

- SUBJECT:** Establishing regulations for prescribed pediatric extended care centers
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 9 ayes — Kolkhorst, Naishtat, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler
- 1 nay — Collier
- 1 absent — Coleman
- SENATE VOTE:** On final passage, April 3 — 31-0
- WITNESSES:** For — Steven Barry, Deb Frazee, and Duane Galligher Pediatric Health Choice; (*Registered, but did not testify:* Melody Chantelle, United Ways of Texas; Brent Connett, Texas Conservative Coalition; Chris Shields, Pediatric Health Choice)
- Against — (*Registered, but did not testify:* Dennis Scharp and Ronald Woodruff, North Texas Citizen’s Lobby; Gyl Switzer, Mental Health America of Texas)
- On — Frank Genco, Health and Human Services Commission; Dana McGrath, Department of Aging and Disability Services; Susan Murphree, Disability Rights Texas
- BACKGROUND:** Health and Safety Code, ch. 248 governs the licensing for special health care facilities. Human Resources Code, ch. 32 governs the state-run medical assistance program (Medicaid).
- DIGEST:** CSSB 492 would establish a regulatory framework for prescribed pediatric extended care centers. The bill would not apply to federally operated facilities or other licensed health care facilities.
- Definitions.** The bill would define a prescribed pediatric extended care center as a for-profit or nonprofit facility that provides nonresidential basic services to four or more medically dependent or technologically dependent minors when the owners or operators of the facility are not related to the

minors. It would also define basic services, center, commission, commissioner, department, executive commissioner, medical dependent or technologically dependent minor, and minor.

A controlling person would be defined as someone who has the ability to influence or direct the management of, expenditure of money for, or policies of a center or other person. It would include a company or individual that operates a center, contracts for the operation of a center, or exercises control over a center, among others. The bill would specify that certain individuals could not be considered controlling persons, such as shareholders and individuals who do not exercise any control over a center. The executive commissioner of the Health and Human Services Commission could adopt rules that further define who is a controlling person.

Licensing. On January 1, 2015, a person would need a license to own or operate a center, and they would need a license for each separate facility. A center could not be operated on the same premises as a licensed child-care facility or any other facility licensed by the Department of Aging and Disability Services (DADS) or the Department of State Health Services (DSHS).

Application and renewal. To obtain a license a person would have to submit certain items to DADS, including a sworn application. If all requirements were met, DADS would need to issue a license to the applicant. The license would need to include certain information about the center. A license would be valid for two years, and the bill would specify renewal procedures, fees, and notification requirements. A license could not be assigned or transferred to another person or center.

Powers and duties. By July 1, 2014, the executive commissioner would have to adopt rules to implement the bill and establish minimum center standards to protect the public and the minors served by the centers.

Minimum standards. The executive commissioner would establish minimum standards related to licensure, basic services and programs, building construction and maintenance, sanitary conditions, and record-keeping, among other things. The executive commissioner by rule would have to authorize the commissioner of DADS to grant a waiver from standards related to sanitary conditions, and building construction and maintenance, for facilities operating in municipalities with more stringent

requirements. The rules established by this bill would supersede any conflicting local, county, or municipal ordinances.

Medicaid provider. A licensed center would be considered a Medicaid health care services provider. DADS would need to establish a separate Medicaid provider type for enrollment and reimbursement for a licensed center. When determining the initial Medicaid reimbursement rate, the executive commissioner would have to establish a rate that, when converted to an hourly rate, does not exceed 70 percent of the average hourly rate for private duty nursing services provided under the Texas Health Steps Comprehensive Care Program.

Inspection and records. DADS, at a reasonable time, could inspect a center to ensure compliance with rules and standards, and the center would have to provide DADS with access to all records. DADS would have to inspect a center before issuing or renewing a license and could require a center to take corrective action or submit a corrective action plan. Upon request, the center would have to provide a copy of the inspection report to any person on request, after redacting any confidential information.

DADS would be entitled to obtain criminal history records from the Department of Public Safety (DPS) for a person who is required to undergo background and criminal history checks under the bill's provisions. A criminal history record would be privileged and confidential and could only be used by DADS. The information could not be released or disclosed to any person, unless the person consents or there is a court order. DADS could destroy the criminal history record after it has been used. These provisions would not prohibit DADS from obtaining or using criminal history records under other laws.

The bill would add licensed centers to the list of licensed health care facilities that must comply with certain criminal history check and reporting requirements. Centers would also need to comply with nurse aide and employee misconduct registry laws.

Funding. The executive commissioner would have to set reasonable and necessary nonrefundable fees to implement the bill, which would be appropriated to DADS from the general revenue fund.

