

BILL ANALYSIS

Senate Research Center
85R9021 MCK-F

S.B. 1208
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Health & Human Services
4/3/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas is experiencing a foster care capacity crisis that has resulted in children sleeping in Child Protective Services (CPS) offices and hotels, and staying past medical necessity in psychiatric and medical hospitals. This is due to a number of factors, including an increase in the severity of needs of children in foster care. To address these issues, stakeholders have reexamined the current Child Care Licensing (CCL) licensure process to build appropriate capacity statewide and improve outcomes for children.

S.B. 1208 is a product of the efforts mentioned above to reform the CCL licensure process. This legislation proposes moving from the three existing license types for providers to five more flexible and innovative licenses that would allow the Department of Family and Protective Services to build programs that address the capacity crisis and better serve children requiring a variety of services and supports. With more flexible license types, the creation of enhanced placement options and an expansion of services and capacity in the CPS system is anticipated statewide.

As proposed, S.B. 1208 amends current law relating to the licensing of certain facilities, homes, and agencies that provide child-care services.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 23 (Section 42.042, Human Resources Code) and SECTION 37 (Section 42.053, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 23 (Section 42.042, Human Resources Code), SECTION 24 (Section 42.0421, Human Resources Code), and SECTION 27 (Section 42.0449, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 109.331(d), Alcoholic Beverage Code, to provide that this section does not apply to a family home, specialized child-care home, or agency foster home, rather than does not apply to a foster group home, foster family home, family home, agency group home, or agency home, as those terms are defined by Section 42.002 (Definitions), Human Resources Code.

SECTION 2. Amends Article 5.04(a-1), Code of Criminal Procedure, to require a certain peace officer to make certain determinations, including whether a call matches the address of a certain home, including a current licensed specialized child-care, rather than foster, home.

SECTION 3. Amends Articles 5.05(a-1) and (b), Code of Criminal Procedure, as follows:

(a-1) Requires a certain peace officer to make a report to the Texas Department of Family and Protective Services (DFPS) if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a certain

home, including a current licensed specialized child-care, rather than foster, home. Makes no further changes to this subsection.

(b) Requires each local law enforcement agency to establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this article, rather than this section. Makes a conforming change. Provides that DFPS is entitled to access the records relating to certain people, including a person who resides in a licensed specialized child-care, rather than foster, home.

SECTION 4. Amends Section 29.081(d), Education Code, to redefine "student at risk of dropping out of school."

SECTION 5. Amends Section 30.083(a), Education Code, to require the plan to be designed to accomplish certain objectives, including enabling certain students to be accommodated in certain facilities, including specialized child-care, rather than foster, homes.

SECTION 6. Amends Section 54.04(d), Family Code, as follows:

(d) Provides that if the court or jury makes the finding specified in Subsection (c) (relating to the prohibition of a disposition unless the child requires certain services or requires a disposition to be made) allowing the court to make a disposition in the case:

(1) makes no changes to this subdivision;

(A) makes no changes to this paragraph;

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable specialized child-care home, as defined by Section 42.002, Human Resources Code, rather than a suitable foster home;

(ii) to (iii) makes no changes to these subparagraphs;

(2) to (6) makes no changes to these subdivisions.

SECTION 7. Amends Section 101.0133, Family Code, to redefine "foster care."

SECTION 8. Amends Section 101.017, Family Code, to redefine "licensed child placing agency."

SECTION 9. Amends Section 162.0062(b), Family Code, as follows:

(b) Requires the records described by Subsection (a) to include records relating to an investigation of abuse in which the child was an alleged or confirmed victim of sexual abuse while residing in a specialized child-care, rather than foster, home or other residential child-care facility.

SECTION 10. Amends Section 262.011, Family Code, as added by Chapter 338 (H.B. 418), Acts of the 84th Legislature, Regular Session, as follows:

Sec. 262.011. New heading: PLACEMENT IN SECURE AGENCY FOSTER HOME. Deletes secure agency foster group home as a facility in which a court may place a child who is the subject of a hearing.

SECTION 11. Amends Section 263.008(a)(1), Family Code, to provide that "agency foster home" and "facility," rather than "agency foster group home," "agency foster home," "facility," "foster group home," and "foster home," have the meanings assigned by Section 42.002, Human Resources Code.

