

- SUBJECT:** Changing regulations for certain child and youth residential facilities
- COMMITTEE:** Human Services — favorable, without amendment
- VOTE:** 7 ayes — Frank, Hinojosa, Deshotel, Klick, Meza, Miller, Noble
0 nays
2 absent — Clardy, Rose
- SENATE VOTE:** On final passage, April 16 — 31-0
- WITNESSES:** *On House companion bill, HB 1698:*
For — (*Registered, but did not testify:* Johana Scot, Parent Guidance Center; Leela Rice, Texas Council of Community Centers; Jennifer Lucy, TexProtects)

Against — Candice Matthews, Children of Diversity Foster Adoption Agency; Gregory Woodruff, Sheltering Harbour Residential Treatment Center

On — Rich Dubroc, Prairie Harbor; Katie Olse, Texas Alliance of Child and Family Services; Christine Gendron, Texas Network of Youth Services; (*Registered, but did not testify:* Kristene Blackstone, Department of Family and Protective Services; Jean Shaw, Health and Human Services Commission; Kate Murphy, Texans Care for Children; Knox Kimberly, Upbring)
- BACKGROUND:** Human Resources Code sec. 42.002(4) defines "general residential operation" as a childcare facility that provides care for seven or more children for 24 hours a day, including facilities known as residential treatment centers and emergency shelters.

Sec. 42.071(c) allows the Department of Family and Protective Services to schedule a facility or family home for evaluation or probation rather than suspend or revoke the license or registration if that facility or family

home is in repeated noncompliance with standards that do not endanger the health and safety of children.

DIGEST: SB 781 would establish regulations for child safety, runaway prevention, quality contracting, and strategic and operational planning for general residential operations.

Child safety and runaway prevention. The Department of Family and Protective Services (DFPS) commissioner would have to establish a strategy to develop trauma-informed protocols for reducing the number of incidents in which a child in DFPS conservatorship ran away from a residential treatment center and to balance measures to protect child safety with federal and state requirements related to normalcy and decision making.

Quality contracting. DFPS would have 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 childcare services purchased by DFPS.

DFPS would have to consider any relevant information to assess the ability of a contractor or potential contractor to provide quality residential childcare services, including:

- the strength of the contractor's operational plan;
- the regulatory history of the contractor; and
- the history of the contractor on satisfying the relevant performance measures.

Strategic plan. DFPS would have 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. The strategic plan would have to:

- assess any available evidence regarding the impact of accreditation on qualitative performance of accredited providers;

- assess a potential structure and any funding requirements necessary to incentivize providers to become accredited;
- study any available evidence regarding the qualitative outcomes in qualified residential treatment providers;
- assess the fiscal implications to the state of developing settings that met the federal definition of qualified residential treatment providers and associated requirements; and
- make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

DFPS would have to submit the strategic plan to relevant legislative committees specified in the bill by September 1, 2020.

Regulation of certain general residential operations. SB 781 would create regulatory requirements for general residential operations that provided care for seven or more children or young adults and treatment for children and young adults with emotional disorders. In addition to current statutory licensing requirements, applicants for general residential operation licenses would have to submit a proposed operational plan to the Health and Human Services Commission (HHSC).

Operational plan. The executive commissioner of HHSC would have to adopt rules for the information that would have to be included in the operational plan, HHSC's review of the operational plan, and how HHSC would determine whether the plan was complete and could be approved.

The operational plan would have to include a community engagement plan to develop and, if necessary, improve relations between the general residential operation and the community in which the operation was located. The community engagement plan would have to include:

- a summary of any discussions the operation had with local law enforcement and local health, therapeutic, and recreational resources available to support children; and
- a summary of the opportunities the children at the operation would have for social interaction in the community.

The operational plan also would have to include an educational plan describing how the applicant would provide for the educational needs of the children at the general residential operation that:

- identified whether the proposed operation would provide for the public or private education of school-age children at the operation;
- identified whether the proposed operation would provide for the education of school-age children through a local school, off-site charter school, or on-site charter school;
- included any discussions, plans, and agreements with the local school district, private school, or local charter school that would be providing education to the school-age children at the operation; and
- if the children were to be enrolled in a public school, included either a statement from the local independent school district on the impact of the proposed childcare services on the district or an explanation of the reasons the operation was unable to obtain such a statement and a discussion of other alternative educational services that the operation could offer.

The operational plan also would have to include a trauma-informed plan to address unauthorized absences of children from the general residential operation and the qualifications, background, and history of each individual who was proposed to be involved in management and educational leadership if the operation would be using an on-site charter school.

A person applying for a license to operate a general residential operation would have to state in the application if the proposed operation would provide services to children who were victims of human trafficking but would not be required to include this information in the operational plan.

