

January 2012

## **TRANSFORMING CHILD WELFARE IN WASHINGTON STATE: PERFORMANCE-BASED CONTRACTING**

### **INTRODUCTION**

The 2009 Washington State Legislature passed Second Substitute House Bill 2106 (2SHB 2106),<sup>1</sup> intended to reform the delivery of child welfare services in Washington State through a two-phase process. The bill requires the Children's Administration (CA) of the Department of Social and Health Services (DSHS) to:

1. Convert existing contracts with service providers to performance-based contracts and reduce the overall number of contracts (Phase 1); and
2. Set up two demonstration sites to compare child welfare case management by private agencies with child welfare case management by DSHS employees (Phase 2).

The legislation also established the Child Welfare Transformation Design Committee (Committee) to advise DSHS in this effort. The Washington State Institute for Public Policy (Institute) was directed to report on the transition to performance-based contracts; and, in 2015, evaluate the outcomes of case management performed by private agencies compared with that of DSHS employees.

This initial report to the legislature and governor provides a brief description of the legislation and an overview of the progress to date in converting and consolidating CA contracts. The Institute will provide a final report on performance-based contracts in June 2012, and an evaluation report of the demonstration project in April 2015.

### **Summary**

The 2009 Washington State Legislature passed 2SHB 2106, directing the Children's Administration (CA) of the Department of Social and Health Services (DSHS) to:

1. Convert contracts with child welfare service providers to performance-based contracts and reduce the overall number of contracts (Phase 1); and
2. Set up two demonstration sites to compare child welfare case management by private agencies with case management by DSHS employees (Phase 2).

The legislation also established the Child Welfare Transformation Design Committee (Committee) to advise DSHS in this effort.

The Committee has met 12 times since June 2009. Over that time, CA offered a model for Phase 1 that would reduce the number of contracts by establishing one lead agency contractor per geographic area to provide or subcontract for all child welfare services. Contract performance would be measured by outcomes related to child safety and well-being, timeliness of services, and results of periodic satisfaction surveys.

A final version of the request for proposals (RFP) for this model was released February 18, 2011, with a submission deadline of May 9, 2011.

On May 5, 2011, the Washington Federation of State Employees (WFSE) filed a motion for a preliminary injunction to halt the RFP. On May 13, 2011, Thurston County Superior Court Judge McPhee granted the preliminary injunction, ruling that DSHS had exceeded its authority under 2SHB 2106, and was in violation of state law requiring agencies that contract out duties customarily performed by state workers to permit employees to offer alternatives or bid for the contracts.

On May 26, 2011, the RFP was formally withdrawn by DSHS Children's Administration; submitted proposals were not scored.

Currently, CA is working to reduce the number of contracts and convert them to performance-based contracts. CA and WFSE have drafted a plan for implementing Phase 1. This plan is under review.

<sup>1</sup> 2SHB 2106, Chapter 520, Laws of 2009.

## LEGISLATIVE ASSIGNMENTS

Second Substitute House Bill 2106 (2SHB 2106) established the Child Welfare Transformation Design Committee (Committee), with 24 representatives from the Children's Administration, private agencies, Washington tribes, and other stakeholders<sup>2</sup> to facilitate the reform's implementation.

The legislation assigned the Committee extensive responsibilities in designing a transition plan for the reform, to be presented as recommendations to the legislature and governor. Their plan was to include:<sup>3</sup>

- a model for performance-based contracts, including a method for reducing the number of contracts held by CA;
- methods to address monitoring of contracts and measurement of outcomes;
- methods for ensuring contracts comply with federal and state laws regarding child welfare for Indian children;
- methods for expanding capacity of private agencies;
- a model for a financing arrangement that includes consideration of linking reimbursement to outcomes and minimizing financial risk to service providers; and
- a description of costs for the transition and start-up periods.

