

BILL ANALYSIS

Senate Research Center

C.S.S.B. 492
By: Lucio
Health & Human Services
3/21/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Prescribed pediatric extended care (PPEC) centers allow Medicaid-eligible children from birth through age 20 with medically complex conditions to receive continual medical care in a non-residential setting. When approved, children can attend a PPEC up to a maximum of 12 hours per day while receiving nursing services, personal care, developmental therapies, and caregiver training of the minor's parents or legal guardian. C.S.S.B. 492 is intended to develop, establish, and enforce licensure and health and safety standards for pediatric extended care centers in order to ensure that such centers provide appropriate care.

C.S.S.B. 492 amends current law relating to the licensing and regulation of prescribed pediatric extended care centers, provides penalties, and imposes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 248A.0012, 248A.052, 248A.053, 248A.101, 248A.152, and 248A.154, Health and Safety Code) and SECTION 8 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 248A, as follows:

CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248A.001. DEFINITIONS. Defines "basic services," "center," "commission," "commissioner," "controlling interest," "department," "executive commissioner," "medically dependent or technologically dependent minor," "minor," and "prescribed pediatric extended care center" in this chapter.

Sec. 248A.0012. CONTROLLING PERSON. (a) Provides that a person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a prescribed pediatric extended care center (center) or other person.

(b) Defines "controlling person" for purposes of this chapter, to include:

- (1) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;
- (2) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(3) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(c) Provides that a controlling person of a center or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation, notwithstanding any other provision of this section, means an officer or director of the corporation for the purposes of this chapter. Provides that the term does not include a shareholder or lender of the publicly traded corporation.

(d) Provides that a controlling person described by Subsection (b)(3) does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of a center.

(e) Authorizes the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person under this section.

Sec. 248A.002. EXEMPTIONS. Provides that this chapter does not apply to a facility operated by the United States government or a federal agency, or a health facility otherwise licensed under this subtitle.

Sec. 248A.003. CONFLICT WITH LOCAL LAWS. Provides that to the extent of any conflict between the standards adopted under this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

SUBCHAPTER B. LICENSING OF CENTERS

Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION. (a) Prohibits a person from owning or operating a prescribed pediatric extended care center (center) in this state unless the person holds a license issued under this chapter.

(b) Provides that a separate license is required for each center located on separate premises, regardless of whether the centers are under the ownership or operation of the same person.

(c) Prohibits a person from operating a center on the same premises as a child-care facility licensed under Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code.

Sec. 248A.052. APPLICATION; ISSUANCE. (a) Requires an applicant for a center license to submit to the Department of Aging and Disability Services (DADS) in accordance with executive commissioner rules a sworn application on the form prescribed by DADS, a letter of credit as prescribed by DADS to demonstrate the applicant's financial viability, and the required fees.

(b) Requires that the application contain:

(1) the location of the premises of the center for which the license is sought;

(2) documentation, signed by the appropriate local government official, stating the location and use of the premises meet local zoning requirements;

(3) the name, address, and social security number of, and background and criminal history check information for the applicant, the administrator responsible for daily operations of the center, the financial officer responsible for financial operations of the center, and each controlling person;

(4) the name, address, and federal employer identification number or taxpayer identification number of the applicant and of each controlling person, if the applicant or controlling person is not an individual;

(5) the business name of the center;

(6) the maximum patient capacity requested for the center; and

(7) a sworn affidavit that the applicant has complied with this chapter and rules adopted under this chapter.

(c) Requires DADS to issue a license to a center under this chapter if DADS determines that the applicant and the center meet the requirements of this chapter and the rules and standards adopted under this chapter. Requires that the license include the license holder's name, the location of the premises of the center, and a statement indicating the center provides services to minors for 12 hours or less in a 24-hour period and does not provide 24-hour care.

Sec. 248A.053. LICENSE TERM; RENEWAL; NOTIFICATION. (a) Provides that a license issued under this chapter expires on the second anniversary of the date of issuance.

