

BILL ANALYSIS

Senate Research Center

S.B. 1539
By: West
Health & Human Services
4-28-97
Committee Report (Substituted)

DIGEST

Currently, the Department of Protective and Regulatory Service (department) licenses, certifies or registers various kinds of child care services from registered family homes, and child care facilities to residential facilities and institutions for 24-hour living arrangements. This bill updates the regulatory provisions of Chapter 42 by changing many references to the agency structure prior to regulatory functions moving to the department. There are several phrases that are not the precise wording used in the definitions section of the law. This bill "cleans up" statutory language to reflect precise wording used in the definitions section of the law and clarifies other sections to clarify the types of regulatory categories covered.

PURPOSE

As proposed, C.S.S.B. 1539 regulates certain facilities, homes, and agencies that provide child care services; regulates child care administrators; and provides penalties

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Department of Protective and Regulatory Services in SECTION 7 (Sections 42.052(h) and 42.057, Article 42C, and Section 42.072(d) Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 42, Human Resources Code, as follows:

CHAPTER 42. New heading: REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES THAT PROVIDE CHILD-CARE SERVICES

SECTION 2. Amends Section 42.001, Human Resources Code, as follows:

Sec. 42.001. PURPOSE. Provides that the policy of the state is to protect children receiving child-care services, rather than protecting children under care in child-care facilities. Provides that this chapter ensures protection of children in regulated child care services, rather than facilities.

SECTION 3. Amends Section 42.002, Human Resources Code, as follows:

Sec. 42.002. DEFINITIONS. Redefines "child care facility," child care institution," "foster group home," "foster home," "day-care center," "group day-care home," "family home," "agency foster group home," "agency foster home," and "child-placing agency." Defines "children who are related to the caretaker," and "regular care."

SECTION 4. Amends Sections 42.021(a) and (b), Human Resources Code, to authorize the Department of Protective and Regulatory Services (department) to designate a division within the department to carry out the responsibilities under this chapter. Requires the executive director of the department (director) to appoint as the director of a division designated under Subsection (a) a person who meets certain qualifications. Deletes provisions relating to qualifications. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Sections 42.022(d)-(f), Human Resources Code, to make conforming changes.

SECTION 6. Amends Sections 42.023(a) and (b), Human Resources Code, to make conforming changes.

SECTION 7. Amends Chapters 42C and D, Human Resources Code, as follows:

SUBCHAPTER C. New heading: REGULATION OF CERTAIN FACILITIES,
HOMES, AND AGENCIES

Sec. 42.041. **REQUIRED LICENSE.** Prohibits a person from operating a child-care facility or child-placing service without a license issued by the department, rather than the division. Provides that this section does not apply to an agency foster home; agency foster group home; a facility licensed, operated, certified, or registered by another agency, rather than a hospital licensed by certain agencies; a family home, whether or not registered as required by Section 42.052 or not; an emergency shelter under Section 32.201, rather than Section 35.05, Family Code; certain other correctional facilities for children; and certain recreational facilities for children. Deletes Subdivision (12). Deletes a Subsection (d), related to applying for a division license. Makes conforming changes.

Sec. 42.042. **RULES AND STANDARDS.** Sets forth the beginning of the six-year period for review of rules. Deletes a provision related to a standard form of recording complaints. Requires the department to promulgate standards that apply to registered child-care facilities regulated under this chapter that will prevent breakdown of foster care and adoptive placement and prescribe qualifications for a person who operates a regulated facility. Requires the department to recognize differences in the organizations and operation of child-care facilities and institutions. Authorizes the department to recognize types of services provided by certain facilities. Requires the department to address minimum qualifications, education, and training required by a person who operates a family home registered with the department, in promulgating minimum standards for the regulation of family homes that register with the department. Deletes a provision related to types of services. Deletes existing Subsections (h), (l), and (m). Makes conforming changes.

Sec. 42.043. **RULES FOR IMMUNIZATIONS.** Requires the department to make rules for the immunization of children in facilities regulated under this chapter. Requires the department to require children to be tested for and immunized against other communicable diseases as recommended by the Texas Department of Health.

Sec. 42.044. **INSPECTIONS.** Require the department to notify the operator of the registered family home when complaints are registered. Makes conforming changes.