The Committee was required to report in writing to the governor and the Legislative Children's Oversight Committee quarterly from June 30, 2009, through June 30, 2012; and semi-annually from June 30, 2012, through January 1, 2015.<sup>4</sup>

The second part of the reform (Phase 2) calls for establishment of demonstration sites to test the effects of child welfare case management by private agencies compared with case management by CA. The legislation required the Committee, together with

CA, to select two demonstration sites; one on the eastern side of the state, and one on the western side of the state. The Committee was also tasked with identifying performance outcomes for the demonstration, determining methods for assessing those outcomes, and identifying the size of the populations in the demonstration sites necessary to achieve levels of statistical power and significance established in the legislation.

The Institute was assigned to evaluate the demonstration and report on the "measurable effects" of child welfare case management<sup>5</sup> provided by private contractors, compared to case management provided by CA. Based on the evaluation findings, "the governor shall ... determine whether to expand this act to the remainder of the state or terminate this act."<sup>6</sup>

Finally, the legislation also assigned DSHS, the Office of Financial Management, and the Caseload Forecast Council to propose a plan for the reinvestment of potential savings resulting from the reform. These savings would be expected to come from reduced foster care placement caseloads.<sup>7</sup>

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<sup>2</sup> In 2010, the legislature amended the committee composition to include a former foster youth (SSB 6832, Chapter 291, Laws of 2010). For a complete list of representation on the Committee, see Appendix Section A.

<sup>3</sup> A full list of requirements for the transition plan can be found in Appendix Section C.

<sup>4</sup> Reports of the Committee are available at <http://www.joinhandsforchildren.org/documents/reports.shtml>.

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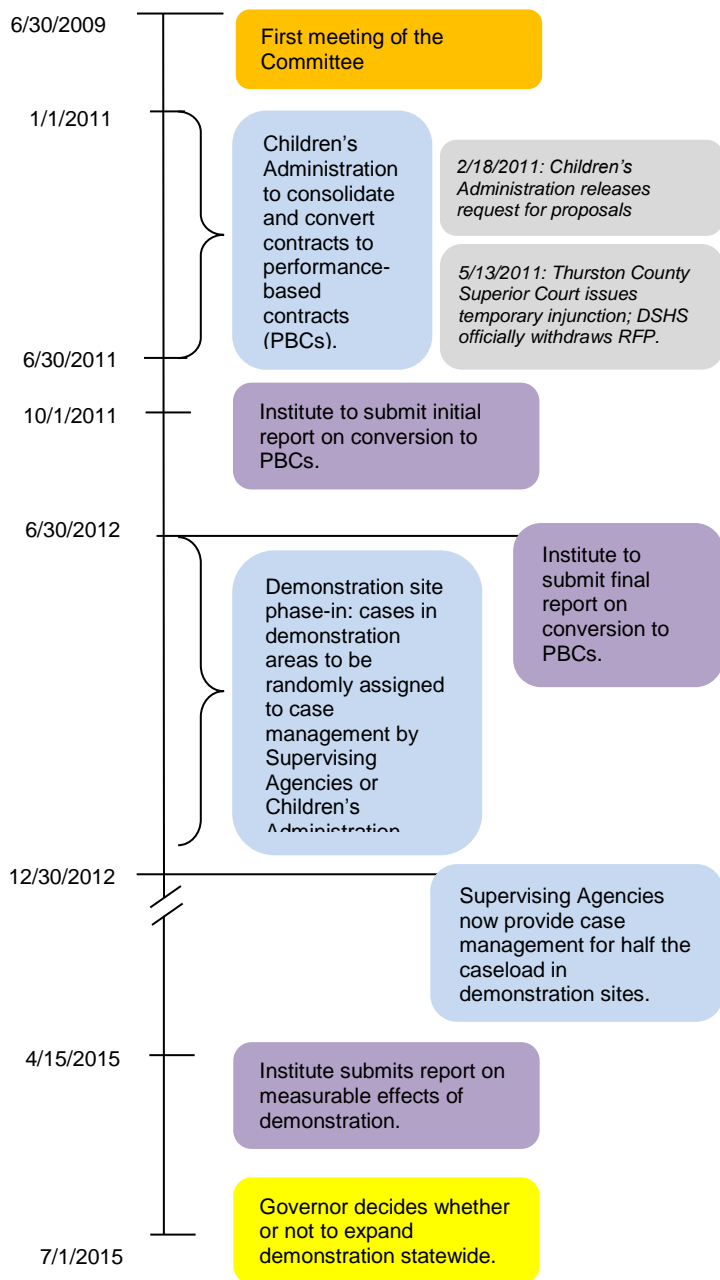
<sup>5</sup> Under 2SHB 2107, "Case management" means the management of services delivered to children and families in the child welfare system, including permanency services, caseworker-child visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, 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. 2SHB 2106, Chapter 520, § 3 (1), Laws of 2009

