilot project. A slowing of momentum or a complete halt to the implementation process brings that commitment into question. This could cause an erosion of confidence in the new system of care by DFPS staff, private service providers, and key stakeholders. In the end, their leadership and commitment to continued infrastructure and resource development are key to the success of system change.

REDESIGN VERSUS LEGACY PLACEMENTS

- In FY2013, there were 30,740 children in foster care.
- 17.5% of those children (5,393) will be included in Foster Care Redesign under current catchment areas.
- 82% of those children remain in legacy system.
- Additional catchment (of similar size) will leave at least three quarters of children in care (75%) in legacy system.
- This is a very slight increase in risk that could offer additional valuable data to evaluate the project.

Source: DFPS 2013 Data Book p. 52

3.3 DFPS should develop a consistent approach to measuring and monitoring provider quality and identifying risk indicators in both the legacy and redesigned systems.

In developing such an approach it is important to note the distinctions between the two systems and the implications those distinctions have on the ability to measure outcomes and quality. Provider authority to impact state and federally-mandated outcomes is more limited in the legacy system, and these limitations must be recognized. **Development of a consistent approach must focus on commonalities between the two systems with an understanding of nuanced differences presented by different contracting and payment systems.**

ISSUE 4: DFPS' ENFORCEMENT EFFORTS MUST BE STRENGTHENED TO BEST ENSURE THE SAFETY OF CHILDREN IN REGULATED CARE.

4.1 Authorize the agency to assess administrative penalties for high-risk child care licensing violations without first pursuing non-monetary administrative sanctions.

Proper enforcement of regulatory standards is critical in child care settings. The Sunset staff report states there is a cautious approach to enforcement, and recommends strengthening enforcement efforts. However, the report also details the difficulty the agency has in ensuring it consistently and reasonably applies safety standards.

We recommend there be a sequence in how changes are made to improve the quality of oversight. The issue of consistent, competent oversight should be addressed first. Regulations are only as effective as a quality oversight process administered by well-trained personnel can deliver. Creating a more punitive flawed enforcement system could undoubtedly compound issues rather than produce better results.

EXPAND AVENUES FOR COMPLIANCE WITH CRIMINAL BACKGROUND AND FINGERPRINT CHECKS: The report refers to repeat violations, noting that most are associated with criminal history check violations. The report does not, however, speak to the delays providers experience in completing these checks. DFPS limits the number of vendors that providers can access for criminal checks, producing delays and impacting cost. In addition, DFPS requires separate criminal checks for an individual for each license and contract they work under, which duplicates processing.

We recommend that providers have the ability to competitively bid for the completion of criminal checks. This will expand the competitive market, which will increase access, reduce the cost, and improve compliance. DFPS should implement internal coordination of completed criminal checks over licenses and contract type to reduce duplication and improve compliance.

4.2 Require DFPS to develop an enforcement policy in rule to guide child care licensing enforcement efforts, and require a specific methodology to be publicly available.

The quality assurance and consistency of regulatory oversight must be improved before adoption of an enforcement policy in statute. Adding more structure to an oversight system that cannot consistently perform under current operations might create confusion rather than clarify issues. Again, we recommend addressing the consistency of oversight before adding methodologies to the process that require more advanced practice.

4.3 Grant cease-and-desist authority to DFPS limited to the unlicensed provision of child care in accordance with child care laws.

The Alliance supports this recommendation.

4.4 Direct DFPS to develop a more robust quality assurance process for standards cited that directly relate to child safety.

The Alliance supports this recommendation.