

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1208
By: Schwertner
Health & Human Services
4/12/2017
Committee Report (Substituted)

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. (Original Author's / Sponsor's Statement of Intent)

C.S.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 18 (Section 42.042, Human Resources Code) and SECTION 32 (Section 42.053, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 18 (Section 42.042, Human Resources Code), SECTION 19 (Section 42.0421, Human Resources Code), SECTION 22 (Section 42.0449, Human Resources Code) and SECTION 34 (Section 42.0535, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the Department of Family and Protective Services in SECTION 30 (Section 42.0463, 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 Section 29.081(d), Education Code, to redefine "student at risk of dropping out of school."

SECTION 3. Amends Section 101.0133, Family Code, to redefine "foster care."

SECTION 4. Amends Section 101.017, Family Code, to redefine "licensed child placing agency."

SECTION 5. Amends Section 262.011, Family Code, as added by Chapter 338 (H.B. 418), Acts of the 84th Legislature, Regular Session, 2015, 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 6. 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 7. Amends Section 263.008(e), Family Code, as follows:

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

SECTION 8. Amends Section 264.0111(a), Family Code, to provide that a certain child, including a child who has been placed by the Department of Family and Protective Services (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 9. Amends Sections 264.751(1) and (3), Family Code, to redefine "designated caregiver" and "relative caregiver."

SECTION 10. Amends Section 264.760, Family Code, to authorize a relative or other designated caregiver who becomes verified by a licensed child-placing agency to operate an agency foster home under Chapter 42, Human Resources Code, rather than a certain individual licensed by DFPS or verified by a licensed child-placing agency or DFPS to operate a foster home, foster group home, or agency foster group home, to receive foster care payments in lieu of the benefits provided by this subchapter (Relative and Other Designated Caregiver Placement Program), beginning with the first month in which the relative or other care giver becomes licensed or is verified.

SECTION 11. Amends Section 264.8521, Family Code, as follows:

Sec. 264.8521. 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 verified agency foster home, rather than a licensed foster home. Makes conforming changes.

SECTION 12. Amends Section 531.151(3), Government Code, to redefine "institution."

SECTION 13. Amends Section 31.002(b), Human Resources Code, to redefine "dependent child."

SECTION 14. 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 (Children's Outreach Heart Program) and HHSC rules.

SECTION 15. Amends Section 42.002, Human Resources Code, by amending Subdivisions (4), (5), (6), (10), (11), (12), (13), and (19) and adding Subdivision (24), as follows:

- (4) Redefines "general residential operation."
- (5) Defines "continuum-of-care residential operation." Deletes existing definition of "foster group home."
- (6) Defines "cottage home operation." Deletes existing definition of "foster home."
- (10) Defines "cottage family home." Deletes existing definition of "agency foster group home."
- (11) Redefines "agency foster home."
- (12) Redefines "child-placing agency."
- (13) Redefines "facilities."
- (19) Redefines "residential child-care facility."
- (24) Defines "specialized child-care home."

SECTION 16. Amends Subchapter A, Chapter 42, Human Resources Code, by adding Section 42.0031, as follows:

Sec. 42.0031. REFERENCE TO PART OF CONTINUUM-OF-CARE OPERATION. Requires a reference in this code or in any other law to a type of residential child-care facility that is a part of a continuum-of-care operation, with respect to a continuum-of-care operation, to be construed as a reference to that portion of the continuum-of-care operation, and authorizes DFPS to take all regulatory action with respect to the continuum-of-care operation that DFPS could take with respect to the type of residential child-care facility, as further specified in DFPS rule.

SECTION 17. 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 18. 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: general residential operations, cottage home operations, specialized child-care homes, group day-care homes, and day-care centers, rather than foster group homes, or foster homes, and continuum-of-care residential operations, rather than agency foster 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 19. Amends Section 42.0421(e), Human Resources Code, to require the executive commissioner, by rule, to require certain individuals of certain entities, including cottage home operation or specialized child-care homes, rather than a foster group home or agency foster group home, to complete certain training.

SECTION 20. Amends Section 42.044(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) through (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 21. 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 of a certain report.

SECTION 22. Amends Section 42.0449, Human Resources Code, to require the executive commissioner to adopt rules specifying the actions that DFPS, a child-placing agency and a continuum-of-care residential operation that includes a child-placing agency, rather than 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 verified agency foster home, rather than the licensed foster home or verified agency foster home.

SECTION 23. Amends Section 42.045(d). Human Resources Code, as follows:

(d) Requires a child-placing agency, rather than an independent foster home and a child-placing agency, to notify DFPS of any change of address for an agency foster home, rather than for a licensed foster home or a verified agency foster home. Requires the child-placing agency to notify DFPS of the address change within the earlier of two business days or 72 hours of the date the agency foster home or 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 24. Amends the heading to Section 42.0451, Human Resources Code, to read as follows:

Sec. 42.0451. DATABASE OF AGENCY FOSTER HOMES; INFORMATION PROVIDED TO DEPARTMENT OF PUBLIC SAFETY.

