

SUBJECT: Background checks for providers of subsidized, unregulated child care

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Rose, Herrero, Darby, Elkins, Hernandez, Hughes, Naishtat, Walle
1 nay — Legler

SENATE VOTE: On final passage, March 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — None
Against — None
On — Scott Silverthorne, Department of Family and Protective Services; Nicole Verver, Texas Workforce Commission

BACKGROUND: Federal Child Care and Development Fund block grant funds are available to assist certain low-income Texans with child care services if they are working, attending school, or participating in job training. These funds are administered through local Workforce Development Boards. Under federal rules, boards may establish income eligibility requirements that do not exceed 85 percent of the state median income for a family of the same size, establish parents' share of the cost, set a maximum reimbursement rate, and establish attendance requirements. Parents may choose the type of child care, including what is called self-arranged care by relatives.

DIGEST: CSSB 81 would require that the Texas Workforce Commission ensure that money appropriated to it or a local workforce development board for child care services by unregulated, self-arranged child care providers be used only to pay for care providers who passed certain background and criminal history checks.

Unregulated, self-arranged child care would be defined as care that was funded wholly or partly from money received under the federal Child Care and Development Block Grant Act of 1990 and was provided by someone who:

- was at least 18 years old;
- complied with federal or state requirements on subsidized child care;
- provided child-care services for less than 24 hours a day to a child to whom they were related, as defined by the bill; and
- did not hold a state-issued license, listing, or registration for child care.

Persons seeking to provide unregulated self-arranged child care would have to submit their name to the Department of Family and Protective Services (DFPS) for use in conducting a background and criminal history check and a complete set of their fingerprints to the Department of Public Safety. DFPS would have to conduct the background check and would have to check its central registry of reported cases of child abuse and neglect. In deciding whether to approve an individual, DFPS would have to use the standards that apply for background and criminal history checks for listed or registered family home providers.

Care providers who provided care continuously would have to resubmit their information for another check at least every five years. Others who had stopped providing care for a period of time would have to submit to another check, unless DFPS determined that a check was unnecessary. Care providers would pay the cost of submitting their fingerprints for a check. The Health and Human Services Commission would have to pay DFPS for the costs it incurred in conducting the checks.

TWC would have to provide notice of the background and criminal history check to the parents or guardians of a child who received unregulated, self-arranged child care before they selected the provider.

DFPS would have to notify child care providers if it determined that they could not provide care because of their background and criminal history check. DFPS would have to notify these providers of the process to dispute the accuracy of the checks.

Care providers and children's parents or guardians each would have to submit a statement about the care to the commission by the 15th day of each month after a calendar quarter in which the care was provided. The statement would have to be signed and would have to include the number of hours that care was provided and a sworn statement by the provider or the parent or guardian that the record of hours was accurate. The statement

could be on a form provided by TWC. If feasible, TWC could use an electronic validation system to verify that child care provider was providing care. If the commission were using such a system, providers and parents or guardians would not have to provide a quarterly statement.

TWC would be required to perform regular, random sample audits of unregulated self-arranged child care providers to determine the accuracy of the quarterly statements or of an electronic validation system and to ensure that the commission and local workforce development boards were paying unregulated self-arranged child care providers only for care that was provided.

By October 1, 2009, the TWC and DFPS would have to adopt a memorandum of understanding about the administration and payment of costs of the background and criminal history checks.

The bill would take effect September 1, 2009. The TWC would have to ensure that payments made on or after November 1, 2009, to providers of unregulated self-arranged child care were made only to those who have had a background check. Agencies would be required to request any federal waiver or authorization they determined necessary before implementing the bill. Implementation of the bill could be delayed until such a waiver or authorization was granted.

**SUPPORTERS
SAY:**

CSSB 81 would help ensure the safety of children being cared for by relatives who were paid with federal block grant funds, to combat abuse of the funds, and to ensure that care actually was being provided. The bill would apply only to these unregulated child care providers paid with federal block grant funds and would not touch others who provide child care or babysit for relatives.

Several incidents have brought to light the need for fingerprint-based background checks on self-arranged child care providers paid by federal block grant funds. For example, payments for child care have gone to persons indicted for murder, in jail, and convicted of sexual assault of a child. Payments also have been made to addresses where no child care was being provided. CSSB 81 would address these issues by requiring that family, self-arranged child care providers undergo background checks run through state and federal databases with fingerprints and that they submit quarterly statement of hours.

While DFPS currently conducts background checks of providers and checks its central registry of reported cases of child abuse and neglect to see if providers are on the list, it does not use fingerprints to run the checks. CSSB 81 would codify DFPS' current practice and expand it to include the use of fingerprints. This would ensure that children were not being cared for by, and that payments are not going to, persons convicted of serious crimes. Even families may not always know the criminal background of someone they ask to take care of their children. The requirements in CSSB 81 would put the background checks of self-arranged family child care providers in line with those of other child care providers, including care providers in licensed child care centers and licensed and registered family homes.

The process to submit fingerprints would not overly burden care providers. The process is simple and efficient and involves making an appointment at one of the 81 locations throughout the state where the prints are made and then submitted to DPS. Major metropolitan areas have several of these locations, and, even in remote locations, no one should have to drive more than 50 miles to one. The approximately \$50 cost to submit the fingerprints, to be paid by the care provider, would be minimal when weighed against protecting children.

To determine whether a provider would pass the background check required by the bill, DFPS would have to use the standards it uses when examining the background of listed or registered family home care providers. This would weed out unsuitable providers by eliminating those convicted of serious or violent crimes. However, DFPS could use its discretion with persons convicted of low-level, non-violent offenses to allow care to be provided, if appropriate. CSSB 81 would put Texas in line with the 48 other states that require background checks for this type of child care provider.

The reporting form that would be required by the bill would not burden care providers or parents. It would be similar to attendance sheets required by local workforce boards now, and any efforts to submit them would be minimal when balanced against the need to safeguard government funds. While many providers paid by federal block grant funds abide by the law and provide safe child care for their relatives, there have been enough abuses to warrant the changes in CSSB 81. It is appropriate to establish procedures to guarantee the safety of children being cared for with government money.

OPPONENTS
SAY:

CSSB 81 could require relatives of children who provided self-arranged child care to go through a burdensome process to have their criminal background checked when they had done nothing wrong and were well known to the parents of the child for whom they were caring. Problems with child care providers who abuse the system or provide unsuitable care should be addressed without increasing the burden on those who abide by the law and provide safe care for their relatives. The bill could set up an unnecessary process by requiring a parent's mother or grandmother to go to a fingerprint center and pay the cost of fingerprint submission. It is unclear whether a fingerprint check revealing a long-ago conviction for a parent's mother or other relative would result in someone being denied payment for child care services.

NOTES:

The committee substitute made several changes to the Senate-passed version of the bill, including requiring persons seeking to provide the child care services to pay the cost for submitting the fingerprints and adding the provisions relating to an electronic validation system for verifying attendance.