

By: Watson

S.B. No. 1345

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement activities of the Health and Human
3 Services Commission against certain child-care facilities;
4 authorizing administrative penalties.

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

6 SECTION 1. Section 42.0421(g), Human Resources Code, is
7 amended to read as follows:

8 (g) A person described by Subsection (f)(6) may provide
9 training under this section only if the commission [~~department~~] has
10 not taken an action under Section 42.071 or ~~[7]~~ 42.072 [~~7~~ or 42.078,
11 ~~other than an evaluation,~~] against the license, listing, or
12 registration of the person or the home or center for which the
13 person is a provider or director during the two-year period
14 preceding the date on which the person provides the training.

15 SECTION 2. Section 42.04412(b), Human Resources Code, is
16 amended to read as follows:

17 (b) During an investigation or inspection of a facility or
18 family home under this chapter, the facility or family home shall
19 cooperate with the commission or department and allow the
20 commission or department to:

21 (1) access the records of the facility or family home,
22 including a photograph, videotape, audiotape, or other audio or
23 visual recording;

24 (2) access any part of the premises of the facility or

1 family home; and

2 (3) interview any child, employee, or other person who
3 is present at the facility or family home and who may have
4 information relevant to the investigation or inspection.

5 SECTION 3. Section 42.0704, Human Resources Code, is
6 amended to read as follows:

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

11 (b) The enforcement policy must:

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

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

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

19 (c) As part of the enforcement policy, the commission
20 [~~department~~] shall develop and implement a methodology for
21 determining the appropriate disciplinary action to take against a
22 person who violates this chapter or a commission [~~department~~] rule.
23 The methodology must provide guidance on when to use each of the
24 available tools of enforcement, including technical assistance,
25 voluntary plans of action, [~~evaluation,~~] probation, suspension or
26 revocation of a license or registration, denial of a license or
27 registration, administrative penalties, and emergency suspension.

1 The methodology must allow the commission [~~department~~] to consider
2 the circumstances of a particular case, including the nature and
3 seriousness of the violation, history of previous violations, and
4 aggravating and mitigating factors, in determining the appropriate
5 disciplinary action.

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

10 SECTION 4. Section 42.071, Human Resources Code, is amended
11 to read as follows:

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

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

26 (c) If the commission [~~department~~] finds a facility or
27 family home is in repeated noncompliance with standards that do not

1 endanger the health and safety of children, the commission
2 [~~department~~] may place [~~schedule~~] the facility or family home on
3 [~~for evaluation or~~] probation rather than suspend or revoke the
4 facility's license or the family home's registration. The
5 commission [~~department~~] shall provide notice to the facility or
6 family home of the [~~evaluation or~~] probation and of the items of
7 noncompliance not later than the 10th day before the [~~evaluation~~
8 ~~or~~] probation period begins. [~~The department shall designate a~~
9 ~~period of not less than 30 days during which the facility or family~~
10 ~~home will remain under evaluation.~~] During the [~~evaluation or~~]
11 probation period, the facility or family home must correct the
12 items that were in noncompliance and report the corrections to the
13 commission [~~department~~] for approval.

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

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

22 SECTION 5. Section 42.078, Human Resources Code, is amended
23 by amending Subsections (a), (a-2), and (c) and adding Subsection
24 (b-1) to read as follows:

25 (a) The commission [~~department~~] may impose [~~an~~
26 ~~administrative sanction or~~] an administrative penalty against a
27 facility or family home licensed, registered, or listed under this

1 chapter that violates this chapter or other law or a commission rule
2 [~~or order adopted under this chapter~~]. In addition, the commission
3 [~~department~~] may impose an administrative penalty against a
4 facility or family home or a controlling person of a facility or
5 family home if the facility, family home, or controlling person:

6 (1) violates a term of a license or registration
7 issued under this chapter;

8 (2) makes a statement about a material fact that the
9 facility, family home, or person knows or should know is false:

10 (A) on an application for the issuance or renewal
11 of a license or registration or an attachment to the application; or

12 (B) in response to a matter under investigation
13 by the commission or the department;

14 (3) refuses to allow a representative of the
15 commission or department to inspect:

16 (A) a book, record, or file [~~required to be~~]
17 maintained by the facility or family home; or

18 (B) any part of the premises of the facility or
19 family home;

20 (4) purposefully interferes with:

21 (A) the work of a representative of the
22 commission or department; or

23 (B) the enforcement of this chapter; or

24 (5) fails to pay a penalty assessed under this chapter
25 on or before the date the penalty is due, as determined under this
26 section.

27 (a-2) The commission [~~department~~] may impose an

1 administrative penalty without first imposing a nonmonetary
2 administrative sanction for violating a minimum standard
3 applicable to a facility or family home under this chapter that is
4 determined by the commission [~~department~~] to be a high-risk
5 standard, including background check standards, safety hazard
6 standards, and supervision standards.

7 (b-1) The executive commissioner shall, in consultation
8 with appropriate interested parties, adopt rules on the imposition
9 of an administrative penalty under this section. The rules must:

10 (1) specify the types of violations that warrant
11 imposition of an administrative penalty by examining the scope and
12 severity of the relevant minimum standard violated;

13 (2) prescribe reasonable penalty amounts, subject to
14 Subdivision (4), to be imposed for each violation subject to an
15 administrative penalty;

16 (3) establish a schedule of progressive
17 administrative penalties and amounts, subject to Subdivision (4),
18 in accordance with the type, frequency, and seriousness of a
19 violation;

20 (4) authorize the imposition of an administrative
21 penalty in an amount not to exceed:

22 (A) \$500 for a first violation; and

23 (B) \$2,000 for progressive violations;

24 (5) provide that a facility or family home commits a
25 separate violation each day the facility or home continues to
26 violate the law or rule;

27 (6) ensure standard and consistent application of the

1 administrative penalties throughout the state; and

2 (7) provide for an administrative appeals process in
3 accordance with Chapter 2001, Government Code, to adjudicate claims
4 and appeals relating to the imposition of an administrative penalty
5 under this section.

6 (c) In determining [~~addition to the number of children,~~] the
7 amount of the penalty, the commission shall consider [~~be based on~~]:

8 (1) the seriousness of the violation, including the
9 nature, circumstances, extent, and gravity of any prohibited acts,
10 and the hazard or potential hazard created to the health and[~~7~~]
11 safety of the children to whom the facility or family home provides
12 care[~~7, or economic welfare of the public~~];

13 (2) the number of children to whom the facility or
14 family home was authorized to provide care or the number of children
15 under the care of the child-placing agency when the violation
16 occurred [~~the economic harm to property or the environment caused~~
17 ~~by the violation~~];

18 (3) the history of previous violations;

19 (4) the amount necessary to deter future violations;

20 (5) the efforts to correct the violation; and

21 (6) any other matter that justice may require.

22 SECTION 6. Sections 42.078(a-1), (b), (e), (f), (g), (h),
23 (i), (j), (k), (l), (m), (n), (o), (p), and (q), Human Resources
24 Code, are repealed.

25 SECTION 7. This Act takes effect September 1, 2019.