

CHILD WELFARE OVERSIGHT AND ADVISORY COMMITTEE

Minutes

July 8, 2019

Call to Order and Roll Call

The Child Welfare Oversight and Advisory Committee meeting was held on Monday, July 8, 2019, at 1:00 p.m., in Room 129 of the Capitol Annex. Representative David Meade, Co-Chair, called the meeting to order at 1:11 p.m., and the secretary called the roll.

Present were:

Members: Representative David Meade, Co-Chair; Senators Tom Buford, Denise Harper Angel, Reginald Thomas, and Whitney Westerfield; Representatives Angie Hatton, and Joni L. Jenkins.

Guests: Adam Meier, Secretary, and Kristi Putnam, Deputy Secretary, Cabinet for Health and Family Services; Eric T. Clark, Commissioner, and Elizabeth Caywood, Deputy Director, Department for Community Based Services, Cabinet for Health and Family Services; Grace Akers, MDIV, Chief Executive Officer, Barb Carter, and Julie Greenwell, St. Joseph Children's Home; Jennifer Hall, MSW, Executive Director, Key Assets Kentucky; Krista Thomas, Policy Fellow, Chapin Hall at the University of Chicago; Judge Sheila Farris, Henderson County Family Court Judge, Kentucky 51st Judicial Circuit; Kelly Stephens, Governmental Affairs Liaison, Kentucky Administrative Office of the Courts; Rachel Bingham, Executive Officer of Family and Juvenile Services, Kentucky Administrative Office of the Courts; Tom Stevenson, State Chair, Citizens Foster Care Review Board; Mollie Cole, foster parent; Liz McKune, Passport; Barb Carter and Julie Greenwell, St. Joseph Children's Home; and Mollie Cole, foster parent.

LRC Staff: Ben Payne and Gina Rigsby.

Election of Senate Co-Chair

A motion was made by Senator Westerfield and seconded by Senator Harper Angel to nominate Senator Tom Buford as Senate Co-Chair. A motion was made by Senator Westerfield and seconded by Senator Harper Angel that nominations cease and Senator Buford be elected Senate Co-Chair by acclamation.

Approval of Minutes

A motion to approve the minutes of the November 19, 2018 meeting was made by Senator Buford, seconded by Senator Westerfield, and approved by voice vote.

Performance-based Contracting and Privatization of Child Welfare Services

Eric T. Clark, Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, Jennifer Hall, MSW, Executive Director, Key Assets Kentucky, and Grace Akers, MDIV, Chief Executive Officer, St. Joseph Children's Homes, testified that House Bill 1 from the 2018 Regular Session established the Child Welfare Oversight and Advisory Committee, gave attention to state social service worker caseloads, updated the delivery of family preservation services for children and parents, streamlined processes for foster and adoptive parents, established a putative father registry, and mandated the cabinet designate a study group to make recommendations regarding the creation and implementation of performance-based contracting for licensed child-caring facilities and child-placing agencies in the Commonwealth and the feasibility and implementation of the privatization of all foster care services in the Commonwealth.

Facilitated by representatives from Chapin Hill at the University of Chicago, the performance based contracting study group met five times between September 2018 and November 2018 to produce its report. The study group looked at previous efforts to explore performance-based contracting conducted by the Kentucky Child Welfare Performance and Accountability Partnership and learned from other information states about recommendations related to performance-based contracting. The study group reviewed the literature and best practices associated with performance-based contracting, reexamined the research and findings of past experiences, and applied discussions to Kentucky's system and current transformation. On November 30, 2018, the report was submitted to the Governor, the Interim Joint Committees on Appropriations and Revenue, and Health, Welfare, and Family Services, and the Child Welfare Oversight and Advisory Committee.

The study group organized its recommendations relating to performance-based contracting for licensed child-caring facilities and child-placing agencies within four overall categories: a focus on the performance-based model and fiscal design, performance monitoring and quality improvement, resource and infrastructure needs, and partnerships and collaboration between public and private partners. The recommendations take into account historical efforts in Kentucky, other state's experiences and outcomes, the landscape of child welfare today and the transformation, and are intended to be reviewed and considered as a whole, not mutually exclusive of each other. The study group determined that implementing performance-based contracting is a promising fiscal strategy to aid in Kentucky's child welfare transformation and achieve the cabinet's priority outcomes to safely reduce entries into foster care, improve timeliness to appropriate permanency, and reduce caseloads for the child welfare workforce. Performance-based contracting aligns well with the implementation of the federal Family First Prevention Services Act by investing more in family preservation services and ensuring that children and youth in care are placed with families in the least restrictive settings possible. A strong collaboration between public and private agencies will be essential for this improvement in outcomes and the advancement of service delivery for children and families.