Sec. 42.045. **RECORDS.** Requires a person who provides adoption services pursuant to a child-placing agency license to furnish certain information. Deletes a provision regarding annual audits.

Sec. 42.046. New heading: **APPLICATION FOR LICENSE OR REGISTRATION.** Requires an applicant for registration to submit certain information. Deletes a provision regarding Section 42.054 of this code. Makes conforming changes.

Sec. 42.047. **CONSULTATIONS.** Requires the department to offer to potential applicants consultation on registration and to users of child care facilities. Makes a conforming change.

Sec. 42.048. **LICENSING.** Makes conforming changes.

Sec. 42.049. **LIABILITY INSURANCE REQUIRED.** Makes conforming changes.

Sec. 42.050. **LICENSE RENEWAL.** Makes conforming and nonsubstantive changes.

Sec. 42.051. PROVISIONAL LICENSE. Provides that a provisional license may be renewed for an additional six months, rather than being nonrenewable. Makes a conforming change.

Sec. 42.052. CERTIFICATION AND REGISTRATION. Authorizes a family home that provides care for three or fewer children excluding children related to the caretaker, rather than the caretaker's own children, to register with the department, rather than the division. Sets forth who is not required to register. Provides that registration is not required of the Texas Youth Commission, rather than Council, or the Texas Youth Commission. Amends a provision required in public advertisements. Requires the department, by rule, to provide for the denial of an application or renewal for registering a family home or is authorized to revoke a family home's registration based on certain background checks. Makes conforming changes.

Sec. 42.053. New heading: AGENCY FOSTER HOMES AND AGENCY FOSTER GROUP HOMES. Provides that an agency foster home or agency foster group home is considered part of the child-placing agency that operates the agency foster home or agency foster group home for purposes of licensing. Makes conforming changes.

Sec. 42.054. FEES. Requires the department to charge an applicant. Requires the department to charge each licensed child-care facility. Provides that the fee is due on the date on which the department issues the child-care facility's initial license. Deletes existing section. Makes conforming and nonsubstantive changes.

Sec. 42.055. SIGN POSTING. Deletes text regarding use fees. Redesignated from existing Section 42.056. Makes conforming and nonsubstantive changes.

Sec. 42.056. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. Sets forth requirements regarding background and criminal history checks. Requires the department, by rule, to require a facility to pay certain fees.

SUBCHAPTER D. REMEDIES

Sec. 42.071. New heading: SUSPENSION, EVALUATION, OR PROBATION OF LICENSE OR REGISTRATION. Authorizes the department to suspend a facility's license or a family home's registration for a definite period rather than deny or revoke the license or registration if the department finds repeated noncompliance with standards that do not endanger the health and safety of children. Sets forth requirements to qualify for license or registration suspension. Makes conforming and nonsubstantive changes.

Sec. 42.072. New heading: LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION. Authorizes the department to suspend, deny, revoke, or refuse to renew a license, registration, or certification of approval of a facility or family home in certain situations. Authorizes the department to revoke the probation of a person whose license or registration is suspended if the person violates a term of the conditions of probation. Entitles a person to a hearing, if the department proposes to take action under Subsection (a). Sets forth the rules and procedures for a hearing under this section. Deletes a provision regarding notification. Deletes existing Subsections (c)-(g). Authorizes the department, by rule to provide for the denial or renewal for a licensed facility. Makes conforming changes.

Sec. 42.073. New heading: EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR FAMILY HOME. Deletes a provision regarding placing children. Makes conforming and nonsubstantive changes.

Sec. 42.074. INJUNCTIVE RELIEF. Sets forth remedies and requirements for appeal. Makes conforming and nonsubstantive changes.

Sec. 42.075. CIVIL PENALTY. Sets forth a penalty for placing an advertisement for an unregistered family home. Makes a conforming change.

Sec. 42.076. CRIMINAL PENALTIES. Provides that a person commits a Class B misdemeanor if the person operates a family home without registration. Deletes existing Subsection (c). Makes a conforming change.

Sec. 42.077. NOTICE OF ACTION AGAINST FACILITY OR FAMILY HOME. Sets forth requirements for notice of action against a facility or a family home, including payment for the notice. Make conforming changes.

