

By: Frank

H.B. No. 4160

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of the Health and Human Services function of regulating facilities and family homes under Chapter 42, Human Resources Code, to the Department of Family and Protective Services.

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

SECTION 1. (a) Section 531.0084, Government Code is deleted and (b) Sections 531.02011 and 531.02013, Government Code, are amended to read as follows:

~~Sec. 531.0084. INVESTIGATION UNIT FOR ILLEGALLY OPERATING CHILD-CARE FACILITIES. The executive commissioner shall maintain a unit within the child-care licensing division of the commission consisting of investigators whose primary responsibility is to:~~

~~(1) identify child-care facilities that are operating without a license, certification, registration, or listing required by Chapter 42, Human Resources Code; and~~

~~(2) initiate appropriate enforcement actions against those facilities.~~

Sec. 531.02011. PHASE TWO: FINAL TRANSFERS TO COMMISSION.

(a) On the dates specified in the transition plan required under Section 531.0204, the following functions are transferred to the commission as provided by this subchapter:

(1) all functions of each state agency and entity subject to abolition under Section 531.0202(b) that remained with

the agency or entity after the initial transfer of functions under Section 531.0201 or a transfer of administrative support services functions under Section 531.02012;

(2) regulatory functions and functions related to state-operated institutions of the Department of State Health Services; and

(3) regulatory functions of the Department of Family and Protective Services.

(b) Notwithstanding Subdivision (a)(3) of this section, the function of regulating facilities and family homes under Chapter 42, Human Resources Code, will be performed by the Department of Family and Protective Services effective September 1, 2021 as provided in Section 531.02013(b). As soon as possible after the effective date of this Act, the Commission shall transfer any and all Commission funds, staff, and resources necessary for the Department of Family and Protective Services to assume the function of regulating facilities and family homes under Chapter 42, Human Resources Code.

Sec. 531.02013. FUNCTIONS REMAINING WITH CERTAIN AGENCIES.

(a) The following functions are not subject to transfer under Sections 531.0201 and 531.02011:

(1) the functions of the Department of Family and Protective Services, including the statewide intake of reports and other information, related to the following:

(A) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

1 (B) adult protective services, other than
2 investigations of the alleged abuse, neglect, or exploitation of an
3 elderly person or person with a disability:

4 (i) in a facility operated, or in a facility
5 or by a person licensed, certified, or registered, by a state
6 agency; or

7 (ii) by a provider that has contracted to
8 provide home and community-based services;

9 (C) prevention and early intervention services;
10 and

11 (D) investigations of alleged abuse, neglect, or
12 exploitation occurring at a child-care facility, as that term is
13 defined in Section 40.042, Human Resources Code; and

14 (2) the public health functions of the Department of
15 State Health Services, including health care data collection and
16 maintenance of the Texas Health Care Information Collection
17 program.

18 (b) Effective September 1, 2021, the function of regulating
19 facilities and family homes under Chapter 42, Human Resources Code,
20 will be transferred to the Department of Family and Protective
21 Services.

22 Sec. 531.951. APPLICABILITY. (a) This subchapter applies
23 only to the final licensing, listing, or registration decisions of
24 a health and human services agency with respect to a person under
25 the law authorizing the agency to regulate the following types of
26 persons:

27 (1) a youth camp licensed under Chapter 141, Health

and Safety Code;

(2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(3) a hospital licensed under Chapter 241, Health and Safety Code;

(4) an institution licensed under Chapter 242, Health and Safety Code;

(5) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(6) a special care facility licensed under Chapter 248, Health and Safety Code;

(7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;

(8) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code;

(9) a mental hospital or mental health facility licensed under Chapter 577, Health and Safety Code;

~~(10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42, Human Resources Code; or~~

~~(1011)~~ (1011) a day activity and health services facility licensed under Chapter 103, Human Resources Code.

(b) This subchapter does not apply to an agency decision that did not result in a final order or that was reversed on appeal.

SECTION 2. Sections 40.0025, 40.042, and 40.0505, Human Resources Code, are amended to read as follows:

Sec. 40.0025. AGENCY FUNCTIONS. (a) In this section,

"function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under Section 531.02012, Government Code.

(b) In accordance with Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions, including the statewide intake of reports and other information, related to the following services:

(1) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(2) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(A) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(B) by a provider that has contracted to provide home and community-based services; ~~and~~

(3) prevention and early intervention services functions, including:

(A) prevention and early intervention services as defined under Section 265.001, Family Code; and

(B) programs that:

(i) provide parent education;

(ii) promote healthier parent-child relationships; or

(iii) prevent family violence; and

1 (4) services related to regulation of facilities and
2 family homes under Chapter 42, Human Resources Code.