SECTION 12. Amends Section 263.008(e), Family Code, as follows:

(e) Requires a specialized-child care home, agency foster home, or other facility in which a child is placed in foster care, rather than an agency foster group home, agency foster home, foster group home, foster home, or other facility in which a child is placed in foster care, to provide a copy of the foster children's bill of rights to a child on the child's request.

SECTION 13. Amends Section 264.0111(a), Family Code, to provide that a certain child, including a child who has been placed by DFPS in a residential child-care facility, rather than a foster home or child-care institution, as defined by Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code, is entitled to keep any money earned by the child during the time of the child's placement.

SECTION 14. Amends Section 264.101(a), Family Code, to delete a foster home as a facility for which DFPS is authorized to pay the cost of foster care for a child if certain conditions are met.

SECTION 15. Amends Sections 264.751(1) and (3), Family Code, to redefine "designated caregiver" and "relative caregiver."

SECTION 16. Amends Section 264.760, Family Code, to authorize a relative or other designated caregiver who becomes licensed by DFPS or verified by a licensed child-placing agency or DFPS to operate a specialized child-care home or agency foster home, rather than operate a foster home, foster group home, agency foster home, or agency foster group home, under Chapter 42, Human Resources Code, to receive foster care payments in lieu of the benefits provided by this subchapter, beginning with the first month in which the relative or other caregiver becomes licensed or is verified.

SECTION 17. Amends Section 264.8521, Family Code, as follows:

Sec. 264.8524. NOTICE TO APPLICANTS. Requires DFPS or the child-placing agency, to, at a certain time, inform the applicant about criminal convictions that preclude an individual from becoming a licensed specialized child-care, rather than foster, home or verified agency foster home. Makes no further changes to this section.

SECTION 18. Amends Section 531.151(3), Government Code, to redefine "institution."

SECTION 19. Amends Section 31.002(b), Human Resources Code, to redefine "dependent child."

SECTION 20. Amends Section 31.008(d), Human Resources Code, to authorize the Health and Human Services Commission (HHSC) to make payments on behalf of a dependent child residing in a residential child-care facility, rather than a foster family home or a child-care institution, in accordance with the provisions of this chapter and HHSC rules.

SECTION 21. Amends Section 42.002, Human Resources Code, by amending Subdivisions (4), (5), (6), (10), (12), (13), and (19) and adding Subdivisions (24) and (25), as follows:

(4) Redefines "general residential operation."

(5) Defines "continuum-of-care residential operation."

(6) Defines "foster family operation."

(10) Defines "cottage family home."

(12) Redefines "child-placing agency."

(13) Redefines "facilities."

(19) Redefines "residential child-care facility."

(24) Defines "specialized child-care home."

(25) Defines "family residential setting."

Deletes existing text defining "agency foster group home."

SECTION 22. Amends Section 42.041(b), Human Resources Code, to delete agency foster group homes and include a facility that provides respite care exclusively for a local mental health authority under a contract with the local mental health authority as facilities to which this section does not apply.

SECTION 23. Amends Section 42.042, Human Resources Code, by amending Subsections (e-1), (g), and (h-1), and adding Subsection (s) as follows:

(e-1) Prohibits DFPS from prohibiting possession of lawfully permitted firearms and ammunition in an agency foster home, rather than in a foster home of any type, including a foster group home, a foster home, and agency foster group home, and an agency foster home. Makes no further changes to this subsection.

(g) Authorizes the executive commissioner of HHSC (executive commissioner) to recognize and treat differently the types of services provided by certain facilities, including: foster family operations, specialized child-care homes, and continuum-of-care residential operations, rather than foster group homes, foster homes, and agency foster group homes.

(h-1) Deletes agency foster group homes as facilities for which the executive commissioner is required to adopt rules for governing the verification and monitoring.

(s) Requires a continuum-of-care residential operation to ensure that each residential child-care facility operating under the operation's license complies with this chapter and any standards and rules adopted under this chapter that apply to the facility. Authorizes the executive commissioner, by rule, to prescribe the actions a continuum-of-care residential operation must take to comply with the minimum standards for each facility type.

SECTION 24. Amends Section 42.0421(e), Human Resources Code, to require the executive commissioner, by rule, to require certain individuals of certain entities, including foster family operation or specialized child-care homes, rather than a group home or agency foster group home, to complete certain training.