<sup>6</sup> 2SHB 2106, Chapter 520, § 10, Laws of 2009.

<sup>7</sup> The final report on reinvestment was submitted to the governor and the legislature in February 2011. See: Washington State Office of Financial Management (2011) *Child Welfare Reform Savings Reinvestment*. The report is available at: [http://www.ofm.wa.gov/reports/child\\_welfare\\_reinvestment.pdf](http://www.ofm.wa.gov/reports/child_welfare_reinvestment.pdf)

## REFORM TIMELINE

The following timeline reflects several changes (extensions) created by the 2010 Legislature.<sup>8</sup>



## CHILD WELFARE TRANSFORMATION DESIGN COMMITTEE

The Committee first met on June 30, 2009. To date, the committee has met on 12 occasions.<sup>9</sup> Partners for Our Children (a public-private partnership located at the University of Washington) and legislative staff provided assistance to the meetings. The early meetings were facilitated by Cedar River Group (a public policy consulting group specializing in mediation and facilitation).

To address the broad scope of issues to be covered in the transition plan (see Appendix Section C), four advisory committees were created with specific expertise to address various topics. The four committees are:

- Legal and Practice Issues
- Outcomes and Evaluation Issues
- Financial Issues
- Site Selection and Transition Issues

The Legal and Practice advisory committee was assigned to define the core services that each supervising agency must provide. In addition, this advisory committee expanded their scope to identify legal processes for working with private agencies providing case management (i.e., during Phase 2 in the demonstration sites). The first task was accomplished and a preliminary service array was submitted to the Legislative Oversight Committee after the advisory committee's September 8<sup>th</sup>, 2010 meeting. The Legal and Practice advisory committee will reconvene to address the second task after the performance-based contracts are implemented.

The Outcomes and Evaluation advisory committee was tasked with defining the outcomes that contractors need to achieve. Outcomes related to safety, permanency, and well-being were discussed. A list of recommended outcomes was submitted to the full Committee which approved the recommendations in June 2010. The Outcomes and

<sup>8</sup> SSB 6832, Chapter 291, Laws of 2010

<sup>9</sup> For a list of meetings and full committee votes, see Appendices E and F.

Evaluation advisory committee's work was completed in April 2010.<sup>10</sup>

The Financial advisory committee was asked to identify how to fund the system established in the demonstration sites (Phase 2). This advisory committee discussed how to link payments and incentives to outcomes, start-up costs for Phase 2, and insurance liability requirements for contractors. The work of this advisory committee is ongoing.

The focus of the Site Selection and Transition advisory committee is the demonstration sites. This advisory committee determined that the most robust evaluation of the demonstration sites would involve random assignment of child welfare cases to Supervising Agencies or Children's Administration. Additionally, the advisory committee identified the key criteria for selecting two demonstration sites. In November 2011, the full Committee voted to approve two demonstrations recommended by the advisory committee.<sup>11</sup> The Site Selection and Transition advisory committee continues to study issues related to transitioning open cases from CA to Supervising Agencies.

## CHILD WELFARE SERVICE CONTRACTS

Children's Administration (CA) contracts with private agencies for a wide range of services for its clients. As previously mentioned, 2SHB 2106 directs the department to reduce the number of contracts for services and to transition existing contracts to performance-based contracts. In FY 2009, prior to passage of 2SHB 2106, CA had 2,203 separate contracts<sup>12</sup>, managed at both the DSHS regional and headquarters level. None of the contracts were performance-based; that is, payment was not contingent upon outcomes for children and families.