3 Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND
4 EXPLOITATION. (a) In this section, "child-care facility" includes
5 a facility, licensed or unlicensed child-care facility, family
6 home, residential child-care facility, employer-based day-care
7 facility, or shelter day-care facility regulated by the department,
8 as those terms are defined in Chapter 42.

9 (b) For all investigations of child abuse, neglect, or
10 exploitation conducted by the child protective investigations
11 ~~services~~ division of the department, the department shall adopt the
12 definitions of abuse, neglect, and exploitation provided in Section
13 261.001, Family Code.

14 (c) The department shall establish standardized policies to
15 be used during investigations.

16 (d) The commissioner shall establish units within the child
17 protective investigations ~~services~~ division of the department to
18 specialize in investigating allegations of child abuse, neglect, or
19 exploitation occurring at a child-care facility.

20 (e) The department may require that investigators who
21 specialize in allegations of child abuse, neglect, and exploitation
22 occurring at child-care facilities receive ongoing training on the
23 minimum licensing standards for any facilities that are applicable
24 to the investigator's specialization.

25 (f) Upon initiation of ~~After~~ an investigation by the child
26 protective investigations division of the department of abuse,
27 neglect, or exploitation occurring at a child-care facility, the

1 child protective investigations division ~~department~~ shall
2 collaborate and share case information with the division of the
3 department responsible ~~provide the state agency responsible~~ for
4 regulating the facility in order for the regulatory division to
5 conduct related inspections and non-abuse, neglect, or
6 exploitation investigations ~~with access to any information~~
7 ~~relating to the department's investigation. Providing access to~~
8 ~~confidential information under this subsection does not constitute~~
9 ~~a waiver of confidentiality.~~

10 (g) The ~~executive commissioner or the~~ commissioner of the
11 department, as appropriate, may adopt rules to implement this
12 section.

13 Sec. 40.0505. DIVISIONS OF DEPARTMENT. (a) The
14 commissioner shall establish the following divisions and offices
15 within the department:

- 16 (1) an investigations division;
17 (2) a consolidated data division;
18 (3) a legal division that oversees the following:
19 (A) legal matters relating to human resources, as
20 necessary to manage the department's workforce and establish the
21 department's hiring and termination policies;
22 (B) open records;
23 (C) privacy and confidentiality;
24 (D) litigation; and
25 (E) contract compliance;
26 (4) an operations division that oversees department
27 operations and human resources functions of the department; ~~and~~

(5) a financial management and accounting services division;

(6) a regulatory division to perform the function of overseeing and regulating facilities and family homes under Chapter 42.

(b) The commissioner may establish additional divisions within the department as the commissioner determines appropriate.

(c) The commissioner may assign department functions among the department's divisions.

SECTION 3. Sections 42.00311, Human Resources Code, is added and 42.0211, Human Resources Code, is amended to read as follows:

Sec. 42.00311. REFERENCES IN LAW MEANING DEPARTMENT OR DEPARTMENT COMMISSIONER. In this chapter, a reference to the department or the commission means the Department of Family and Protective Services. A reference to the commissioner or executive commissioner means the commissioner of the Department of Family and Protective Services.

Sec. 42.0211. SAFETY SPECIALISTS, RISK ANALYSTS, AND PERFORMANCE MANAGEMENT, AND UNIT FOR ILLEGALLY OPERATING CHILD-CARE FACILITIES. (a) The division shall employ at least one specially trained investigation safety specialist, whose duties include the duty to:

(1) review and evaluate the intake of reports that include allegations associated with a higher risk of harm to the child; and

(2) consult with the assigned investigator to provide

1 specialized guidance and resources to assist the investigation.

2 (b) The division shall employ at least one risk analyst,
3 whose duties include the duty to:

4 (1) identify facilities, including child-placing
5 agencies, whose compliance histories indicate the potential for a
6 higher risk of harm to children in the care of the facility;

7 (2) review the monitoring and inspection reports for
8 any facilities described by Subdivision (1) to assess the quality
9 of the investigation or monitoring; and

10 (3) identify any additional monitoring or enforcement
11 action that may be appropriate to ensure the safety of a child in
12 the care of the facility.

13 (c) The division must include a performance management unit
14 with duties that include:

15 (1) conducting quality assurance reviews of randomly
16 selected monitoring and investigative reports to ensure compliance
17 with all relevant laws, rules, and agency policies; and

18 (2) making recommendations to improve the quality and
19 consistency of monitoring and investigations.

20 (d) The division must include a unit consisting of
21 investigators whose primary responsibility is to:

22 (1) identify child-care facilities that are operating
23 without a license, certification, registration, or listing
24 required by this Chapter; and

25 (2) initiate appropriate enforcement actions against
26 those facilities.

27 SECTION 4. This Act takes effect September 1, 2021.