SECTION 25. Amends Sections 42.0451(a) and (c), Human Resources Code, as follows:

(a) Requires DFPS to maintain a database of agency foster homes including the current address for each 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 26. 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 an agency foster home and child-placing agency, 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 27. 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 28. 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 29. 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, a cottage home operation, or a continuum-of-care residential operation that is located in a county with a population of less than 300,000, 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 30. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.0463, as follows:

Sec. 42.0463. EXPANSION OF CAPACITY. (a) Authorizes DFPS, notwithstanding the limitations established by Section 42.002, to develop, by rule, criteria to determine when it may be appropriate to exclude children who are related to a caretaker in determining a residential child-care facility's total capacity and 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.

(b) Authorizes DFPS to include children who are related to a caretaker when determining under Subsection (a)(1) whether a residential child-care facility complies with the standards relating to total capacity or child-to-caregiver ratios for the facility.

SECTION 31. Amends Section 42.048(e), Human Resources Code, to prohibit 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 32. 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) through (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 division of DFPS designated to regulate certain child-care entities to provide services as an integrated care coordinator places children with caregivers described by Subchapter I, Chapter 264 (Child Welfare Services), Family Code, those caregivers are not considered a part of the child-placing agency for purposes of licensing.

SECTION 33. 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 34. Amends Sections 42.0535(a), (b), (d), and (e), Human Resources Code, as follows:

(a) Requires a child-placing agency that seeks to verify an agency foster home to request background information about the agency foster home from a child-placing agency that has previously verified the home as an agency foster home or agency foster group home. 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 verified foster home, and includes an agency foster home, rather than foster home, as facilities to which this subsection applies.

SECTION 35. Amends Sections 42.054(a), (b), (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.

(b) Requires DFPS to charge each child-placing agency and continuum-of-care residential operation a fee for an initial license.

(d) Requires DFPS to charge each licensed child-placing agency and continuum-of-care residential operation or annual license fee. 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 existing Subdivisions (2)-(4) as Subdivisions (1)-(3). Makes no further changes to this subsection.

SECTION 36. Amends Section 42.0561, Human Resources Code, as follows:

Sec. 42.0561. 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 37. 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, cottage home operation, or specialized child-care home, rather than a 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 38. Repealers: 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), and (g) (relating to DFPS prohibiting a child-placing agency from verifying the proposed agency foster home or agency foster group home on certain grounds), Human Resources Code.

SECTION 39. Requires the executive commissioner, subject to an appropriation of funds for this purpose, to adopt minimum standards related to continuum-of-care operations, cottage home operations, and specialized child-care homes as provided by Section 42.042, Human Resources Code, as amended by this Act, as soon as practicable after the effective date of this Act.

SECTION 40. (a) Requires the executive commissioner to develop and implement a procedure by which a residential child-care facility that holds a license or certification issued under Chapter 42, Human Resources Code, is authorized to convert the license or certification to a new type of residential child-care facility license or certification created by this Act.

(b) Authorizes HHSC, with respect to a residential child-care facility converting a license or certification under Subsection (a) of this section, to waive requirements for an initial inspection, an initial background and criminal history check, or a family violence report, or for notice and hearing if HHSC determines that previous inspections, background and criminal history checks, family violence reports, or notice and hearing, as applicable, were conducted and are sufficient to ensure the safety of children receiving care at the residential child-care facility converting a license or certification.

SECTION 41. (a) Requires the executive commissioner to develop and implement a procedure that requires a foster home or a foster group home that holds a license issued by DFPS under Chapter 42, Human Resources Code, before September 1, 2017, to convert the license to another residential child-care facility license issued under Chapter 42, Human Resources Code, or relinquish the license.

(b) Authorizes HHSC, with respect to a foster home or foster group home converting a license under Subsection (a) of this section, to waive requirements for an initial inspection, an initial background and criminal history check, or a family violence report, or for notice and hearing if HHSC determines that previous inspections, background and criminal history checks, family violence reports, or notice and hearing, as applicable, were conducted and are sufficient to ensure the safety of children receiving care at the foster home or foster group home converting a license or certification.

(c) Prohibits DFPS from issuing a license or certification to a foster home or foster group home after August 31, 2017.

(d) Authorizes a foster home or a foster group home that was licensed by DFPS before September 1, 2017, to continue to operate under the law as it existed immediately before the effective date of this Act, and provides that law is continued in effect for that purpose, until each foster home and foster group home has been converted to another residential child-care facility license or the license has been relinquished.

SECTION 42. (a) Requires the executive commissioner to develop and implement a procedure that requires a child-placing agency that verified, before September 1, 2017, an agency foster group home according to the Minimum Standards for Child-Placing Agencies to convert the agency foster group home to an agency foster home or to close the agency foster group home.

(b) Authorizes HHSC, with respect to a child-placing agency converting an agency foster group home under Subsection (a) of this section, to waive requirements for an initial inspection, an initial background and criminal history check, or a family violence report, if HHSC determines that previous inspections, background and criminal history checks, or family violence reports, as applicable, were conducted and are sufficient to ensure the safety of children receiving care at the agency foster home.

(c) Prohibits a child placing agency from verifying an agency foster group home after August 31, 2017.

(d) Authorizes an agency foster group home that was verified by a child-placing agency before September 1, 2017, to continue to operate under the child-placing agency that verified the home and under the law as it existed immediately before the effective date of this Act, and provides that law is continued in effect for that purpose, until each agency foster group home has been converted to a verified foster home or has been closed.

SECTION 43. Effective date: September 1, 2017.