

By: Kolkhorst

S.B. No. 781

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

1 department shall consider any information the department
2 determines relevant to assess the ability of a contractor or
3 potential contractor to provide quality residential child-care
4 services, including:

5 (1) the strength of the operational plan and all
6 required components of the operational plan described by Section
7 42.252;

8 (2) the regulatory history of the contractor; and

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

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

13 Sec. 40.080. STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW
14 REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN.

15 (a) The department shall develop a strategic plan regarding the
16 placement of children in settings eligible for federal financial
17 participation under the requirements of the federal Family First
18 Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

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

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

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

26 (3) study any available evidence regarding the
27 qualitative outcomes in qualified residential treatment providers,

1 as defined in the federal Family First Prevention Services Act
2 (Title VII, Div. E, Pub. L. No. 115-123);

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

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

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

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

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

21 Sec. 42.0462. WAIVER OF NOTICE AND HEARING REQUIREMENTS.

22 (a) Subject to Subsection (b), to [~~To~~] protect the safety and
23 well-being of residents and employees of a general residential
24 operation that provides comprehensive residential services to
25 children who are victims of trafficking, the commission
26 [~~department~~] shall waive the notice and hearing requirements
27 imposed under Section 42.0461 for an applicant who submits to the

1 commission [~~department~~] an application to provide trafficking
2 victim services at the applicant's general residential operation.

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

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

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

13 (b) The enforcement policy must:

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

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

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

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

26 (1) provide guidance on when to use each of the
27 available tools of enforcement, including technical assistance,

1 voluntary plans of action, ~~[evaluation]~~ probation, suspension or
2 revocation of a license or registration, denial of a license or
3 registration, administrative penalties, and emergency suspension;
4 and

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

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

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

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

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

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

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

27 (b) The commission [~~department~~] may suspend a facility's

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

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

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

26 (e) The commission [~~department~~] may suspend or revoke the
27 license of a facility or the registration of a family home that does

1 not correct items that were in noncompliance or that does not comply
2 with required standards within the applicable [~~evaluation or~~]
3 probation period.

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

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

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

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

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

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

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

23 (a-1) Except as provided by Subsection (a-2), nonmonetary
24 administrative sanctions, including corrective action plans and[~~7~~]
25 probation[~~7 and evaluation~~] periods, shall be imposed when
26 appropriate before administrative penalties.

27 SECTION 10. Chapter 42, Human Resources Code, is amended by

1 adding Subchapter H to read as follows:

2 SUBCHAPTER H. REGULATION OF CERTAIN GENERAL RESIDENTIAL OPERATIONS

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

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

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

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

14 (b) The executive commissioner shall adopt rules regarding:

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

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

18 and

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

21 (A) the plan is complete or incomplete; and

22 (B) to deny or approve the plan.

23 (c) The operational plan must include:

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

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

- 3 (i) local law enforcement; and
4 (ii) local health, therapeutic, and
5 recreational resources available to support children at the
6 operation; and

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

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

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

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

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

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

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

27 (ii) an explanation of the reasons the

1 operation was unable to obtain a statement described by
2 Subparagraph (i) and a discussion of other alternative educational
3 services that the operation could offer;

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

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

9 (A) the management of the operation; and

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

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

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

19 (1) holding a hearing under Section [42.0461](#), if
20 applicable; or

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

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

25 (1) evidence gathered through the application review
26 process;

27 (2) all parts of the operational plan described by

1 Subsection (c);

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

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

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

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

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

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

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

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

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

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

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

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

1 the conduct of participants at the hearing.

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

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

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

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

25 (c) The changes in law made by this Act apply only to a
26 disciplinary action initiated on or after the effective date of
27 this Act. A disciplinary action initiated before the effective

1 date of this Act is governed by the law in effect immediately before
2 the effective date of this Act, and the former law is continued in
3 effect for that purpose.

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

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