HHSC would have to approve the proposed general residential operation's operational plan before holding a hearing, if applicable, or granting a license.

In evaluating an application for a license to operate a general residential operation, HHSC could consider:

- evidence gathered through the application review process;
- all parts of the operational plan;
- evidence of community support for or opposition to the proposed general residential operation, including any public comment the executive commissioner received relating to the licensing of the proposed operation; and
- the impact statement from the school district likely to be affected by the proposed general residential operation, including information relating to any financial impact on the district that could result from an increase in enrollment.

HHSC could deny license applications if it was determined that:

- the community had insufficient resources to support children proposed to be served by the applicant;
- granting the license would significantly impact the local school district and would adversely affect the children proposed to be served by the applicant; or
- 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.

Human trafficking victims. If an applicant for a license to operate a general residential operation would provide services to victims of human trafficking, any information related to the provision of services for victims of human trafficking would be confidential and HHSC could not disclose that information.

If a hearing was required for an application, the applicant would not have to disclose any information related to the provision of services for victims of human trafficking.

The bill would establish that the requirement to waive certain notice and

hearing requirements imposed on applicants who submitted an application to provide trafficking victim services at a general residential operation would not apply to applicants that provided services to children or young adults with emotional disorders.

Education. HHSC would have 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 them.

DFPS would have to make information and training related to trauma-informed practices available on its website to assist school districts with training district employees by increasing staff awareness of trauma-informed care.

License renewal. On request of the commissioners court of a county where a general residential operation was located, HHSC would have to hold a public hearing to obtain comments regarding the renewal of the operation's license.

HHSC would have to adopt procedures that provided the public with a reasonable opportunity to appear before HHSC to speak on any issue related to renewal of the license, including procedures relating to the conduct of the hearing, the order of the witnesses, and the conduct of participants.

Voluntarily closed facilities. DFPS would be prohibited from issuing a license to a person who, in lieu of disciplinary action, voluntarily closed a facility or family home or relinquished a license, listing, registration, or certification if it was within five years of the facility's or family home's closure or relinquishing of license, listing, registration, or certification.

Enforcement and compliance. The bill would expand the circumstances that HHSC would have to consider when determining the appropriate disciplinary action to take against a person who violated laws governing certain childcare facilities to include whether the violation involved the

abuse or neglect of a child or resulted in the death or near fatal injury of a child and any repetition or pattern of violations.

The bill would eliminate an option for an applicable facility or family home found to be repeatedly noncompliant with standards that did not endanger the health and safety of children to have an evaluation rather than be placed on probation or have the applicable license or registration revoked.

Implementation. The executive commissioner of HHSC would have to adopt necessary rules to implement the bill as soon as practicable after the effective date. DFPS would have to implement the provisions of the bill only if the Legislature appropriated money specifically for those purposes.

The bill would take effect September 1, 2019, and would apply only to license applications, contracts, or disciplinary actions submitted, entered into, or initiated on or after that date.

**SUPPORTERS
SAY:**

SB 781 would require higher standards for residential childcare for children with emotional disorders that would ensure the safety of the children served in those facilities as well as the communities that they are based in, improve the quality of education in facilities, and strengthen the requirements necessary for opening and operating a new facility.

Over the past five years, more than 40 residential care facilities have voluntarily surrendered their licenses to avoid penalties due to noncompliance with state regulations, demonstrating the need for improved regulation of and support for facilities. Additionally, recent incidents involving runaways from residential care facilities have raised concerns regarding the quality of care in facilities and the dangers that badly run facilities can impose on the communities in which they are located. By establishing child safety and runaway prevention procedures, the bill would help decrease the risk of dangerous situations for both children and communities.

Requiring that the Health and Human Services Commission collaborate

with the Texas Education Agency on creating and implementing best practices for education in residential treatment centers would ensure that children living in facilities received the best possible education and that the capacity and resources of local school districts were taken into account when placement decisions were made.

The strategic plan outlined in the bill would ensure that state agencies were fully prepared for the implementation of the federal Family First Prevention Services Act, signed into law in 2018, which would require providers to meet certain additional standards of care. As HHSC has already filed a waiver to delay implementation of the federal law for two years due to a lack of readiness, the bill would create a process by which the agency could build the capacity and processes necessary to comply by the coming deadline.

**OPPONENTS
SAY:**

SB 781 should include provisions that would require residential treatment centers to become fully compliant with the Family First Prevention Services Act sooner than 2021. The strategic plan as outlined in the bill could delay prevention for a program that has already been adopted at the federal level and has been proven to be the best way to care for children with emotional disorders.