

## **BILL ANALYSIS**

Senate Research Center  
83R5141 YDB-F

S.B. 492  
By: Lucio  
Health & Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Prescribed pediatric extended care (PPEC) centers allow Medicaid-eligible children from birth through age 20 with medically complex conditions to receive continual medical care in a non-residential setting. When approved, children can attend a PPEC up to a maximum of 12 hours per day while receiving nursing services, personal care, developmental therapies, and caregiver training of the minor's parents or legal guardian. S.B. 492 as drafted is intended to develop, establish, and enforce licensure and health and safety standards for pediatric extended care centers in order to ensure that such centers provide appropriate care.

As proposed, S.B. 492 amends current law relating to the licensing and regulation of prescribed pediatric extended care centers, provides penalties, and imposes fees.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 248A.052, 248A.053, 248A.101, 248A.152, and 248A.154, Health and Safety Code) and SECTION 6 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 248A, as follows:

#### CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248A.001. DEFINITIONS. Defines "basic services," "center," "commission," "commissioner," "controlling interest," "department," "executive commissioner," "medically dependent or technologically dependent minor," "minor," and "prescribed pediatric extended care center" in this chapter.

Sec. 248A.002. EXEMPTIONS. Provides that this chapter does not apply to a facility operated by the United States government or a federal agency, or a health facility otherwise licensed under this subtitle.

Sec. 248A.003. CONFLICT WITH LOCAL LAWS. Provides that to the extent of any conflict between the standards adopted under this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

##### SUBCHAPTER B. LICENSING OF CENTERS

Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION. (a) Prohibits a person from owning or operating a prescribed pediatric extended care center (center) in this state unless the person holds a license issued under this chapter.

(b) Provides that a separate license is required for each center located on separate premises, regardless of whether the centers are under the ownership or operation of the same person.

(c) Prohibits a person from operating a center on the same premises as a child-care facility licensed under Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code.

Sec. 248A.052. APPLICATION; ISSUANCE. (a) Requires an applicant for a center license to submit to the Department of Aging and Disability Services (DADS) in accordance with executive commissioner of the Health and Human Services Commission (executive commissioner) rules a sworn application on the form prescribed by DADS, a letter of credit as prescribed by DADS to demonstrate the applicant's financial viability, and the required fees.

(b) Requires that the application contain:

(1) the location of the premises of the center for which the license is sought;

(2) documentation, signed by the appropriate local government official, stating the applicant has met local zoning requirements;

(3) the name, address, and social security number of, and background and criminal history check information for the applicant, the administrator responsible for daily operations of the center, and the financial officer responsible for financial operations of the center;

(4) the name, address, and federal employer identification number or taxpayer identification number of the applicant and of each controlling interest, if the applicant or controlling interest is not an individual;

(5) the business name of the center;

(6) the maximum patient capacity requested for the center; and

(7) a sworn affidavit that the applicant has complied with this chapter and rules adopted under this chapter.

(c) Requires DADS to issue a license to a center under this chapter if DADS determines that the applicant and the center meet the requirements of this chapter and the rules and standards adopted under this chapter. Requires that the license include the license holder's name, the location of the premises of the center, and a statement indicating the center provides services to minors for 12 hours or less in a 24-hour period and does not provide 24-hour care.

Sec. 248A.053. LICENSE TERM; RENEWAL; NOTIFICATION. (a) Provides that a license issued under this chapter expires on the second anniversary of the date of issuance.

(b) Requires a person applying to renew a center license to:

(1) submit a renewal application to DADS on the form prescribed by DADS at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by DADS; and

(3) comply with any other requirements specified by executive commissioner rule.

(c) Requires DADS to assess a \$50 per day late fee to a license holder who submits a renewal application after the date required by Subsection (b)(1), except that the total amount of a late fee is prohibited from exceeding the lesser of 50 percent of the license renewal fee or \$500.

(d) Requires DADS, at least 90 days before expiration of a center license, to notify the owner or operator of the center of the license expiration.

Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. Provides that a license under this chapter is issued to the license holder named on the license at the location of the premises listed on the license and is not transferable or assignable.

