By:  Kolkhorst S.B. No. 781

(In the Senate - Filed February 12, 2019; March 1, 2019, read first time and referred to Committee on Health & Human Services; April 8, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Buckingham        X

Campbell          X

Flores            X

Johnson           X

Miles             X

Powell            X

Seliger           X

COMMITTEE SUBSTITUTE FOR S.B. No. 781 By:  Kolkhorst

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of child-care facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter B, Chapter 40, Human Resources Code, is amended by adding Section 40.043 to read as follows:

Sec. 40.043.  CHILD SAFETY AND RUNAWAY PREVENTION PROCEDURES. The commissioner by rule shall establish the department's strategy to:

(1)  develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of the department runs away from a residential treatment center; and

(2)  balance measures aimed at protecting child safety with federal and state requirements related to normalcy and decision making under the reasonable and prudent parent standard prescribed by 42 U.S.C. Section 675 and Sections 264.001 and 264.125, Family Code.

SECTION 2.  Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.0582 to read as follows:

Sec. 40.0582.  QUALITY CONTRACTING FRAMEWORK. (a)  The department shall monitor and coordinate with general residential operations providing treatment services to children or young adults with emotional disorders to maintain and improve the quality of residential child-care services purchased by the department.

(b)  In implementing the requirements of Subsection (a), the department shall consider any information the department determines relevant to assess the ability of a contractor or potential contractor to provide quality residential child-care services, including:

(1)  the strength of the operational plan and all required components of the operational plan described by Section 42.252;

(2)  the regulatory history of the contractor; and

(3)  the history of the contractor on satisfying the performance measures developed under Section 40.058.

SECTION 3.  Subchapter C, Chapter 40, Human Resources Code, is amended by adding Section 40.080 to read as follows:

Sec. 40.080.  STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN. (a)  The department shall develop a strategic plan regarding the placement of children in settings eligible for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

(b)  The strategic plan required under this section must:

(1)  assess any available evidence regarding the impact of accreditation on qualitative performance of accredited providers;

(2)  assess a potential structure and any funding requirements necessary to incentivize providers to become accredited;

(3)  study any available evidence regarding the qualitative outcomes in qualified residential treatment providers, as defined in the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(4)  assess the fiscal implications to this state of developing settings that meet the federal definition of qualified residential treatment providers and all associated requirements; and

(5)  make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

SECTION 4.  Section 42.0421(g), Human Resources Code, is amended to read as follows:

(g)  A person described by Subsection (f)(6) may provide training under this section only if the commission [~~department~~] has not taken an action under Section 42.071, 42.072, or 42.078[~~, other than an evaluation,~~] against the license, listing, or registration of the person or the home or center for which the person is a provider or director during the two-year period preceding the date on which the person provides the training.

SECTION 5.  Section 42.0462, Human Resources Code, is amended to read as follows:

Sec. 42.0462.  WAIVER OF NOTICE AND HEARING REQUIREMENTS. (a)  Subject to Subsection (b), to [~~To~~] protect the safety and well-being of residents and employees of a general residential operation that provides comprehensive residential services to children who are victims of trafficking, the commission [~~department~~] shall waive the notice and hearing requirements imposed under Section 42.0461 for an applicant who submits to the commission [~~department~~] an application to provide trafficking victim services at the applicant's general residential operation.

(b)  This section does not apply to an applicant who submits an application for a license for a general residential operation that provides services to children or young adults with emotional disorders.

SECTION 6.  Section 42.0704, Human Resources Code, is amended to read as follows:

Sec. 42.0704.  ENFORCEMENT POLICY. (a)  The executive commissioner by rule shall adopt a general enforcement policy that describes the commission's [~~department's~~] approach to enforcement of this chapter.

(b)  The enforcement policy must:

(1)  summarize the commission's [~~department's~~] general expectations in enforcing this chapter;

(2)  include the methodology required by Subsection (c); and

(3)  describe the commission's [~~department's~~] plan for strengthening its enforcement efforts and for making objective regulatory decisions.