(b) Requires a person applying to renew a center license to:

(1) submit a renewal application to DADS on the form prescribed by DADS at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by DADS; and

(3) comply with any other requirements specified by executive commissioner rule.

(c) Requires DADS to assess a \$50 per day late fee to a license holder who submits a renewal application after the date required by Subsection (b)(1), except that the total amount of a late fee is prohibited from exceeding the lesser of 50 percent of the license renewal fee or \$500.

(d) Requires DADS, at least 120 days before expiration of a center license, to notify the owner or operator of the center of the license expiration.

Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. Provides that a license under this chapter is issued to the license holder named on the license at the location of the premises listed on the license and is not transferable or assignable.

SUBCHAPTER C. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT

Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) Requires the executive commissioner to adopt rules necessary to implement this chapter.

(b) Requires that the rules, to protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, establish the minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for the physically disabled, and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive or ancillary services;

(9) standards relating to transportation services; and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

(c) Requires the executive commissioner by rule to authorize the commissioner of aging and disability services (commissioner) to grant a waiver from compliance with standards adopted under Subsection (b)(3), (4), or (6) to a center located in a municipality that adopts a code to regulate any of those standards if the commissioner determines the applicable municipal code standards exceed the corresponding standards adopted under Subsection (b)(3), (4), or (6).

Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN. (a) Authorizes DADS to inspect a center, including its records, at reasonable times as necessary to ensure compliance with this chapter and the rules adopted under this chapter. Requires the center to provide DADS with access to all center records.

(b) Requires DADS to inspect a center before issuing or renewing a license under this chapter.

(c) Authorizes DADS to require a center that undergoes an inspection to take appropriate corrective action necessary to comply with the requirements of this chapter and rules adopted under this chapter, and submit a corrective action plan to DADS for approval.

(d) Requires a center to make available to any person on request a copy of each inspection report pertaining to the center that has been issued by DADS. Requires the center, before making an inspection report available under this subsection, to redact from the report any information that is confidential under other law.

Sec. 248A.103. FEES. (a) Requires the executive commissioner to set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) Requires that a fee collected under this chapter be deposited in the state treasury to the credit of the general revenue fund and be appropriated to DADS to administer and enforce this chapter.

(c) Provides that a fee collected under this chapter is nonrefundable.

Sec. 248A.104. COMMISSION DUTIES. Requires the Health and Human Services Commission (HHSC) to designate a center licensed under this chapter as a health care services provider under the medical assistance program established under Chapter 32 (Medical Assistance Program), Human Resources Code.

SUBCHAPTER D. CENTER REGULATION

Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT. Prohibits a center from admitting a minor client unless the client is a medically dependent or technologically dependent minor, the minor's prescribing physician issues a prescription ordering care at a center, the minor's parent or legal guardian consents to the minor's admission to the center, and the admission is voluntary based on the parent's or legal guardian's preference in both managed care and non-managed care service delivery systems.

Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT CAPACITY. (a) Prohibits a center from providing services to a minor for more than 12 hours in any 24-hour period.

(b) Prohibits a center from providing services other than services regulated under this chapter and executive commissioner rule.

(c) Prohibits the maximum patient capacity at a center from exceeding 60.

Sec. 248A.153. LICENSE DISPLAY. Requires each center licensed under this chapter to display the center's license in a conspicuous location readily visible to a person entering the center.

Sec. 248A.154. MAINTENANCE OF RECORDS. Requires each center to maintain at the center the medical and other records required by this chapter and by rules adopted under this chapter.

Sec. 248A.155. COMPLAINTS. Authorizes a person to file a complaint with DADS against a center licensed or required to be licensed under this chapter. Requires DADS to investigate the complaint in accordance with the complaint procedures established under Chapter 1001 (Department of State Health Services).

Sec. 248A.156. COMPLIANCE WITH OTHER LAW. (a) Requires a center to comply with Chapter 260A (Reports of Abuse, Neglect, and Exploitation of Residents of Certain Facilities) and rules adopted under that chapter.

(b) Requires an owner, center employee, or other person subject to Chapter 260A to comply with that chapter and rules adopted under that chapter.