#### SUBCHAPTER C. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT

Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) Requires the executive commissioner to adopt rules necessary to implement this chapter.

(b) Requires that the rules, to protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, establish the minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for the physically disabled, and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive or ancillary services;

(9) standards relating to transportation services; and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN. (a) Authorizes DADS to inspect a center, including its records, at reasonable times as necessary to ensure compliance with this chapter and the rules adopted under this chapter. Requires the center to provide DADS with access to all center records.

(b) Requires DADS to inspect a center before issuing or renewing a license under this chapter.

(c) Authorizes DADS to require a center that undergoes an inspection to take appropriate corrective action DADS determines is necessary to comply with the requirements of this chapter and rules adopted under this chapter, and submit a corrective action plan that demonstrates a good faith effort to remedy violations.

(d) Authorizes DADS to charge a center a reasonable fee for an inspection and for the cost of services provided by DADS in formulating, monitoring, and implementing a corrective action plan under this section.

(e) Requires a center to make available to any person on request a copy of each inspection report pertaining to the center that has been issued by DADS. Requires the center, before making an inspection report available under this subsection, to redact from the report any information that is confidential under other law.

Sec. 248A.103. FEES. (a) Requires the executive commissioner to set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) Requires that a fee collected under this chapter be deposited in the state treasury to the credit of the general revenue fund and be appropriated to DADS to administer and enforce this chapter.

(c) Provides that a fee collected under this chapter is nonrefundable.

Sec. 248A.104. COMMISSION DUTIES. Requires the Health and Human Services Commission (HHSC) to designate a center licensed under this chapter as a health care services provider under the medical assistance program established under Chapter 32 (Medical Assistance Program), Human Resources Code.

#### SUBCHAPTER D. CENTER REGULATION

Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT. Prohibits a center from admitting a minor client unless the client is a medically dependent or technologically dependent minor, the minor's prescribing physician issues a prescription ordering care at a center, and the minor's parent or legal guardian consents to the minor's admission to the center.

Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT CAPACITY. (a) Prohibits a center from providing services to a minor for more than 12 hours in any 24-hour period.

(b) Prohibits a center from providing services other than services regulated under this chapter and executive commissioner rule.

(c) Prohibits the maximum patient capacity at a center from exceeding 60.

Sec. 248A.153. LICENSE DISPLAY. Requires each center licensed under this chapter to display the center's license in a conspicuous location readily visible to a person entering the center.

Sec. 248A.154. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED.

(a) Requires a center to:

(1) obtain through DADS a background and criminal history check on each individual seeking employment with the center who is expected to or whose responsibilities would require the individual to provide personal care, as defined by DADS rule, or basic services directly to clients, including an individual for whom information must be obtained under Chapter 250 (Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses); and

(2) for the initial center license and annually, obtain through DADS a background and criminal history check on:

(A) each employee whose responsibilities require the employee to provide personal care, as defined by DADS rule, or basic services directly to clients;

(B) each center owner or operator who is an individual;

(C) each administrator responsible for the center's daily operations; and

(D) each financial officer responsible for the center's financial operations.

(b) Requires a center, in accordance with rules adopted by the executive commissioner, to submit to DADS for use in conducting background and criminal history checks the name of each person described by Subsection (a).

(c) Requires that the background and criminal history checks be conducted using:

(1) the information provided under Subsection (b);

(2) the criminal history record information made available by the Department of Public Safety of the State of Texas (DPS) under Section 411.1105 (Access to Criminal History Record Information: Department of State Health Services), Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), Government Code; and

(3) DADS's records of reported or substantiated abuse and neglect, including the employee misconduct registry established under Chapter 253 (Employee Misconduct Registry).

(d) Requires DADS to require the center to pay to DADS a fee in an amount not to exceed the administrative costs DADS incurs in conducting background and criminal history checks under this section.

Sec. 248A.155. MAINTENANCE OF RECORDS. Requires each center to maintain at the center the medical and other records required by this chapter and by rules adopted under this chapter.

