

LEGISLATOR'S GUIDE TO THE ISSUES 2021-2022

Child Welfare Efficiency Audits

The Issue

The last several years have seen extensive activity in Texas and at the federal level aimed at improving outcomes for children who have contact with the child welfare system.

In 2015, a federal judge ruled the Texas Department of Family and Protective Services (DFPS) infringed upon the constitutional rights of children in its permanent care by placing them at an unacceptable risk of harm. Following an appeal to the Fifth Circuit, which in part reversed, in part adopted, and in part modified the original judgment, final remedial orders were issued in November 2018 requiring Texas to take immediate actions to address systemic deficiencies and alleviate the danger to children. Compliance efforts are ongoing.

Following the 2015 ruling, the 85th Legislature enacted fundamental reforms of the state's child welfare system, which gave local private and nonprofit charities primary responsibility for caring for and managing the cases of children in foster care. The new model created by the Legislature, known as community-based care, is currently being rolled out statewide through a phased, regional implementation.

More recently, in 2018, President Donald Trump signed the Bipartisan Budget Act of 2018, which included the Family First Prevention Services Act (FFPSA)—one of the most dramatic overhauls of child welfare funding in over 30 years. Key provisions of FFPSA will enter into force for Texas in October 2021.

In light of these significant changes and ongoing improvement efforts, the 87th Legislature will be faced with critical decisions impacting the future success of the state's child welfare system. One tool that the Legislature can employ to aid in the difficult and important work of transforming a system as complex as foster care is the efficiency audit.

Unlike traditional financial audits, which only look at the financial statements of an agency to ensure that records provide a fair and accurate representation of financial activities, efficiency audits are intended to determine if dollars spent by the agency are achieving desired outcomes. The power of efficiency audits lies in their ability to improve the effectiveness of agency operations by identifying opportunities to deliver services more effectively, eliminate duplication of services, and obtain cost savings through streamlined and innovative processes. In the context of child welfare, an efficiency audit can help ensure that agency activities are prioritizing the safety of children and actually generating positive outcomes in the lives of children served.

Improving the efficiency of the Texas child welfare system is more important now than ever before. A report released in June 2020 by court-appointed monitors tasked with assessing the state's progress in making changes ordered by the judge in response to the lawsuit found continued issues involving DFPS's investigatory

and oversight practices. While Texas has undoubtedly made significant improvements in the year and a half since the judge's final remedial orders were entered, there is still a long way to go. As the state continues to work to improve its child welfare system, a top-to-bottom efficiency audit of DFPS operations and services provided could focus the state's efforts and help finally bring the years-long litigation to a close.

Beyond the lawsuit, an efficiency audit could help the state improve its transition from a centralized, government-run child welfare bureaucracy to a decentralized, community-led system. Although regions operating under community-based care are generating positive outcomes and addressing many of the issues that gave rise to the lawsuit, statewide implementation of the model is progressing slowly. Despite Senate Bill 11 requiring DFPS to identify eight regions of the state in which to implement community-based care by no later than December 2019, only four regions are currently operating under the model with a fifth scheduled to launch in late 2020. An efficiency audit could help identify barriers that are impeding the rollout of community-based care and find additional areas where the model can be improved to maximize positive outcomes.

Finally, an efficiency audit can be a powerful tool to inform the state of actions to bring its child welfare system into compliance with the requirements of the federal FFPSA in advance of the October 2021 deadline. FFPSA made major changes to how states are able to use Title IV-E funds in providing child welfare services and placed restrictions on the placement of children in institutional or congregate care settings. While FFPSA provided some additional flexibility by permitting states to use Title IV-E funds for select services intended to prevent entry into foster care, this flexibility came with additional regulatory hurdles. One of the largest hurdles for Texas to overcome is the lack of sufficient numbers of child welfare service providers who are accredited under standards set by FFPSA. An efficiency audit could help identify services that are generating desired outcomes as well as those that are falling short. The results of the audit could then be used to achieve accreditation for high-performing services and eliminate wasteful spending on underperforming services.

Fortunately, Texas will not have to reinvent the wheel to accomplish this goal. House Bill 3, enacted by the 86th Legislature, included a requirement for Texas school districts to undergo an efficiency audit prior to raising maintenance and operations (M&O) property tax rates. This same structure can be easily repurposed for child welfare services.

Texas has the opportunity to become a national model of successful child welfare reform, but getting there will require focused hard work from the community and state officials. The 87th Legislature can set the state up for success by requiring an efficiency audit of all child welfare activities.

continued

The Facts

- In FY 2019, DFPS spent \$2.2 billion on child welfare services.
- There are more than 51,000 children in the Texas foster care system. Approximately 3,000 of these—roughly 6% of the state's foster care population—are being served by community-based care.
- The 87th Legislature will be faced with critical decisions regarding the future of the Texas child welfare system as a result of ongoing efforts to take remedial actions ordered in connection with the *M.D. v. Abbott* lawsuit as well as changes made by the federal Family First Prevention Services Act scheduled to come into force in October 2021.

Recommendations

- In FY 2021, conduct a third-party efficiency audit focused on ensuring the success of state efforts to take remedial actions ordered in connection with the *M.D. v. Abbott* lawsuit, comply with the requirements of the Family First Prevention Services Act, and fully transition the state's foster care system to the community-based care model by FY 2025.
- Require regular third-party efficiency audits of DFPS operations, to include both services provided directly by DFPS as well as those provided under contract with private service providers.

Resources

[Using Efficiency Audits to Improve Child Welfare](#) by Andrew C. Brown, Texas Public Policy Foundation (Sept. 2020).

[The Texas Two-Step: Community-Based Care and the Family First Prevention Services Act](#) by Andrew C. Brown and Charissa Huntzinger, Texas Public Policy Foundation (July 2020).

[A Tale of 2 Systems: Monitors' Report Underscores Need for Community-Based Child Welfare Reform](#) by Andrew C. Brown, Texas Lawyer (July 2020).

[M.D. ex rel Stukenberg v. Abbott: First Court Monitors' Report 2020](#) by Deborah Fowler and Kevin Ryan (June 2020).

[Family First Prevention Services Act](#) by National Conference of State Legislatures (April 2020).

[Community-Based Care](#) by Texas Department of Family and Protective Services (2020).

[Government Efficiency Reviews](#) by John W. Cox and J.W. Rust, Alvarez & Marsal Public Sector Services (Accessed July 15, 2020).

[Operating Budget for Fiscal Year 2020](#) by Texas Department of Family and Protective Services (Dec. 2019).

[HB 3](#). Enrolled. 86th Texas Legislature. Regular (2019).

[CPS Conservatorship: Children in DFPS Legal Responsibility](#) by Texas Department of Family and Protective Services, DFPS Data Book (2019).

[Bipartisan Budget Act of 2018](#), Pub. L. No. 115–123, 132 Stat. 64 (2018).



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