(c)  As part of the enforcement policy, the commission [~~department~~] shall develop and implement a methodology for determining the appropriate disciplinary action to take against a person who violates this chapter or a commission [~~department~~] rule. The methodology must:

(1)  provide guidance on when to use each of the available tools of enforcement, including technical assistance, voluntary plans of action, [~~evaluation,~~] probation, suspension or revocation of a license or registration, denial of a license or registration, administrative penalties, and emergency suspension; and

(2)  [~~. The methodology must~~] allow the commission [~~department~~] to consider the circumstances of a particular case, including:

(A)  the nature and seriousness of the violation, including whether the violation involved the abuse or neglect of a child or resulted in the death or near fatal injury of a child;

(B)  any history of previous violations, including a repetition or pattern of violations;[~~,~~] and

(C)  any aggravating and mitigating factors[~~, in determining the appropriate disciplinary action~~].

(d)  The commission [~~department~~] shall make the methodology described by Subsection (c) available to the public, including by posting the methodology on the commission's [~~department's~~] Internet website.

SECTION 7.  Section 42.071, Human Resources Code, is amended to read as follows:

Sec. 42.071.  SUSPENSION[~~, EVALUATION,~~] OR PROBATION OF LICENSE OR REGISTRATION. (a)  The commission [~~department~~] may suspend the license of a facility or the registration of a family home that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license or registration.

(b)  The commission [~~department~~] may suspend a facility's license or a family home's registration for a definite period rather than deny or revoke the license or registration if the commission [~~department~~] finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license or registration suspension under this subsection, a facility or family home must suspend its operations and show that standards can be met within the suspension period.

(c)  If the commission [~~department~~] finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, the commission [~~department~~] may place [~~schedule~~] the facility or family home on [~~for evaluation or~~] probation rather than suspend or revoke the facility's license or the family home's registration. The commission [~~department~~] shall provide notice to the facility or family home of the [~~evaluation or~~] probation and of the items of noncompliance not later than the 10th day before the [~~evaluation or~~] probation period begins. [~~The department shall designate a period of not less than 30 days during which the facility or family home will remain under evaluation.~~] During the [~~evaluation or~~] probation period, the facility or family home must correct the items that were in noncompliance and report the corrections to the commission [~~department~~] for approval.

(d)  The commission [~~department~~] shall revoke the license of a facility or the registration of a family home that does not comply with standards at the end of a license or registration suspension.

(e)  The commission [~~department~~] may suspend or revoke the license of a facility or the registration of a family home that does not correct items that were in noncompliance or that does not comply with required standards within the applicable [~~evaluation or~~] probation period.

SECTION 8.  Section 42.072(c), Human Resources Code, is amended to read as follows:

(c)  The department may not issue a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked, [~~or~~] whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter, or who in lieu of disciplinary action voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification before the fifth anniversary of the date on which:

(1)  the revocation takes effect by department or court order;

(2)  [~~or~~] the decision to deny the application is final;

(3)  the facility or family home is closed; or

(4)  the license, listing, registration, or certification is relinquished.

SECTION 9.  Section 42.078(a-1), Human Resources Code, is amended to read as follows:

(a-1)  Except as provided by Subsection (a-2), nonmonetary administrative sanctions, including corrective action plans and[~~,~~] probation[~~, and evaluation~~] periods, shall be imposed when appropriate before administrative penalties.

SECTION 10.  Chapter 42, Human Resources Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. REGULATION OF CERTAIN GENERAL RESIDENTIAL OPERATIONS

Sec. 42.251.  APPLICABILITY. This subchapter applies only to a general residential operation that:

(1)  provides care for seven or more children or young adults; and

(2)  provides treatment services for children or young adults with emotional disorders.

Sec. 42.252.  PROPOSED OPERATIONAL PLAN; LICENSING PROCEDURES. (a)  In addition to the applicable requirements to obtain a license under Subchapter C, a person applying for a license to operate a general residential operation shall submit to the commission a proposed operational plan.

(b)  The executive commissioner shall adopt rules regarding:

(1)  the information that must be included in the operational plan;

(2)  the commission's review of the operational plan; and

(3)  the basis of the commission's determination on whether:

(A)  the plan is complete or incomplete; and

(B)  to deny or approve the plan.

