

SUBJECT: Regulation and inspection of certain child-care facilities

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Raymond, N. Gonzalez, Klick, Rose, Sanford, Scott Turner
0 nays
3 absent — Fallon, Naishtat, Zerwas

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Laura Blanke, Texas Pediatric Society; Stephanie LeBleu, Texas CASA; Annie Mahoney, Texas Conservative Coalition; Madeline McClure, TexProtects, the Texas Association for the Protection of Children; Stewart Snider, League of Women Voters of Texas)

Against — None

On — Elizabeth Kromrei, Department of Family and Protective Services; (*Registered, but did not testify:* Michele Adams and Lisa Kanne, Department of Family and Protective Services)

BACKGROUND: The Department of Family and Protective Services (DFPS) licenses, certifies, and registers child-care facilities — which includes facilities that provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day.

Definitions. “Day-care center” means a child care facility that provides care at a location other than the residence of the director, owner, or operator of the facility for seven or more children under age 14 for less than 24 hours a day, but at least two hours a day, three or more days a week.

“Group day-care home” means a day-care center that provides care at the residence of the director, owner, or operator.

“Family home” means a home that provides regular care in the caretaker's own residence for not more than six children under age 14, excluding children related to the caretaker, and that provides care after school hours for not more than six additional elementary school children.

“General residential operation” means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment centers, emergency shelters, and therapeutic camps.

“Residential child-care facility” includes general residential operations, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes.

Inspections. DFPS is required under Human Resources Code, sec. 42.044 to inspect all licensed and certified facilities at least once a year and may inspect other facilities or registered family homes as necessary.

Penalties. Under sec. 42.078, Human Resources Code, DFPS can impose an administrative penalty against a licensed, registered or listed facility or family home that violates Ch. 42 of Human Resources Code regulating these entities. In addition, the department can impose an administrative penalty against a residential child-care facility if the facility or controlling person:

- violates a term of an issued license or registration;
- makes a false statement on an application for the issuance of a license or registration or an attachment to the application or in response to a matter under investigation;
- refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by the facility or any part of the facility premises;
- purposefully interferes with the work of a DFPS representative or the enforcement of law governing facility regulation; or
- fails to pay an assessed penalty relating to facility regulation on or before the date the penalty was due.

Administrative penalties or remedies, including but not limited to corrective action plans, probation, and evaluation periods, are required to be imposed when appropriate before monetary penalties.

DIGEST:

SB 427 would allow DFPS to inspect a licensed day-care center or group day-care home biennially instead of annually if the department determined, based on previous inspections, that the facility had a history of substantial compliance with minimum licensing standards. Biennial inspections would be unannounced.

The bill would add residential child-care facilities to the list of facilities and programs required to submit a complete set of fingerprints for background checks for all prospective employees, current employees, the director, owner, or operator, and certain persons 14 and older.

The bill would repeal a subsection of code requiring fingerprinting only for prospective foster or adoptive parents and persons 18 or older and living in the home of a person who applied to be a foster or adoptive parent.

The bill would allow DFPS to impose an administrative sanction against a facility or family home that did not submit fingerprints for a background check. The department could also impose an administrative penalty against a family home or a controlling person of a family home for the same reasons an administrative penalty can be imposed against a residential child-care facility under Human Resources Code, sec. 42.078 in current law.

Under the bill, nonmonetary administrative sanctions would be required to be imposed when appropriate before administrative penalties. The department could impose an administrative penalty without first imposing a nonmonetary administrative sanction on a facility or family home for:

- failing to submit fingerprints;
- knowingly allowing a person to be present in a facility or home without a background and criminal history check or with a problematic background and criminal history check; or
- violating a condition or restriction the department had placed on a person's presence at a facility or family home as part of a pending or approved risk evaluation of the person's background and criminal history or central registry findings.

The bill would require fingerprinting and a criminal history and background check as part of the requirements for issuance and renewal of a child-care administrator's license and a child-placing agency

administrator's license. A person could not serve as a child-care administrator of a general residential operation without a license.

The bill would authorize DFPS to deny, revoke, suspend, or refuse to renew a license for a child-care or child-placing agency administrator for engaging in conduct that made the license holder ineligible for a permit for certain facilities or family homes or employment as a controlling person or service in that capacity in a facility or family home.

The changes in law made by the bill to Human Resources Code, sec. 42.078, relating to penalties and sanctions, would apply only to a violation committed on or after the effective date of the bill.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 427 would strengthen protections to create a safe environment for children in all child-care centers by ensuring that all workers who come into contact with children are properly vetted. The bill would allow child-care centers with a strong history of compliance with licensing standards to be inspected once every two years to allow DFPS to focus its efforts on child-care centers at higher risk. The bill would ensure that child-care centers would always be up to licensing standards by continuing to use unannounced inspections and by adding administrative penalties for those who did not submit to background checks.

Recent cases of child deaths and injuries related to insufficient oversight of child-care facilities highlights the need for this bill. The bill is necessary to make sure criminals are not working in Texas child-care facilities and to ensure that DFPS can identify and take action against bad actors. The bill would provide incentives for all child-care facilities to raise the bar for care and would allow DFPS to use its resources more efficiently where they are most needed.

Requiring annual inspections for all facilities, even those with a history of meeting standards, could result in a higher fiscal note for the bill. The fiscal note for the bill is already included in appropriations under the state budget.

**OPPONENTS
SAY:**

While SB 427 is necessary and a step forward, the bill would not go far enough to ensure that all child-care facilities were inspected regularly to ensure the safety of Texas children. DFPS should continue to inspect all

child-care facilities at least once a year.

NOTES:

The companion bill, HB 1680 by Raymond, was referred to the House Human Services Committee on March 4.

According to the Legislative Budget Board, SB 427 would have a negative fiscal impact of \$217,674 through fiscal 2014-15 to cover the costs of fingerprint-based background checks.