

1-1 By: Kolkhorst S.B. No. 781
 1-2 (In the Senate - Filed February 12, 2019; March 1, 2019,
 1-3 read first time and referred to Committee on Health & Human
 1-4 Services; April 8, 2019, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 April 8, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 781 By: Kolkhorst

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the regulation of child-care facilities.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Subchapter B, Chapter 40, Human Resources Code,
 1-24 is amended by adding Section 40.043 to read as follows:
 1-25 Sec. 40.043. CHILD SAFETY AND RUNAWAY PREVENTION
 1-26 PROCEDURES. The commissioner by rule shall establish the
 1-27 department's strategy to:
 1-28 (1) develop trauma-informed protocols for reducing
 1-29 the number of incidents in which a child in the conservatorship of
 1-30 the department runs away from a residential treatment center; and
 1-31 (2) balance measures aimed at protecting child safety
 1-32 with federal and state requirements related to normalcy and
 1-33 decision making under the reasonable and prudent parent standard
 1-34 prescribed by 42 U.S.C. Section 675 and Sections 264.001 and
 1-35 264.125, Family Code.
 1-36 SECTION 2. Subchapter C, Chapter 40, Human Resources Code,
 1-37 is amended by adding Section 40.0582 to read as follows:
 1-38 Sec. 40.0582. QUALITY CONTRACTING FRAMEWORK. (a) The
 1-39 department shall monitor and coordinate with general residential
 1-40 operations providing treatment services to children or young adults
 1-41 with emotional disorders to maintain and improve the quality of
 1-42 residential child-care services purchased by the department.
 1-43 (b) In implementing the requirements of Subsection (a), the
 1-44 department shall consider any information the department
 1-45 determines relevant to assess the ability of a contractor or
 1-46 potential contractor to provide quality residential child-care
 1-47 services, including:
 1-48 (1) the strength of the operational plan and all
 1-49 required components of the operational plan described by Section
 1-50 42.252;
 1-51 (2) the regulatory history of the contractor; and
 1-52 (3) the history of the contractor on satisfying the
 1-53 performance measures developed under Section 40.058.
 1-54 SECTION 3. Subchapter C, Chapter 40, Human Resources Code,
 1-55 is amended by adding Section 40.080 to read as follows:
 1-56 Sec. 40.080. STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW
 1-57 REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN.
 1-58 (a) The department shall develop a strategic plan regarding the
 1-59 placement of children in settings eligible for federal financial
 1-60 participation under the requirements of the federal Family First

2-1 Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

2-2 (b) The strategic plan required under this section must:

2-3 (1) assess any available evidence regarding the impact
2-4 of accreditation on qualitative performance of accredited
2-5 providers;

2-6 (2) assess a potential structure and any funding
2-7 requirements necessary to incentivize providers to become
2-8 accredited;

2-9 (3) study any available evidence regarding the
2-10 qualitative outcomes in qualified residential treatment providers,
2-11 as defined in the federal Family First Prevention Services Act
2-12 (Title VII, Div. E, Pub. L. No. 115-123);

2-13 (4) assess the fiscal implications to this state of
2-14 developing settings that meet the federal definition of qualified
2-15 residential treatment providers and all associated requirements;
2-16 and

2-17 (5) make any appropriate recommendations related to
2-18 implementation of the requirements for qualified residential
2-19 treatment providers.

2-20 SECTION 4. Section 42.0421(g), Human Resources Code, is
2-21 amended to read as follows:

2-22 (g) A person described by Subsection (f)(6) may provide
2-23 training under this section only if the commission [~~department~~] has
2-24 not taken an action under Section 42.071, 42.072, or 42.078 [~~, other~~
2-25 ~~than an evaluation,~~] against the license, listing, or registration
2-26 of the person or the home or center for which the person is a
2-27 provider or director during the two-year period preceding the date
2-28 on which the person provides the training.

2-29 SECTION 5. Section 42.0462, Human Resources Code, is
2-30 amended to read as follows:

2-31 Sec. 42.0462. WAIVER OF NOTICE AND HEARING REQUIREMENTS.

2-32 (a) Subject to Subsection (b), to [~~To~~] protect the safety and
2-33 well-being of residents and employees of a general residential
2-34 operation that provides comprehensive residential services to
2-35 children who are victims of trafficking, the commission
2-36 [~~department~~] shall waive the notice and hearing requirements
2-37 imposed under Section 42.0461 for an applicant who submits to the
2-38 commission [~~department~~] an application to provide trafficking
2-39 victim services at the applicant's general residential operation.

2-40 (b) This section does not apply to an applicant who submits
2-41 an application for a license for a general residential operation
2-42 that provides services to children or young adults with emotional
2-43 disorders.