In response to questions by Senator Westerfield, Commissioner Clark stated that the cabinet will use performance based measures for its own services that are the same as services used by private providers. Ms. Hall stated that there has to be a period of time to see if the data can be gathered and ensure that it is accurate. There has not been a point person to measure performance data before. Some data is monitored on a check box form but data has not been measured before related to performance as it pertains to the contract. Adam Meier, Secretary, Cabinet for Health and Family Services, stated that when performance based funding was done for the universities in the past, one of the things implemented was the hold harmless rule that allows for a transition period so there are not drastic fluctuations in budgets during the first year of a budget. It can be set up in such a way that new market entrants would have a baseline and still remain competitive. The cabinet does not want to cause a drastic disruption in the market where there would be a quick loss of providers especially in areas where there are not enough providers currently.

Senator Westerfield stated that the best outcomes are what they are and a standard is a standard whether a provider meets it or not. Ms. Hall stated that there are certain standards that do not have much room for flexibility, for instance safety or abuse or neglect happening within the foster care system. A benchmark may have to be set and some providers might not meet it. The provider community does not want poor quality providers, because it is not fair to the children that are being served. Standards will need to be determined, what is or is not acceptable, and the degree which is expected for improvements. Senator Westerfield stated that discretion can be used or abused without controls and guidelines in place.

In response to questions by Representative Meade, Commissioner Clark stated that the contracts with providers are renewed every state fiscal year. As part of the \$34 million allocated by the General Assembly for performance based contracts to begin on July 1, 2019, two performance measures, placement stability and positive discharge, will be monitored. The cabinet is bringing in some experts to build upon the capacity within DCBS to do performance based contracting. The department does not have the capacity nor the expertise to monitor a performance based contract effectively. As resources are available, the cabinet will continue full implementation.

Commissioner Clark, Ms. Hall, and Ms. Akers testified that in January 2019, the privatization study group reconvened to make recommendations relating to the feasibility of the full privatization of child welfare services in Kentucky. The study group reviewed the literature on the privatization of child welfare services, heard from two expert panels of public and private child welfare agency leaders, and applied the findings to the child welfare system in Kentucky and the transformation it is undergoing. Like most child welfare systems nationally, Kentucky has already privatized a substantial amount of foster care services. Over half of children and youth in out-of-home care in Kentucky are placed in private agency homes or facilities. It is common for child welfare agencies, including Kentucky, to privatize a substantial portion of its child welfare services, including child

placement, support to resource families, and clinical service provisions. In a majority of states, including Kentucky, the public child welfare agency retains case management responsibility and oversight of day-to-day activities of child welfare cases. Only Florida and Kansas have pursued system-wide privatization, including contracting out all case management services. There are different payment structures that each carry its own risks and rewards. One of these is performance-based contracting, designed to improve child and family outcomes by integrating performance standards into contracts with providers and linking financial incentives or disincentives with providers' performance on identified targets.

On June 28, 2019, the study group submitted its report to the Governor, the Interim Joint Committees on Appropriations and Revenue and Health, Welfare and Family Services, and the Child Welfare Oversight and Advisory Committee. The report included the following recommendations: (1) expanding privatization to all foster care services in Kentucky is not feasible at this time given the capacities that need to be built within both the public and private sector in order to be successful, (2) future efforts to expand privatization should include a readiness assessment, a cost study, and a legal review prior to implementation; (3) significant investments of resources are needed within the child welfare system to effectively prepare for privatization which is not a cost-saving measure; and (4) consider a modular approach to expanded privatization, a phased-in implementation plan, and preliminary consideration of specific dimensions of the child welfare continuum of care to privatize.

The cabinet is committed to building a child welfare system reoriented around preventive services. In State Fiscal Year 2019, DCBS spent \$409,947,786 on out-of-home care costs compared to \$14,707,255 spent on preventive services. Recognizing the trauma experienced when a child is removed from their home and family, the study group expressed its desire to turn those figures around and spend more on preserving families and preventing removal in a safe manner. Kentucky's outcome data show consistently positive outcomes for families that receive family preservation services. The study group would like to see increases in family preservation resources and supports available to families post-permanency, whether that be adoption, guardianship, or reunification to prevent a re-entry into care. The study group stressed the importance of expanding the Kentucky service array so that it aligns with the identified needs of the child welfare population across the continuum of care. Kentucky needs more appropriate placements for children, foster families to come along side birth families to do what is best for the children, and to do a better job recognizing foster and kin caregivers as valued contributors. As the public and private sector works together along with key partners to transform the existing child welfare system, an environment will be created that promotes learning rather than fault-finding and blame was universally identified as essential.

In response to questions by Senator Westerfield, Commissioner Clark stated that the department cannot hire as many staff as needed, because there are caps on employment

through the cabinet's Office of Human Resources Management and Personnel Cabinet. The department has to justify how many social workers that can be hired. It makes no difference if an unlimited amount of staff could be hired if there continues to be a low retention of the staff. It is not fair to a foster child to develop a relationship with the caseworker only to have that caseworker leave and have to start all over with a new caseworker. If the cabinet does not change the culture in which a social worker operates, how they are equipped, and are supported by strong leadership, the cabinet cannot retain experienced social workers.