SECTION 25. Amends Section 42.004(e), Human Resources Code, as follows:

(e) Requires DFPS, in addition to DFPS's responsibility to investigate an agency foster home, rather than an agency foster home or agency foster group home, under Subsection (c), to:

(1) to (3) makes conforming changes;

(4) conduct at least one annual enforcement team conference for each child-placing agency to thoroughly review the investigations or inspections of the child-placing agency and all of its agency foster homes, rather than its agency homes, to meet certain outcomes.

SECTION 26. Amends Section 42.0448, Human Resources Code, to include a continuum-of-care residential operation that includes a child-placing agency to agencies which DFPS is required to notify.

SECTION 27. Amends Section 42.0449, Human Resources Code, to require the executive commissioner to adopt rules specifying the actions that certain entities, including a specialized child-care home and a continuum-of-care residential operation that includes a child-placing agency are required to take after receiving a certain notice to ensure the health, safety, and welfare of each child residing in the specialized child-care home or verified agency foster home, rather than including an independent foster home, are required to take after receiving a certain notice to ensure the health, safety, and welfare of each child residing in the licensed foster home or verified agency foster home.

SECTION 28. Amends Section 42.045(d). Human Resources Code, as follows:

(d) Requires a child-placing agency or a specialized child-care home that is the primary residence of a caregiver to notify DFPS of any change of address for a verified agency foster home or specialized child-care home, rather than requires an independent foster home and a child-placing agency to notify DFPS of any changes of address for a licensed foster home or a verified agency foster home. Requires the child-placing agency and specialized child care home to notify DFPS of the address change within the earlier of two business days or 72 hours of the date the verified agency foster home or specialized child-care home changes its address, rather than requires the independent foster home and child-placing agency to notify DFPS of the address change within the earlier of two business days or 72 hours of the date the foster home changes its address.

SECTION 29. Amends the heading to Section 42.0451, Human Resources Code, to read as follows:

Sec. 42.0451. DATABASE OF VERIFIED AGENCY FOSTER HOMES AND SPECIALIZED CHILD-CARE HOMES; INFORMATION PROVIDED TO DEPARTMENT OF PUBLIC SAFETY.

SECTION 30. Amends Sections 42.0451(a) and (c), Human Resources Code, as follows:

(a) Requires DFPS to maintain a database of specialized child-care homes that are the primary residence of a caregiver and verified agency foster homes including the current address for each specialized child-care home or verified agency foster home as reported to DFPS, rather than a database of licensed foster homes and verified agency foster homes including the address for each licensed or verified home as reported to DFPS.

(c) Makes a conforming change.

SECTION 31. Amends Section 42.0452, Human Resources Code, as follows:

Sec. 42.0452. FOSTER PARENT RIGHTS AND RESPONSIBILITIES STATEMENT.

(a) Requires DFPS to develop a statement that lists the rights and responsibilities of foster parents in a specialized child-care, rather than foster, home or an agency foster home and of DFPS or a child-placing agency, as applicable.

(b) Makes a conforming change.

SECTION 32. Amends Section 42.046(a), Human Resources Code, to require an applicant for a license to operate a child-care facility, child-placing agency, or continuum-of-care residential operation, rather than an applicant for a license to operate a child-care facility or child-placing agency, or for a listing or registration to operate a family home to submit to DFPS a certain fee and application.

SECTION 33. Amends the heading to Section 42.0461, Human Resources Code, to read as follows:

Sec. 42.0461. PUBLIC NOTICE AND HEARING: RESIDENTIAL CHILD CARE.

SECTION 34. Amends Sections 42.0461(a), (d), and (e), Human Resources Code, as follows:

(a) Requires a certain applicant, at the applicant's expense, to take certain action before DFPS may issue a license of certificate for the operation or the expansion of the capacity of a general residential operation or a continuum-of-care residential operation, rather than

before DFPS may issue a license of certificate for the operation or the expansion of the capacity of a foster group home or foster family home that is located in a county with a population of less than 300,000 and that provides child care for 24 hours a day at a location other than the actual residence of a child's primary caretaker or of a general residential operation.

(d) Requires DFPS, before issuing a license or certificate described by Subsection (a), to consider written information provided by an interested party directly to DFPS's representative at the public hearing concerning certain matters, rather than to consider certain matters.

(e) Authorizes DPFS, based on the written information provided to DFPS's representative at the public hearing, rather than only authorizes DFPS, to deny the application if DFPS makes certain determinations.