Center regulation. The bill would establish a number of regulations for centers, including admission criteria and restrictions on hours, services,

and patient capacity. Centers would have to comply with license display and record-keeping requirements, as well as DADS' complaint investigation procedures. The centers, owners, and employees would have to comply with abuse, neglect, and exploitation reporting requirements. The bill would establish notification procedures for the voluntary closing of a center.

Enforcement. The bill would establish various enforcement procedures.

Denial, suspension, and revocation. The bill would specify the situations in which DADS could deny, suspend, or revoke a center's license. This would include a violation of a rule or standard, or a fraudulent act, among other things. The administrative procedures for a contested case would apply to the denial, suspension, or revocation of a license, unless DADS issues an emergency suspension order.

Probation. If a center is repeatedly non-compliant, but the non-compliance does not endanger a client or the public, DADS could schedule the probation of a center's license. The bill would provide additional probation procedures, including notice requirements. The bill would also establish procedures for the emergency suspension of a center's license and a process by which DADS could petition a district court for an injunction against a center.

Penalties. The bill would establish civil, criminal, and administrative penalties.

Civil and criminal. A person who violated a rule or standard established by the bill or failed to comply with a corrective action plan would be liable for a civil penalty of \$500 (or less) for each violation. The bill would establish other provisions related to civil penalties. A person who knowingly established or operated a center without a license would commit a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). For both civil and criminal penalties, each day a violation continued would constitute a separate violation.

Administrative. The commissioner could also impose an administrative penalty on a person who violates a rule, standard, or order established by the bill. The amount of the penalty would depend on a variety of factors, as specified by the bill, but could not exceed \$500. Each day a violation continued would constitute a separate violation. The bill would establish

procedures for giving a center notice of an alleged violation. After notice is given, the person could accept the determination and penalty or request a hearing on the alleged violation, the penalty amount, or both. If the person fails to respond to the notice, the commissioner would have to approve the determination and impose the penalty.

If a person requests a hearing, the matter would be referred to the State Office of Administrative Hearings (SOAH) which would promptly set a hearing date and give written notice to the person. After the hearing, an administrative law judge would issue to the commissioner findings of facts, conclusions of law, and a decision proposal about the violation and penalty. The commissioner would then issue an order finding that violation occurred and imposing a penalty, or finding that the violation did not occur. The notice of the commissioner's order would be sent to the person with a statement about the right to judicial review.

Appeal. The bill would establish procedures by which the person could pay the penalty or appeal the order by petitioning for judicial review. It would also specify how a person who petitions for judicial review could temporarily stop ("stay") the enforcement of the penalty. The bill would establish procedures for penalty collection, court modification of the penalty, remittance of the penalty and interest, and release of a supersedeas (appeal) bond. The proceeding to impose a penalty would be considered a contested case under state administrative procedures.

Federal authorization. A state agency would be required to seek any necessary federal authorization and could delay the implementation of any provision until permission was granted.

The bill would take effect on September 1, 2013, except that the provisions relating to enforcement and administrative penalties would take effect January 1, 2015

**SUPPORTERS
SAY:**

CSSB 492 would increase access to appropriate and cost-effective services for children with medically complex conditions who require close care and supervision. These children are often cared for at their home by private-duty nurses, which prevents them from having important social interactions. Moreover, families often experience delays before these in-home services become available. Prescribed pediatric extended care (PPEC) centers provide a socially and medically appropriate option that can help alleviate health care workforce shortages.

Many states allow the licensure and operation of PPEC centers, and they have proven to be a safe, cost-effective alternative to in-home services. By allowing PPEC centers to operate in Texas by establishing the necessary statutory framework, this bill would increase access to high-quality services and decrease workforce shortages.

OPPONENTS
SAY:

CSSB 492 bill would advance the commercial interests of a few private companies that provide these services.

OTHER
OPPONENTS
SAY:

CSSB 492 should go further to protect children with medically complex conditions. Although PPEC centers could provide a viable option to in-home care, the bill should clarify that these services are voluntary. The bill should also include additional protections to ensure that PPEC centers do not prevent a child from receiving the medically necessary private-duty nursing services and free appropriate public education to which they are legally entitled.

NOTES:

Compared with the engrossed version, the committee substitute adds a requirement that the initial Medicaid reimbursement rate not exceed a certain hourly rate.

CSSB 492 is expected to be cost-neutral through the 2015 fiscal year because expenditures for cost pool increases and additional employees would be offset by revenue from new fees. The bill could result in either increased costs or savings to Medicaid client services, but the impact cannot yet be determined, according to the Legislative Budget Board.