Sec. 248A.157. CLOSING OF CENTER. Requires the owner or operator of the center, at least 30 days before the date a center voluntarily discontinues operation, to inform the parent or legal guardian of each minor client to whom the center is providing services of the discontinuance and the proposed time of the discontinuance.

SUBCHAPTER E. GENERAL ENFORCEMENT

Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) Authorizes DADS to deny, suspend, or revoke a license issued under this chapter for:

- (1) a violation of this chapter or a rule or standard adopted under this chapter;
- (2) an intentional or negligent act by the center or an employee of the center that DADS determines significantly affects the health or safety of a minor served by the center;
- (3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;
- (4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state of any person required to undergo a background and criminal history check under this chapter;
- (5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception; or
- (6) a license revocation, suspension, or other disciplinary action taken against the license holder or any person listed in the application in another state.

(b) Provides that the procedures by which DADS denies, suspends, or revokes a license and by which those actions are appealed are governed by the procedures for a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code, except as provided by Section 248A.203.

Sec. 248A.202. PROBATION. (a) Authorizes DADS, if DADS finds that a center is in repeated noncompliance with this chapter, rules adopted under this chapter, or a corrective action plan, but that the noncompliance does not endanger a minor served by the center or the public health and safety, to schedule the center for probation rather than suspending or revoking the center's license.

(b) Requires DADS to provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) Requires DADS to designate a period of not less than 30 days during which the center will remain under probation. Requires the center, during the probation period, to correct the items that were in noncompliance and report the corrections to DADS for approval.

(d) Authorizes DADS to suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Sec. 248A.203. EMERGENCY SUSPENSION. (a) Authorizes DADS to issue an emergency order to suspend a license issued under this chapter if DADS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a

minor served by the center or the public health and safety. Provides that an emergency suspension is effective immediately without a hearing on notice to the license holder.

(b) Requires DADS, on written request of the license holder, to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) Provides that the hearing and any appeal are governed by DADS's rules for a contested case hearing and by Chapter 2001, Government Code.

Sec. 248A.204. INJUNCTION. (a) Authorizes DADS to petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule or standard adopted under this chapter if DADS finds that the violation creates an immediate threat to the health and safety of the minors served by a center.

(b) Authorizes a district court, on petition of DADS and on a finding by the court that a person is violating this chapter or the rules adopted under this chapter, to, by injunction, prohibit the person from continuing the violation, restrain or prevent the establishment or operation of a center without a license issued under this chapter, or grant any other injunctive relief warranted by the facts.

(c) Authorizes the attorney general to institute and conduct a suit authorized by this section at the request of DADS. Authorizes the attorney general and DADS to recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Provides that the venue for a suit brought under this section is in the county in which the center is located or in Travis County.

Sec. 248A.205. CIVIL PENALTY. (a) Provides that a person who violates this chapter or a rule or standard adopted under this chapter or who fails to comply with a corrective action plan submitted under this chapter is liable for a civil penalty of not more than \$500 for each violation if DADS determines the violation threatens the health and safety of a minor served by the center.

(b) Provides that each day a violation continues constitutes a separate violation for the purposes of this section.

(c) Authorizes the attorney general to sue to collect the penalty. Authorizes the attorney general and DADS to recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Requires that all penalties collected under this section be deposited in the state treasury in the general revenue fund.

Sec. 248A.206. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly establishes or operates a center without the appropriate license issued under this chapter.

(b) Provides that an offense under this section is a Class B misdemeanor.

(c) Provides that each day a violation continues constitutes a separate offense.

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 248A.251. IMPOSITION OF PENALTY. Authorizes the commissioner to impose an administrative penalty on a person licensed under this chapter who violates this chapter or rule or standard adopted or order issued under this chapter.

Sec. 248A.252. AMOUNT OF PENALTY. (a) Prohibits the amount of the penalty from exceeding \$500 for each violation, and provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) Requires that the amount be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) any previous violations;
- (4) the amount necessary to deter a future violation;
- (5) the efforts made by the violator to correct the violation; and
- (6) any other matter that justice may require.

Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Requires DADS, if DADS initially determines that a violation occurred, to give written notice of the report to the person.

(b) Requires that the notice include a brief summary of the alleged violation, state the amount of the recommended penalty, and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person in writing, not later than the 20th day after the date the person receives the notice sent under Section 248A.253, to accept the determination and recommended penalty of DADS or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the commissioner, if the person accepts the determination and recommended penalty or if the person fails to respond to the notice, to approve the determination and impose the recommended penalty.

Sec. 248A.255. HEARING. (a) Requires the commissioner, if the person requests a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH), which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of SOAH to conduct the hearing.

(b) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 248A.256. DECISION BY COMMISSIONER. (a) Authorizes the commissioner by order, based on the findings of fact, conclusions of law, and proposal for a decision, to find that a violation occurred and impose a penalty or find that a violation did not occur.

(b) Requires that the notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, include a statement of the right of the person to judicial review of the order.

Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, not later than the 30th day after the date the order of the commissioner imposing an administrative penalty under Section 248A.256 becomes final, to pay the penalty or file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review, within the period prescribed by Section 248A.257, to:

(1) stay enforcement of the penalty by paying the penalty to the court for placement in an escrow account in the court registry, or giving the court a supersedeas bond approved by the court that is for the amount of the penalty and is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond, and sending a copy of the affidavit to the commissioner by certified mail.

(b) Authorizes the commissioner, if the commissioner receives a copy of an affidavit under Subsection (a)(2), not later than the fifth day after the date the copy is received, to file with the court a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and is required to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 248A.259. COLLECTION OF PENALTY. (a) Authorizes the penalty, if the person does not pay the penalty and the enforcement of the penalty is not stayed, to be collected.

(b) Authorizes the attorney general to sue to collect the penalty and to recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(c) Requires that a penalty collected under this subchapter be deposited in the state treasury in the general revenue fund.

Sec. 248A.260. DECISION BY COURT. (a) Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 248A.261. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the court becomes final.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires that the interest be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 248A.262. RELEASE OF BOND. (a) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, when the court's judgment becomes final, to order the release of the bond.

(b) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 248A.263. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 2. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.13861, as follows:

Sec. 411.13861. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF AGING AND DISABILITY SERVICES. (a) Requires DADS to obtain from the Texas Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code.

(b) Provides that criminal history record information obtained under Subsection (a) is for the exclusive use of DADS and is privileged and confidential.

(c) Prohibits criminal history record information obtained under Subsection (a) from being released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information. Authorizes DADS to destroy the criminal history record information after the information is used for the purposes authorized by this section.

(d) Provides that this section does not prohibit DADS from obtaining and using criminal history record information as provided by other law.

SECTION 3. Amends Section 250.001(3), Health and Safety Code, to redefine "facility" to include a center licensed by DADS under Chapter 248A.

SECTION 4. Amends Section 253.001(4), Health and Safety Code, to redefine "facility" to include a center licensed under Chapter 248A.

SECTION 5. Amends Section 260A.001(5) and (7), Health and Safety Code, to redefine "facility" to include a center as that term is defined by Section 248A.001 and to redefine "resident."

SECTION 6. Amends Section 32.024, Human Resources Code, by adding Subsection (jj), to require HHSC to establish a separate provider type for centers licensed under Chapter 248A, Health and Safety Code, for purposes of enrollment as a provider for and reimbursement under the medical assistance program.

SECTION 7. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 8. Requires the executive commissioner, not later than July 1, 2014, to adopt the rules required by Subchapter C, Chapter 248A, Health and Safety Code, as added by this Act.

(b) Provides that a person is not required to hold a center license until January 1, 2015, notwithstanding Section 248A.051, Health and Safety Code, as added by this Act.

SECTION 9. (a) Effective date, except as provided by Subsection (b) of this section:
September 1, 2013

(b) Effective date, Subchapters E and F, Chapter 248A, Health and Safety Code, as
added by this Act: January 1, 2015.