SECTION 35. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0463, as follows:

Sec. 42. 0463. EXPANSION OF CAPACITY. Authorizes DFPS, notwithstanding the limitations established by Section 42.002, to issue an exception in accordance with DFPS rules allowing an agency foster home, cottage family home, or specialized child-care home to expand its capacity and care for not more than eight children.

SECTION 36. Amends Section 42.048(e), Human Resources Code, as follows:

(e) Prohibits a residential child-care facility operating under the license of a continuum-of-care residential operation that changes location from continuing to operate under that license unless DFPS approves the new location after the continuum-of-care residential operation meets all requirements related to the new location.

SECTION 37. Amends Section 42.053, Human Resources Code, as follows:

Sec. 42.053. New heading: AGENCY FOSTER HOMES. (a) Deletes an agency foster group home as an entity to which this subsection applies.

(b) to (d) Makes conforming changes.

(e) Authorizes a child-placing agency, before verifying an agency foster home, to issue a provisional verification to the home. Authorizes the executive commissioner, by rule, to establish the criteria for a child-placing agency to issue a provisional verification to a prospective agency foster home.

(f) Provides that if a child-placing agency under contract with the child protective services division of DFPS to provide services as an integrated care coordinator places children with caregivers described by Subchapter I (Relative and Other Designated Caregiver Placement Program), Chapter 264 (Child Welfare Services), Family Code, those caregivers are not considered a part of the child-placing agency for purposes of licensing.

SECTION 38. Amends Section 42.0531, Human Resources Code, as follows:

Sec. 42.0531. New heading: SECURE AGENCY FOSTER HOMES. (a) Deletes secure agency foster group home as a facility to which this subsection applies.

(b) to (c) Makes conforming changes.

SECTION 39. Amends Sections 42.0535(a), (b), (d), and (e), Human Resources Code, as follows:

(a) Deletes an agency group home and group home as facilities to which this subsection applies.

(b) and (d) Makes conforming changes.

(e) Deletes a foster group home and includes an agency foster home, rather than foster home, as facilities to which this subsection applies.

SECTION 40. Amends Sections 42.054(a), (d), and (g), Human Resources Code, as follows:

(a) Includes a continuum-of-care residential operation among facilities to which this subsection applies. Makes nonsubstantive changes.

(d) Provides that the annual license fee is due on the date on which DFPS issues the initial license to the child-placing agency or continuum-of-care residential operation and on the anniversary of that date, rather than on which DFPS issues the child-placing agency's initial license and on the anniversary of that date.

(g) Deletes existing text of Subdivision (1) to make a conforming change and redesignates Subdivisions (2)-(4) as Subdivisions (1)-(3). Makes no further changes to this subsection.

SECTION 41. Amends Section 42.0561, Human Resources Code, as follows:

Sec. 4.0561. INFORMATION RELATING TO FAMILY VIOLENCE REPORTS. Requires the child-placing agency to obtain certain information before a child-placing agency may issue a verification certificate for an agency foster home, rather than requires DFPS or the child-placing agency to obtain certain information before DFPS may issue a license or registration for a foster home or a child-placing agency may issue a verification certificate for an agency foster home.

SECTION 42. Amends Section 42.063(d), Human Resources Code, to require an employee or volunteer of a general residential operation, child placing agency, continuum-of-care residential operation, foster family operation, or specialized child-care home, rather than an employee or volunteer of a general residential operation, child-placing agency, foster home, or foster group home, to report any serious incident directly to DFPS if the incident involved a child under the care of the operation, agency, or home.

SECTION 43. Repealer: Section 42.0461(f) (relating to certain child-placing agencies complying with certain notice and hearing requirements and providing DFPS with information relating to certain considerations), Human Resources Code;

Repealer: Section 42.0461(g) (relating to DFPS prohibiting a child-placing agency from verifying the proposed agency foster home or agency foster group on certain grounds), Human Resources Code.

SECTION 44. Provides that this Act applies only to a license or registration issued or renewed on or after the effective date of this Act. Requires facilities licensed or registered in a facility category that is not continued following the changes in law made by this Act to continue to operate under the license or registration as it existed before the effective date of this Act until the license or registration is expired. Requires the facilities to renew a license or registration under the new license or registration category.

SECTION 45. Effective date: September 1, 2017.