2-44 SECTION 6. Section 42.0704, Human Resources Code, is
2-45 amended to read as follows:

2-46 Sec. 42.0704. ENFORCEMENT POLICY. (a) The executive
2-47 commissioner by rule shall adopt a general enforcement policy that
2-48 describes the commission's [~~department's~~] approach to enforcement
2-49 of this chapter.

2-50 (b) The enforcement policy must:

2-51 (1) summarize the commission's [~~department's~~] general
2-52 expectations in enforcing this chapter;

2-53 (2) include the methodology required by Subsection
2-54 (c); and

2-55 (3) describe the commission's [~~department's~~] plan for
2-56 strengthening its enforcement efforts and for making objective
2-57 regulatory decisions.

2-58 (c) As part of the enforcement policy, the commission
2-59 [~~department~~] shall develop and implement a methodology for
2-60 determining the appropriate disciplinary action to take against a
2-61 person who violates this chapter or a commission [~~department~~] rule.
2-62 The methodology must:

2-63 (1) provide guidance on when to use each of the
2-64 available tools of enforcement, including technical assistance,
2-65 voluntary plans of action, [~~evaluation,~~] probation, suspension or
2-66 revocation of a license or registration, denial of a license or
2-67 registration, administrative penalties, and emergency suspension;
2-68 and

2-69 (2) [~~The methodology must~~] allow the commission

3-1 ~~[department]~~ to consider the circumstances of a particular case,
3-2 including:

3-3 (A) the nature and seriousness of the violation,
3-4 including whether the violation involved the abuse or neglect of a
3-5 child or resulted in the death or near fatal injury of a child;

3-6 (B) any history of previous violations,
3-7 including a repetition or pattern of violations; ~~[7]~~ and

3-8 (C) any aggravating and mitigating factors ~~[7, in~~
3-9 ~~determining the appropriate disciplinary action]~~.

3-10 (d) The commission ~~[department]~~ shall make the methodology
3-11 described by Subsection (c) available to the public, including by
3-12 posting the methodology on the commission's ~~[department's]~~ Internet
3-13 website.

3-14 SECTION 7. Section 42.071, Human Resources Code, is amended
3-15 to read as follows:

3-16 Sec. 42.071. SUSPENSION ~~[, EVALUATION,]~~ OR PROBATION OF
3-17 LICENSE OR REGISTRATION. (a) The commission ~~[department]~~ may
3-18 suspend the license of a facility or the registration of a family
3-19 home that has temporarily ceased operation but has definite plans
3-20 for starting operations again within the time limits of the issued
3-21 license or registration.

3-22 (b) The commission ~~[department]~~ may suspend a facility's
3-23 license or a family home's registration for a definite period
3-24 rather than deny or revoke the license or registration if the
3-25 commission ~~[department]~~ finds repeated noncompliance with
3-26 standards that do not endanger the health and safety of children.
3-27 To qualify for license or registration suspension under this
3-28 subsection, a facility or family home must suspend its operations
3-29 and show that standards can be met within the suspension period.

3-30 (c) If the commission ~~[department]~~ finds a facility or
3-31 family home is in repeated noncompliance with standards that do not
3-32 endanger the health and safety of children, the commission
3-33 ~~[department]~~ may place ~~[schedule]~~ the facility or family home on
3-34 ~~[for evaluation or]~~ probation rather than suspend or revoke the
3-35 facility's license or the family home's registration. The
3-36 commission ~~[department]~~ shall provide notice to the facility or
3-37 family home of the ~~[evaluation or]~~ probation and of the items of
3-38 noncompliance not later than the 10th day before the ~~[evaluation~~
3-39 ~~or]~~ probation period begins. ~~[The department shall designate a~~
3-40 ~~period of not less than 30 days during which the facility or family~~
3-41 ~~home will remain under evaluation.]~~ During the ~~[evaluation or]~~
3-42 probation period, the facility or family home must correct the
3-43 items that were in noncompliance and report the corrections to the
3-44 commission ~~[department]~~ for approval.

3-45 (d) The commission ~~[department]~~ shall revoke the license of
3-46 a facility or the registration of a family home that does not comply
3-47 with standards at the end of a license or registration suspension.

3-48 (e) The commission ~~[department]~~ may suspend or revoke the
3-49 license of a facility or the registration of a family home that does
3-50 not correct items that were in noncompliance or that does not comply
3-51 with required standards within the applicable ~~[evaluation or]~~
3-52 probation period.

3-53 SECTION 8. Section 42.072(c), Human Resources Code, is
3-54 amended to read as follows:

3-55 (c) The department may not issue a license, listing,
3-56 registration, or certification to a person whose license, listing,
3-57 registration, or certification is revoked, ~~[or]~~ whose application
3-58 for a license, listing, registration, or certification is denied
3-59 for a substantive reason under this chapter, or who in lieu of
3-60 disciplinary action voluntarily closed a facility or family home or
3-61 relinquished the person's license, listing, registration, or
3-62 certification before the fifth anniversary of the date on which:

3-63 (1) the revocation takes effect by department or court
3-64 order;

3-65 (2) ~~[or]~~ the decision to deny the application is
3-66 final;

3-67 (3) the facility or family home is closed; or

3-68 (4) the license, listing, registration, or
3-69 certification is relinquished.

