

## **BILL ANALYSIS**

Senate Research Center

S.B. 781  
By: Kolkhorst  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Residential treatment centers (RTCs) are a type of congregate care facility that provides around-the-clock supervision and treatment services exclusively to children with emotional disorders. These operations are regulated by both the Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS).

In February 2018, President Trump signed the Family First Prevention Services Act (FFPSA) into law. It will become effective in 2021. This new law will drastically impact the foster care system in Texas and where the state places our most vulnerable at risk youth. S.B. 781 seeks to ensure Texas' RTCs are ready to meet the higher standards of this federal law. This bill encourages the state to support the provider community in building capacity towards federal accreditation for Qualified Residential Treatment Programs in compliance with the FFPSA.

This bill strengthens the requirements necessary to obtain a license to open a new RTC facility and allows for a public hearing process for license renewals. It also clarifies the enforcement provisions of the Human Resources Code to specify what types of violations will lead to a facility's license suspension or revocation. Furthermore, it increases participation with the surrounding community by requiring new RTC applicants to thoughtfully compile a community engagement plan. This plan must include both an operational plan and an educational plan that take into consideration local community review and feedback. S.B. 781 would require collaboration between the Texas Education Agency (TEA) and HHSC to create and implement best practices for educating students living in RTCs. (Original Author's/Sponsor's Statement of Intent)

S.B. 781 amends current law relating to the regulation of child-care facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of the Department of Family and Protective Services in SECTION 1 (Section 40.043, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 10 (Section 42.252, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 6 (Section 42.0704, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 40, Human Resources Code, by adding Section 40.043, as follows:

Sec. 40.043. CHILD SAFETY AND RUNAWAY PREVENTION PROCEDURES. Requires the commissioner of the Department of Family and Protective Services (commissioner; DFPS) by rule to establish DFPS's strategy to:

(1) develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of DFPS 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 (Definitions) and 264.125 (Age-Appropriate Normalcy Activities; Standard of Care), Family Code.

SECTION 2. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.0582, as follows:

Sec. 40.0582. **QUALITY CONTRACTING FRAMEWORK.** (a) Requires DFPS to 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 DFPS.

(b) Requires DFPS, in implementing the requirements of Subsection (a), to consider any information DFPS determines relevant to assess the ability of a contractor or potential contractor to provide quality residential child-care services, including:

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

(2) the regulatory history of the contractor; and

(3) the history of the contractor on satisfying the performance measures developed under Section 40.058 (Contracts and Agreements).

SECTION 3. Amends Subchapter C, Chapter 40, Human Resources Code, by adding Section 40.080, as follows:

Sec. 40.080. **STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN.** (a) Requires DFPS to develop a strategic plan regarding the placement of children in settings eligible for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115–123).

(b) Requires the strategic plan required under this section to assess certain information and make certain recommendations.

SECTION 4. Amends Section 42.0421(g), Human Resources Code, as follows:

(g) Authorizes a person described by Subsection (f)(6) (relating to requiring that certain training be provided by a person who is a registered family home care provider or director) to provide training under this section only if the Health and Human Services Commission (HHSC), rather than DFPS, has not taken an action under Section 42.071 (Suspension, Evaluation, or Probation of License or Registration), 42.072 (License, Listing, or Registration Denial, Suspension, or Revocation), or 42.078 (Administrative Penalty), rather than has not taken an action under Section 42.071, 42.072, or 42.078, other than an evaluation, against the license, listing or registration of the person or the home or center for which the person is a provider or director during the two-year period preceding the date on which the person provides the training.

SECTION 5. Amends Section 42.0462, Human Resources Code, as follows:

Sec. 42.0462. **WAIVER OF NOTICE AND HEARING REQUIREMENTS.** (a) Creates this subsection from existing text. Requires HHSC, rather than DFPS, subject to

Subsection (b), to protect the safety and well-being of residents and employees of a general residential operation that provides comprehensive residential services to children who are victims of trafficking, to waive the notice and hearing requirements imposed under Section 42.0461 (Public Notice and Hearing: Residential Child Care) for an applicant who submits to HHSC, rather than DFPS, an application to provide trafficking victim services at the applicant's general residential operation.

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

SECTION 6. Amends Section 42.0704, Human Resources Code, as follows:

Sec. 42.0704. ENFORCEMENT POLICY. (a) Requires the executive commissioner of HHSC (executive commissioner) by rule to adopt a general enforcement policy that describes HHSC's, rather than DFPS's, approach to enforcement of this chapter (Regulation of Certain Facilities, Homes, and Agencies That Provide Child-Care Services).

(b) Makes conforming changes to this subsection.

(c) Requires HHSC, rather than DFPS, as part of the enforcement policy, to develop and implement a methodology for determining the appropriate disciplinary action to take against a person who violates this chapter or an HHSC rule, rather than DFPS rule. Creates subdivisions from existing text, makes nonsubstantive changes, and requires the methodology to:

(1) deletes existing text relating to guidance on when to use evaluation as a tool of enforcement; and

(2) allow HHSC, rather than DFPS, to consider the circumstances of a particular case, including:

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

(B) any history of previous violations, including a repetition or pattern of violations; and

(C) any aggravating and mitigating factors.

(d) Makes conforming changes to this subsection.

SECTION 7. Amends Section 42.071, Human Resources Code, as follows:

Sec. 42.071. New heading: SUSPENSION OR PROBATION OF LICENSE OR REGISTRATION. (a)-(b) Makes conforming changes to these subsections.