(c)  The operational plan must include:

(1)  a community engagement plan to develop and, if necessary, improve relations between the general residential operation and the community in which the operation is located that includes:

(A)  a summary of any discussions the operation had with:

(i)  local law enforcement; and

(ii)  local health, therapeutic, and recreational resources available to support children at the operation; and

(B)  a summary of the opportunities the children at the operation will have for social interaction in the community;

(2)  an educational plan describing the applicant's plan to provide for the educational needs of the children at the general residential operation that:

(A)  identifies whether the proposed operation will provide for the public or private education of school-age children at the operation;

(B)  identifies whether the proposed operation will provide for the education of school-age children through a local school, off-site charter school, or on-site charter school;

(C)  includes any discussions, plans, and agreements with the local school district, private school, or local charter school that will be providing education to the school-age children at the operation; and

(D)  if the children are to be enrolled in a public school, includes either:

(i)  a statement from the local independent school district on the impact of the proposed child-care services on the local school district; or

(ii)  an explanation of the reasons the operation was unable to obtain a statement described by Subparagraph (i) and a discussion of other alternative educational services that the operation could offer;

(3)  a trauma-informed plan to address unauthorized absences of children from the general residential operation; and

(4)  the qualifications, background, and history, including any compliance history, of each individual who is proposed to be involved in:

(A)  the management of the operation; and

(B)  the educational leadership of the operation if the operation will be using an on-site charter school.

(d)  A person applying for a license to operate a general residential operation shall state in the application if the proposed operation will provide services to children who are victims of human trafficking but is not required to include this information in the operational plan.

(e)  The commission must approve the proposed general residential operation's operational plan before:

(1)  holding a hearing under Section 42.0461, if applicable; or

(2)  granting a license to operate a general residential operation.

(f)  In evaluating an application for a license to operate a general residential operation, the commission may consider:

(1)  evidence gathered through the application review process;

(2)  all parts of the operational plan described by Subsection (c);

(3)  evidence of community support for or opposition to the proposed general residential operation, including any public comment the executive commissioner receives relating to the licensing of the proposed operation; and

(4)  the impact statement from the school district likely to be affected by the proposed general residential operation, including information relating to any financial impact on the district that may result from an increase in enrollment.

(g)  The commission may deny an application for a license to operate a general residential operation if the commission determines that:

(1)  the community has insufficient resources to support children proposed to be served by the applicant;

(2)  granting the license would significantly impact the local school district and would adversely affect the children proposed to be served by the applicant; or

(3)  granting the license would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

Sec. 42.253.  CONFIDENTIALITY OF INFORMATION RELATING TO SERVICES FOR HUMAN TRAFFICKING VICTIMS. (a)  If an applicant for a license to operate a general residential operation will provide services to victims of human trafficking, any information relating to the provision of services for victims of human trafficking is confidential and the commission may not disclose that information.

(b)  If a hearing is required under Section 42.0461 for an application for a license to operate a general residential operation and the proposed operation will provide services to victims of human trafficking, the applicant is not required to disclose any information relating to the provision of services for victims of human trafficking.

Sec. 42.254.  DUTIES RELATING TO EDUCATION OF CHILDREN IN GENERAL RESIDENTIAL OPERATION. (a)  The commission shall collaborate with the Texas Education Agency to determine best practices for educational services in a general residential operation, including the most effective educational plans and best practices for implementing those plans.

(b)  The department shall make available on the department's Internet website information and training regarding trauma-informed practices to assist school districts with training district employees by increasing staff awareness of trauma-informed care.

Sec. 42.255.  HEARING BEFORE RENEWAL OF LICENSE. (a)  On request of the commissioners court of a county where a general residential operation is located, the commission shall hold a public hearing to obtain public comments regarding the renewal of the operation's license.

(b)  The commission shall adopt procedures that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue related to renewal of the general residential operation's license, including procedures relating to the conduct of the hearing, the order of witnesses, and the conduct of participants at the hearing.

SECTION 11.  Not later than September 1, 2020, the Department of Family and Protective Services shall submit the plan required by Section 40.080, Human Resources Code, as added by this Act, to the Senate Health and Human Services Committee, the Senate Finance Committee, the House Committee on Human Services, the House Committee on Public Health, and the House Appropriations Committee.

SECTION 12.  As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission and the commissioner of the Department of Family and Protective Services shall adopt the rules necessary to implement the changes in law made by this Act.

SECTION 13.  (a)  The changes in law made by this Act apply only to an application for a license for a child-care facility submitted on or after the effective date of this Act. An application submitted before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b)  The changes in law made by this Act apply only to a contract entered into by the Department of Family and Protective Services on or after the effective date of this Act. A contract entered into before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c)  The changes in law made by this Act apply only to a disciplinary action initiated on or after the effective date of this Act. A disciplinary action initiated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 14.  The Department of Family and Protective Services and the Health and Human Services Commission are required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Department of Family and Protective Services and the Health and Human Services Commission may, but are not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 15.  This Act takes effect September 1, 2019.

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