4-1 SECTION 9. Section 42.078(a-1), Human Resources Code, is
4-2 amended to read as follows:

4-3 (a-1) Except as provided by Subsection (a-2), nonmonetary
4-4 administrative sanctions, including corrective action plans and~~[7]~~
4-5 probation~~[, and evaluation]~~ periods, shall be imposed when
4-6 appropriate before administrative penalties.

4-7 SECTION 10. Chapter 42, Human Resources Code, is amended by
4-8 adding Subchapter H to read as follows:

4-9 SUBCHAPTER H. REGULATION OF CERTAIN GENERAL RESIDENTIAL OPERATIONS

4-10 Sec. 42.251. APPLICABILITY. This subchapter applies only
4-11 to a general residential operation that:

4-12 (1) provides care for seven or more children or young
4-13 adults; and

4-14 (2) provides treatment services for children or young
4-15 adults with emotional disorders.

4-16 Sec. 42.252. PROPOSED OPERATIONAL PLAN; LICENSING
4-17 PROCEDURES. (a) In addition to the applicable requirements to
4-18 obtain a license under Subchapter C, a person applying for a license
4-19 to operate a general residential operation shall submit to the
4-20 commission a proposed operational plan.

4-21 (b) The executive commissioner shall adopt rules regarding:

4-22 (1) the information that must be included in the
4-23 operational plan;

4-24 (2) the commission's review of the operational plan;
4-25 and

4-26 (3) the basis of the commission's determination on
4-27 whether:

4-28 (A) the plan is complete or incomplete; and

4-29 (B) to deny or approve the plan.

4-30 (c) The operational plan must include:

4-31 (1) a community engagement plan to develop and, if
4-32 necessary, improve relations between the general residential
4-33 operation and the community in which the operation is located that
4-34 includes:

4-35 (A) a summary of any discussions the operation
4-36 had with:

4-37 (i) local law enforcement; and

4-38 (ii) local health, therapeutic, and
4-39 recreational resources available to support children at the
4-40 operation; and

4-41 (B) a summary of the opportunities the children
4-42 at the operation will have for social interaction in the community;

4-43 (2) an educational plan describing the applicant's
4-44 plan to provide for the educational needs of the children at the
4-45 general residential operation that:

4-46 (A) identifies whether the proposed operation
4-47 will provide for the public or private education of school-age
4-48 children at the operation;

4-49 (B) identifies whether the proposed operation
4-50 will provide for the education of school-age children through a
4-51 local school, off-site charter school, or on-site charter school;

4-52 (C) includes any discussions, plans, and
4-53 agreements with the local school district, private school, or local
4-54 charter school that will be providing education to the school-age
4-55 children at the operation; and

4-56 (D) if the children are to be enrolled in a public
4-57 school, includes either:

4-58 (i) a statement from the local independent
4-59 school district on the impact of the proposed child-care services
4-60 on the local school district; or

4-61 (ii) an explanation of the reasons the
4-62 operation was unable to obtain a statement described by
4-63 Subparagraph (i) and a discussion of other alternative educational
4-64 services that the operation could offer;

4-65 (3) a trauma-informed plan to address unauthorized
4-66 absences of children from the general residential operation; and

4-67 (4) the qualifications, background, and history,
4-68 including any compliance history, of each individual who is
4-69 proposed to be involved in:

5-1 (A) the management of the operation; and
 5-2 (B) the educational leadership of the operation
 5-3 if the operation will be using an on-site charter school.

5-4 (d) A person applying for a license to operate a general
 5-5 residential operation shall state in the application if the
 5-6 proposed operation will provide services to children who are
 5-7 victims of human trafficking but is not required to include this
 5-8 information in the operational plan.

5-9 (e) The commission must approve the proposed general
 5-10 residential operation's operational plan before:

5-11 (1) holding a hearing under Section 42.0461, if
 5-12 applicable; or

5-13 (2) granting a license to operate a general
 5-14 residential operation.

5-15 (f) In evaluating an application for a license to operate a
 5-16 general residential operation, the commission may consider:

5-17 (1) evidence gathered through the application review
 5-18 process;

5-19 (2) all parts of the operational plan described by
 5-20 Subsection (c);

5-21 (3) evidence of community support for or opposition to
 5-22 the proposed general residential operation, including any public
 5-23 comment the executive commissioner receives relating to the
 5-24 licensing of the proposed operation; and

5-25 (4) the impact statement from the school district
 5-26 likely to be affected by the proposed general residential
 5-27 operation, including information relating to any financial impact
 5-28 on the district that may result from an increase in enrollment.