SECTION 8. Amends Section 43.012, Human Resources Code, to delete text regarding the amount of a fine.

SECTION 9. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 10. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 42.001, Human Resources Code, to provide that the policy of the state is to protect children receiving child-care services, rather than protecting children under care in child-care facilities.

SECTION 3.

Amends Section 42.002, Human Resources Code, Redefines "child-care facility," "family home," and "agency foster group home." Defines "regular care."

SECTION 4.

Amends Sections 42.021(a) and (b), Human Resources Code, to authorize the department to designate a division within the department to carry out the responsibilities under this chapter. Makes conforming and nonsubstantive changes.

SECTION 5.

Amends Sections 42.022(d)-(f), Human Resources Code, to make conforming changes.

SECTION 6.

Amends Sections 42.023(a) and (b), Human Resources Code, to make conforming changes.

SECTION 7.

Amends Section 42.041, Human Resources Code, to provide that this section does not apply to certain schools accredited by the Texas Education Agency, rather than Central Education Agency. Deletes proposed Subdivision (8). Makes conforming and nonsubstantive changes.

Amends Section 42.042, Human Resources Code, to require the department to address minimum qualifications, education, and training required by a person who operates a family home registered with the department, in promulgating minimum standards for the regulation of family homes that register with the department. Makes conforming changes.

Amends Section 42.044, Human Resources Code, to make conforming changes.

Amends Section 42.046, Human Resources Code, to provide for an application for license or registration.

Amends Section 42.047, Human Resources Code, to make conforming changes.

Deletes Section 42.048.

Amends Section 42.050, Human Resources Code, to make conforming and nonsubstantive changes.

Amends Section 42.052, Human Resources Code, to make conforming changes.

Amends Section 42.052, Human Resources Code, to provide that the certification requirements do not apply to a facility providing services solely for the Texas Youth Commission.

Deletes Section 42.054. Amends Section 42.054, Human Resources Code, to require the department to charge an applicant. Requires the department to charge each licensed child-care facility. Provides that the fee is due on the date on which the department issues the child-care facility's initial license. Makes conforming and nonsubstantive changes.

Deletes existing Section 42.055, Human Resources Code. Redesignates Sections 42.056 and 42.057 as 42.055 and 42.056.

Amends Section 42.056, Human Resources Code, to make conforming and nonsubstantive changes.

Amends Section 42.071, Human Resources Code, to provide for a new heading: **SUSPENSION, EVALUATION, OR PROBATION OR LICENSE OR REGISTRATION**. Authorizes the department to suspend a facility's license or a family home's registration for a definite period rather than deny or revoke the license or registration if the department finds repeated noncompliance with standards that do not endanger the health and safety of children. Sets forth requirements to qualify for license or registration suspension. Makes conforming and nonsubstantive changes.

Amends Section 42.072, Human Resources, to provide for a new heading: **LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION**. Authorizes the department to suspend, deny, revoke, or refuse to renew a license, registration, or certification of approval of a facility or family home in certain situations. Authorizes the department to revoke the probation of a person whose license or registration is suspended if the person violates a term of the conditions of probation. Entitles a person to a hearing, if the department proposes to take action under Subsection (a). Sets forth the rules and procedures for a hearing under this section. Deletes a provision regarding notification. Deletes existing Subsections (c)-(g). Authorizes the department, by rule, to provide for the denial or renewal for a licensed facility. Makes conforming changes.

Amends Section 42.073, Human Resources Code, to provide for a new heading: **EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR FAMILY HOME**. Makes conforming and nonsubstantive changes.

Amends Section 42.074, Human Resources Code, to make conforming and nonsubstantive changes.

Amends Section 42.075, Human Resources Code, to make a conforming change.

Amends Section 42.076, Human Resources Code, to provide that a person commits a Class B misdemeanor if the person operates a family home without registration. Deletes existing Subsection (c). Makes conforming changes.

Amends Section 42.077, Human Resources Code, Sets forth requirements for notice of action against a facility or a family home, including payment for the notice. Makes conforming changes.

Deletes Section 43.001, Human Resources Code.

SECTIONS 7, 8, and 9.

Redesignates SECTIONS 7, 8, and 9 as SECTIONS 8, 9, and 10.