Sec. 248A.156. COMPLAINTS. Authorizes a person to file a complaint with DADS against a center licensed or required to be licensed under this chapter. Requires DADS to investigate the complaint in accordance with the complaint procedures established under Chapter 1001 (Department of State Health Services).

Sec. 248A.157. CLOSING OF CENTER. Requires the owner or operator of the center, at least 30 days before the date a center voluntarily discontinues operation, to inform the parent or legal guardian of each minor client to whom the center is providing services of the discontinuance and the proposed time of the discontinuance.

#### SUBCHAPTER E. GENERAL ENFORCEMENT

Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) Authorizes DADS to deny, suspend, or revoke a license issued under this chapter for:

- (1) a violation of this chapter or a rule or standard adopted under this chapter;
- (2) an intentional or negligent act by the center or an employee of the center that DADS determines significantly affects the health or safety of a minor served by the center;
- (3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;
- (4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state or nation of any person required to undergo a background and criminal history check under this chapter;
- (5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception; or
- (6) a license revocation, suspension, or other disciplinary action taken against the license holder or any person listed in the application in another state or nation.

(b) Provides that the procedures by which DADS denies, suspends, or revokes a license and by which those actions are appealed are governed by the procedures for a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code, except as provided by Section 248A.203.

Sec. 248A.202. PROBATION. (a) Authorizes DADS, if DADS finds that a center is in repeated noncompliance with this chapter, rules adopted under this chapter, or a corrective action plan, but that the noncompliance does not endanger a minor served by the center or the public health and safety, to schedule the center for probation rather than suspending or revoking the center's license.

(b) Requires DADS to provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) Requires DADS to designate a period of not less than 30 days during which the center will remain under probation. Requires the center, during the probation period, to correct the items that were in noncompliance and report the corrections to DADS for approval.

(d) Authorizes DADS to suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Sec. 248A.203. EMERGENCY SUSPENSION. (a) Authorizes DADS to issue an emergency order to suspend a license issued under this chapter if DADS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a

minor served by the center or the public health and safety. Provides that an emergency suspension is effective immediately without a hearing on notice to the license holder.

(b) Requires DADS, on written request of the license holder, to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) Provides that the hearing and any appeal are governed by DADS's rules for a contested case hearing and by Chapter 2001, Government Code.

Sec. 248A.204. INJUNCTION. (a) Authorizes DADS to petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule or standard adopted under this chapter if DADS finds that the violation creates an immediate threat to the health and safety of the minors served by a center.

(b) Authorizes a district court, on petition of DADS and on a finding by the court that a person is violating this chapter or the rules adopted under this chapter, to, by injunction, prohibit the person from continuing the violation, restrain or prevent the establishment or operation of a center without a license issued under this chapter, or grant any other injunctive relief warranted by the facts.

(c) Requires the attorney general to institute and conduct a suit authorized by this section at the request of DADS. Authorizes the attorney general and DADS to recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Provides that the venue for a suit brought under this section is in the county in which the center is located or in Travis County.

Sec. 248A.205. CIVIL PENALTY. (a) Provides that a person who violates this chapter or a rule or standard adopted under this chapter or who fails to comply with a corrective action plan submitted under this chapter is liable for a civil penalty of not more than \$500 for each violation if DADS determines the violation threatens the health and safety of a minor served by the center.

(b) Provides that each day a violation continues constitutes a separate violation for the purposes of this section.

(c) Authorizes the attorney general to sue to collect the penalty. Authorizes the attorney general and DADS to recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Requires that all penalties collected under this section be deposited in the state treasury in the general revenue fund.

Sec. 248A.206. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly establishes or operates a center without the appropriate license issued under this chapter.

(b) Provides that an offense under this section is a Class B misdemeanor.

(c) Provides that each day a violation continues constitutes a separate offense.

#### SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 248A.251. IMPOSITION OF PENALTY. Authorizes the commissioner of state health services (commissioner) to impose an administrative penalty on a person licensed

under this chapter who violates this chapter or rule or standard adopted or order issued under this chapter.