5-29 (g) The commission may deny an application for a license to
 5-30 operate a general residential operation if the commission
 5-31 determines that:

5-32 (1) the community has insufficient resources to
 5-33 support children proposed to be served by the applicant;

5-34 (2) granting the license would significantly impact
 5-35 the local school district and would adversely affect the children
 5-36 proposed to be served by the applicant; or

5-37 (3) granting the license would have a significant
 5-38 adverse impact on the community and would limit opportunities for
 5-39 social interaction for the children proposed to be served by the
 5-40 applicant.

5-41 Sec. 42.253. CONFIDENTIALITY OF INFORMATION RELATING TO
 5-42 SERVICES FOR HUMAN TRAFFICKING VICTIMS. (a) If an applicant for a
 5-43 license to operate a general residential operation will provide
 5-44 services to victims of human trafficking, any information relating
 5-45 to the provision of services for victims of human trafficking is
 5-46 confidential and the commission may not disclose that information.

5-47 (b) If a hearing is required under Section 42.0461 for an
 5-48 application for a license to operate a general residential
 5-49 operation and the proposed operation will provide services to
 5-50 victims of human trafficking, the applicant is not required to
 5-51 disclose any information relating to the provision of services for
 5-52 victims of human trafficking.

5-53 Sec. 42.254. DUTIES RELATING TO EDUCATION OF CHILDREN IN
 5-54 GENERAL RESIDENTIAL OPERATION. (a) The commission shall
 5-55 collaborate with the Texas Education Agency to determine best
 5-56 practices for educational services in a general residential
 5-57 operation, including the most effective educational plans and best
 5-58 practices for implementing those plans.

5-59 (b) The department shall make available on the department's
 5-60 Internet website information and training regarding
 5-61 trauma-informed practices to assist school districts with training
 5-62 district employees by increasing staff awareness of
 5-63 trauma-informed care.

5-64 Sec. 42.255. HEARING BEFORE RENEWAL OF LICENSE. (a) On
 5-65 request of the commissioners court of a county where a general
 5-66 residential operation is located, the commission shall hold a
 5-67 public hearing to obtain public comments regarding the renewal of
 5-68 the operation's license.

5-69 (b) The commission shall adopt procedures that provide the

6-1 public with a reasonable opportunity to appear before the
6-2 commission and to speak on any issue related to renewal of the
6-3 general residential operation's license, including procedures
6-4 relating to the conduct of the hearing, the order of witnesses, and
6-5 the conduct of participants at the hearing.

6-6 SECTION 11. Not later than September 1, 2020, the
6-7 Department of Family and Protective Services shall submit the plan
6-8 required by Section 40.080, Human Resources Code, as added by this
6-9 Act, to the Senate Health and Human Services Committee, the Senate
6-10 Finance Committee, the House Committee on Human Services, the House
6-11 Committee on Public Health, and the House Appropriations Committee.

6-12 SECTION 12. As soon as practicable after the effective date
6-13 of this Act, the executive commissioner of the Health and Human
6-14 Services Commission and the commissioner of the Department of
6-15 Family and Protective Services shall adopt the rules necessary to
6-16 implement the changes in law made by this Act.

6-17 SECTION 13. (a) The changes in law made by this Act apply
6-18 only to an application for a license for a child-care facility
6-19 submitted on or after the effective date of this Act. An
6-20 application submitted before that date is governed by the law in
6-21 effect immediately before the effective date of this Act, and the
6-22 former law is continued in effect for that purpose.

6-23 (b) The changes in law made by this Act apply only to a
6-24 contract entered into by the Department of Family and Protective
6-25 Services on or after the effective date of this Act. A contract
6-26 entered into before that date is governed by the law in effect
6-27 immediately before the effective date of this Act, and the former
6-28 law is continued in effect for that purpose.

6-29 (c) The changes in law made by this Act apply only to a
6-30 disciplinary action initiated on or after the effective date of
6-31 this Act. A disciplinary action initiated before the effective
6-32 date of this Act is governed by the law in effect immediately before
6-33 the effective date of this Act, and the former law is continued in
6-34 effect for that purpose.

6-35 SECTION 14. The Department of Family and Protective
6-36 Services and the Health and Human Services Commission are required
6-37 to implement a provision of this Act only if the legislature
6-38 appropriates money specifically for that purpose. If the
6-39 legislature does not appropriate money specifically for that
6-40 purpose, the Department of Family and Protective Services and the
6-41 Health and Human Services Commission may, but are not required to,
6-42 implement a provision of this Act using other appropriations
6-43 available for that purpose.

6-44 SECTION 15. This Act takes effect September 1, 2019.

6-45

* * * * *