In 2009, about 75 percent (1,682) of the contracts were "templates." That is, contracts for categories of

service where DSHS regions<sup>13</sup> complete the form with the provider information and the maximum billable amount. CA has templates for the following categories of service:

- Family Preservation Services
- Intensive Services
- Foster Care Services
- Adolescent Services
- Mental Health Services
- CA Staff Training/Consultation
- Domestic Violence Services
- Purchased Services/Goods

The remaining 521 contracts were "custom" contracts. Regions may issue custom contracts to provide services that meet the unique needs of children and families not covered by the templates. Contracts for two other categories of service—technology and data sharing—are always custom contracts.

Since passage of 2SHB 2106, CA has made efforts, working independently from the Committee, to reduce the number of contracts it maintains. Additionally, CA has moved toward performance-based contracts as defined in a governor's executive order that requires all state cabinet agencies to employ performance-based contracts for client and personal service contracts. CA has used two strategies to reduce the number of contracts:

- 1) Consolidating contracts so that an agency providing services within a service category has a single statewide template contract for those services, rather than separate contracts with individual regions. For example, in 2009 an agency might have had six contracts—one with each of the DSHS geographic regions—to provide a single service. After consolidation, that agency would have a single contract with DSHS for that service category; and

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<sup>10</sup> See Appendix Section D for the final report of the Outcomes and Evaluation Advisory Committee.

<sup>11</sup> The Western Washington site will include the DCFS offices in Everett, Lynnwood, Sky Valley, Smokey Point and two offices in Seattle, King West and Martin Luther King Jr. The Eastern Washington site will include offices in Clarkston, Colfax, Moses Lake, and Spokane (which also serves Lincoln County).

<sup>12</sup> Personal communication from Tammy Hay, Chief - Office of Budget, Forecasts and Contracts, Children's Administration.

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<sup>13</sup> For administrative purposes, DSHS divides the state into geographical areas referred to as regions. In 2009, there were six regions; in 2011, DSHS consolidated regions so that now, there are three administrative regions.

- 2) Eliminating contracts with agencies and sole proprietors not actively performing services for CA; that is, where no invoices for services were received from an agency or individual in the prior year.

These strategies allowed CA to reduce the number of contracts to 1,823 in FY 2011—a 17 percent reduction from FY 2009. Custom contracts and templates were reduced at about the same rate (15 percent and 18 percent, respectively). Children’s Administration (CA) anticipates a further reduction to 1,557 contracts for FY 2012.

Children’s Administration continues to review and consolidate existing contracts, while converting them to performance-based contracts according to the governor’s definition.<sup>14</sup> Whether or not the Governor’s definition of performance-based contracts conforms to the definition specified in 2SHB 2106 has not yet been determined.

In fact, 2SHB 2106 offers two definitions of performance-based contracts. One definition mandates linking performance to reimbursement in contracts. The other allows for—but does not require—linking performance to reimbursement.<sup>15</sup>

## LEAD AGENCY CONTRACTORS

At the December 2009 meeting of the Committee, CA presented a proposal to consolidate contracts under a small number of “Lead Agency Contractors,” a significant departure from CA’s current methods for contracting child welfare services. Lead Agencies would be responsible for providing services to children and families within a “Coordinated Care” system. Lead Agency contracts would be awarded in four service categories, ultimately defined as:

- In-home child safety services;
- Placement, reunification and permanency;

- Intensive treatment services; and
- Transitional services for older youth.

In later months, Children’s Administration also clarified that a Lead Agency Contractor could bid for more than one category of services, as well as subcontract with existing providers to provide specific services. Additionally, the performance-based contracts would hold the Lead Agency accountable for services, processes, service coordination, and child and family outcomes.

Throughout this planning period, CA solicited feedback regarding the Lead Agency model from a broad group of stakeholders, including advisory groups within CA, foster parents, relatives, tribal representatives, judiciary representatives, and service providers.