(c) Authorizes HHSC, if HHSC finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, to place the facility or family home on probation rather than suspend or revoke the facility's license or the family home's registration, rather than authorizing DFPS, if DFPS finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, to schedule the facility or family home for evaluation or probation rather than suspend or revoke the facility's license or the family home's registration. Requires HHSC to provide notice to the facility or family home of the probation and of the items of noncompliance not later than the 10th day before the probation period begins, rather than requiring DFPS to provide notice to the facility or

family home of the evaluation or probation and of the items of noncompliance not later than the 10th day before the evaluation or probation period begins. Deletes existing text requiring DFPS to designate a period of not less than 30 days during which the facility or family home will remain under evaluation. Makes conforming changes.

(d)-(e) Makes conforming changes to these subsections.

SECTION 8. Amends Section 42.072(c), Human Resources Code, as follows:

(c) Prohibits DFPS from issuing a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked, whose application for a license, listing, registration, or certification, is denied for a substantive reason under this chapter, or who in lieu of disciplinary action voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification, rather than a person whose license, listing, registration, or certification is revoked or whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter, before the fifth anniversary of the date on which:

(1)–(2) creates these subdivisions from existing text and makes nonsubstantive changes;

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

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

SECTION 9. Amends Section 42.078(a-1), Human Resources Code, to require nonmonetary administrative sanctions, including corrective action plans and probation periods, rather than corrective actions plans, probation, and evaluation periods, to be imposed when appropriate before administrative penalties.

SECTION 10. Amends Chapter 42, Human Resources Code, by adding Subchapter H, as follows:

#### SUBCHAPTER H. REGULATION OF CERTAIN GENERAL RESIDENTIAL OPERATIONS

Sec. 42.251. **APPLICABILITY.** Provides that this subchapter applies only to a general residential operation that provides care for seven or more children or young adults and provides treatment services for children or young adults with emotional disorders.

Sec. 42.252. **PROPOSED OPERATIONAL PLAN; LICENSING PROCEDURES.** (a) Requires a person applying for a license to operate a general residential operation, in addition to the applicable requirements to obtain a license under Subchapter C (Regulation of Certain Facilities, Homes, and Agencies), to submit to HHSC a proposed operational plan.

(b) Requires the executive commissioner to adopt rules regarding the information that is required to be included in the operational plan, HHSC's review of the operational plan, and the basis of HHSC's determination on whether the plan is complete or incomplete and to deny or approve the plan.

(c) Requires the operational plan to include certain information.

(d) Requires a person applying for a license to operate a general residential operation to state in the application if the proposed operation will provide services to children who are victims of human trafficking but provides that the person is not required to include this information in the operational plan.

(e) Requires HHSC to approve the proposed general residential operation's operational plan before holding a hearing under Section 42.0461, if applicable, or granting a license to operate a general residential operation.

(f) Authorizes HHSC, in evaluating an application for a license to operate a general residential operation, to consider certain information.

(g) Authorizes HHSC to deny an application for a license to operate a general residential operation if HHSC determines that the community has insufficient resources to support children proposed to be served by the applicant, that granting the license would significantly impact the local school district and would adversely effect the children proposed to be served by the applicant, or that granting the license would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

Sec. 42.253. CONFIDENTIALITY OF INFORMATION RELATING TO SERVICES FOR HUMAN TRAFFICKING VICTIMS. (a) Provides that, if an applicant for a license to operate a general residential operation will provide services to victims of human trafficking, any information relating to the provision of services for victims of human trafficking is confidential and that HHSC is prohibited from disclosing that information.

(b) Provides that, if a hearing is required under Section 42.0461 for an application for a license to operate a general residential operation and the proposed operation will provide services to victims of human trafficking, the applicant is not required to disclose any information relating to the provision of services for victims of human trafficking.

Sec. 42.254. DUTIES RELATING TO EDUCATION OF CHILDREN IN GENERAL RESIDENTIAL OPERATION. (a) Requires HHSC to collaborate with the Texas Education Agency to determine best practices for educational services in a general residential operation, including the most effective educational plans and best practices for implementing those plans.

(b) Requires DFPS to make available on DFPS's Internet website information and training regarding trauma-informed practices to assist school districts with training district employees by increasing staff awareness of trauma-informed care.

Sec. 42.255. HEARING BEFORE RENEWAL OF LICENSE. (a) Requires HHSC, on request of the commissioners court of a county where a general residential operation is located, to hold a public hearing to obtain public comments regarding the renewal of the operation's license.

(b) Requires HHSC to adopt procedures that provide the public with a reasonable opportunity to appear before HHSC and to speak on any issue related to renewal of the general residential operation's license, including procedures relating to the conduct of the hearing, the order of witnesses, and the conduct of participants at the hearing.

SECTION 11. Requires DFPS, not later than September 1, 2020, to submit the plan required by Section 40.080, Human Resources Code, as added by this Act, to the Senate Health and Human Services Committee, the Senate Finance Committee, the House Committee on Human Services, the House Committee on Public Health, and the House Appropriations Committee.

SECTION 12. Requires the executive commissioner and the commissioner, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 13. (a)-(c) Makes application of this Act prospective.

SECTION 14. Provides that DFPS and HHSC are required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, DFPS and HHSC, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations available for that purpose.

SECTION 15. Effective date: September 1, 2019.