Sec. 248A.252. AMOUNT OF PENALTY. (a) Prohibits the amount of the penalty from exceeding \$500 for each violation, and provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) Requires that the amount be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) any previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Requires DADS, if DADS initially determines that a violation occurred, to give written notice of the report by certified mail to the person.

(b) Requires that the notice include a brief summary of the alleged violation, state the amount of the recommended penalty, and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person in writing, not later than the 20th day after the date the person receives the notice sent under Section 248A.253, to accept the determination and recommended penalty of DADS or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the commissioner, if the person accepts the determination and recommended penalty or if the person fails to respond to the notice, to approve the determination and impose the recommended penalty.

Sec. 248A.255. HEARING. (a) Requires the commissioner, if the person requests a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH), which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of SOAH to conduct the hearing.

(b) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 248A.256. DECISION BY COMMISSIONER. (a) Authorizes the commissioner by order, based on the findings of fact, conclusions of law, and proposal for a decision, to find that a violation occurred and impose a penalty or find that a violation did not occur.



(b) Requires that the notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, include a statement of the right of the person to judicial review of the order.

Sec. 248A.257. **OPTIONS FOLLOWING DECISION: PAY OR APPEAL.** Requires the person, not later than the 30th day after the date the order of the commissioner imposing an administrative penalty under Section 248A.256 becomes final, to pay the penalty or file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 248A.258. **STAY OF ENFORCEMENT OF PENALTY.** (a) Authorizes a person who files a petition for judicial review, within the period prescribed by Section 248A.257, to:

(1) stay enforcement of the penalty by paying the penalty to the court for placement in an escrow account in the court registry, or giving the court a supersedeas bond approved by the court that is for the amount of the penalty and is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond, and sending a copy of the affidavit to the commissioner by certified mail.

(b) Authorizes the commissioner, if the commissioner receives a copy of an affidavit under Subsection (a)(2), not later than the fifth day after the date the copy is received, to file with the court a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and is required to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 248A.259. **COLLECTION OF PENALTY.** (a) Authorizes the penalty, if the person does not pay the penalty and the enforcement of the penalty is not stayed, to be collected.

(b) Authorizes the attorney general to sue to collect the penalty and to recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(c) Requires that a penalty collected under this subchapter be deposited in the state treasury in the general revenue fund.

Sec. 248A.260. **DECISION BY COURT.** (a) Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 248A.261. **REMITTANCE OF PENALTY AND INTEREST.** (a) Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the court becomes final.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires that the interest be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 248A.262. RELEASE OF BOND. (a) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, when the court's judgment becomes final, to order the release of the bond.

(b) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 248A.263. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 2. Amends Section 411.1105(a), Government Code, as follows:

(a) Provides that the Department of State Health Services (DSHS) is entitled to obtain from DPS criminal history record information maintained by DPS that relates to:

- (1) an applicant for a chemical dependency counselor's license, a counselor intern's registration, or a clinical supervisor certification under Chapter 504 (Chemical Dependency Counselors), Occupations Code;
- (2) the holder of a license, registration, or certification under Chapter 504, Occupations Code; or
- (3) a person required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code.

Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 250.001(3), Health and Safety Code, to redefine "facility," to include a center licensed by DADS under Chapter 248A.

SECTION 4. Amends Section 32.024, Human Resources Code, by adding Subsection (jj), to require HHSC to establish a separate provider type for prescribed pediatric extended care centers licensed under Chapter 248A, Health and Safety Code, for purposes of enrollment as a provider for and reimbursement under the medical assistance program.

SECTION 5. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 6. Requires the executive commissioner, not later than March 1, 2014, to adopt the rules required by Subchapter C, Chapter 248A, Health and Safety Code, as added by this Act.

(b) Provides that a person is not required to hold a care center license until July 1, 2014, notwithstanding Section 248A.051, Health and Safety Code, as added by this Act.

SECTION 7. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2013

(b) Effective date, Subchapters E and F, Chapter 248A, Health and Safety Code, as added by this Act: July 1, 2014.