The department does not have the legal capacity to represent itself effectively when it comes to case management for children in foster care let alone shift it to the private sector. The department cannot compete with the private sector. The department needs to build a data information system that is compatible with information entered by provider and compliance with the federal Child Welfare Information System (CWIS). Secretary Meier stated that the data entry from all providers has to be compatible for all of them. It is going to take time to invest in the compatible infrastructure between systems. There could be long-term savings, but it will take several years for the outcomes to accrue savings.

Private providers are not currently providing case management services for the department. Ms. Hall stated there is a difference for caring for children and youth and case management responsibilities that comes with historical knowledge. If case management responsibility is given to private providers, the liability is shifted too. The private provider would not be able to have a cabinet attorney represent them. There are insurance companies around the country that refuse to insure providers that take on this level of risk and responsibility. Currently there is no case management being provided by private providers for entire families, just for the children. Krista Thomas, Policy Fellow, Chapin Hall at the University of Chicago, stated that it is a remarkably profound shift of responsibilities to private providers. There is a tremendous amount of child welfare services for children currently privatized in Kentucky, but none for entire families.

Secretary Meier stated that the next step would be to implement the recommendation for any future efforts to expand privatization in Kentucky should first include a readiness assessment, a cost study, and a legal review. Commissioner Clark stated that minutes were not taken at the meetings, but it was a unanimous vote on the recommendations by both the performance based contracts and privatization work group members, but not the contributing participants. He is not aware of anyone who disagreed or had concerns with the recommendations of either report.

Commissioner Clark stated that House Bill 158 from the 2019 Regular Session and the Family First Prevention Services Act required fingerprinting for child-caring facilities. The cabinet has to receive final approval from the Federal Bureau of Investigations (FBI) in order to conduct the fingerprinting. The department is processing the backlog of

fingerprints within 2 to 7 days while waiting on approval from the FBI. The department has some electronic support so fingerprinting is not all paper based. Elizabeth Caywood, Deputy Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, stated the technology has been deployed for electronic child abuse and neglect background checks, and the department is in the process of training staff and issuing communications to the public and providers. The agency will conduct fingerprint background checks for its employees.

In response to questions by Senator Thomas, Commissioner Clark stated that federal funding for foster care and child welfare systems has always been tied to a bad outcome and forcing child welfare agencies to be reactionary. Something bad and traumatic has to happen in order to get Title IV-E funding associated for the services that are needed. The federal Family First Prevention Services Act will allow states to leverage Title IV-E funding for prevention services. On October 1, 2019, Kentucky will implement the federal Family First Prevention Services Act.

In response to questions by Representative Meade, Secretary Meier stated that recruitment and certification is one area that does not require as much of a common infrastructure. Moving children that are not in need of residential services to the private sector, infrastructure investments will be needed so everyone is using the same systems. The cabinet has a Request for Proposal (RFP) in this arena for a managed care organization (MCO) that take care of foster children. Ms. Akers stated that independent living services are currently being done by a pilot program for post adoption or post permanency services. Commissioner Clark stated that the cabinet did a request for information (RFI) to look at recruitment and certification in Jefferson County.

Child Welfare Court Case Process and Procedure Update

Judge Sheila Farris, Henderson County Family Court, Kentucky 51st Judicial Circuit, stated that some of the timeliest things done in her court are the dependent and neglect and abuse docket and the termination of parental rights docket. The Kentucky Revised Statutes (KRS) states that within 45 days of the issuance of emergency custody order or 60 days if there is not an emergency custody order that there will be adjudication and disposition of a case. The only person that can waive the timeframe is the guardian ad litem for the child. House Bill 1 includes language that the testimony of the person allegedly responsible for the abuse and neglect cannot be used against them in a criminal proceeding. Having this language has been beneficial in moving cases forward, moving children through the judicial system quicker, and making sure that everyone is working their case plan to get the child back into the home. Fifteen out of the most recent 48 months verses 15 out of the most recent 22 months makes it beneficial for long-term outcomes and whether actual termination of parental rights is the most appropriate measure for a particular family. Termination of parental rights is a great concern for judges. A case management conference is set in cases to protect rights.

Courts check the putative father registry to see if someone has placed their name on the registry and claimed they could be the father of a child. By June 2019, there were 27 putative father paternity actions filed in Henderson and only 25 total filed in 2018. If there is a case where child support will be enforced through the Cabinet for Health and Family Services, there will be no payment for the DNA fee by either parent. Children deserve to have a two-parent family whether the father and mother are together or not. Court Appointed Special Advocate (CASA) is usually in court and if not, a report has been submitted.

Adjournment

There being no further business, the meeting was adjourned at 3:12 p.m.