A revised version of the Lead Agency design was presented at the June 2010 meeting of the Committee. This proposal specified that each Lead Agency would be expected to provide or subcontract for all categories of services. Each geographical area would have one Lead Agency and a single contract for all child welfare services. The projected timeline for this project was:

- October–November 2010: Issue a request for proposals for Lead Agency contractors;
- March–April 2011: Execute contracts to enable capacity-building and a 90-day start-up period; and
- July 1, 2011: Legislative deadline for implementation of performance-based contracts.

Children’s Administration continued to meet with stakeholders to solicit feedback after the June 2010 meeting.

At the October 2010 Committee meeting, CA clarified their plans for Lead Agency services and responsibilities, and presented an initial proposal for seeking Supervising Agencies to provide case management services in Phase 2. Children’s Administration recommended that Supervising Agencies be selected from existing Lead Agencies.

A draft Request for Proposals (RFP) was released by CA on November 22, 2010, followed by a two-week

<sup>14</sup> “Performance-based contracts identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.”  
From Governor’s Executive Order 10-07, November 29, 2010.

<sup>15</sup> The two definitions are in Section (2)(9) and Section (13)(5), SSHB2106 (Laws of 2009).

period for written comments and questions. The December 2010 Committee meeting was devoted to addressing questions that were submitted to CA.

A final version of the RFP was released on February 18, 2011, with a submission deadline of May 9, 2011. The final version of the RFP called for Lead Agencies to provide or subcontract for all services within a geographical area. Contracts would be performance-based, as required by the legislation. Contract performance would be measured based on outcomes related to:

- Child safety and well-being;
- Timeliness of services; and
- Results of periodic satisfaction surveys of children and families, tribes, community partners, CA social workers, and court partners.

## COURT ACTION

On May 5, 2011, the Washington Federation of State Employees (WSFE) filed a motion for a preliminary injunction against the Department of Social and Health Services of Washington State. WSFE argued that the RFP issued by CA included elements of child welfare case management that would take work away from state classified employees; that by releasing the RFP without allowing employees to offer alternatives or to compete for the contracts, CA had violated state law regarding “contracting out” services traditionally performed by state workers (RCW 41.06.142).<sup>16</sup> Further, WFSE argued that CA was required to bargain with employees under a separate state statute (RCW 41.80).

In its response, the state’s attorney general argued that that under the RFP, CA employees would continue to be responsible for child welfare case management. The attorney general’s office further argued that the reform legislation exempted the conversion to performance-based contracts from the

<sup>16</sup> Washington State Law RCW 41.06.142 governs the criteria for agency-purchased services, when those services are “customarily and historically provided by employees in the classified service”. The law allows state employees who would be displaced by the contract to “offer alternatives to purchasing services by contract and, if these alternatives are not accepted, compete for the contract under competitive contracting procedures.”

requirements of RCW 41.06.142. Therefore, in implementing this law, the agency was not required to provide an opportunity for state employees to offer alternatives to contracting the services or compete for the contracts.

Following oral arguments and briefings, the court concluded that the proposed contracts in the RFP were not exempt from the requirements of RCW 41.06.142; therefore, the RFP could not go forward as planned. On May 13, 2011, Thurston County Superior Court Judge Thomas McPhee issued a preliminary injunction on behalf of WSFE, preventing any further actions regarding the proposed contracts until DSHS “fully complied with the provisions of RCW 41.06.142 and further order of the court . . .”<sup>17</sup>

On May 26, 2011, the RFP was formally withdrawn by DSHS Children’s Administration, and submitted proposals were not scored. As of January 2012, no additional court action has occurred.

In January 2012, legislation was introduced concerning child welfare performance contracts.<sup>18</sup> This topic is likely to be the subject of legislative action during the 2012 session.

## NEXT STEPS

By June 30, 2012, the Institute will publish its final report on the transition to performance-based contracting.

Suggested citation: M. Miller and S. Lee. (2012). *Transforming Child Welfare in Washington State: Performance-Based Contracting*. Olympia: Washington State Institute for Public Policy, Document Number 12-01-3902

<sup>17</sup> See Appendix Section G for a copy of the court injunction.

<sup>18</sup> HB 2264.

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