

SUBJECT: Alternative accreditation for religious organizations providing child care

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Hilderbran, Naishtat, Christian, Davila, Maxey, McReynolds, Wohlgemuth

0 nays

2 absent — Chavez, Krusee

WITNESSES: For — David Gibbs; G. Edward MacClellan; Elizabeth Seale

Against — LaVerne Redwine, Child Care Providers of Texas; Loretta Robertson, Austin Association for the Education of Young Children; Jack Daniels; Eugene Boone

On — Howard Baldwin, Department of Protective and Regulatory Services; Ken Hobble, Texas Licensing Child care Association

DIGEST: CSHB 2482 would require the Department of Protective and Regulatory Services (DPRS) to establish procedures to authorize a child care facility to operate without a license if the facility was accredited by an alternative accreditation organization approved by DPRS.

DPRS approval would be extended to recognized private organizations that promulgate and require compliance with standards and inspection procedures for child care centers that are substantially similar to or exceed the state's minimum requirements. An accreditation organization would be required to file a copy of its standards and procedures with DPRS. DPRS would have to prescribe an annual renewal procedure for accreditation organizations to ensure continued compliance.

A child care facility approved by an alternative accreditation agency would have to register with DPRS and could be required to pay an administrative fee. DPRS would grant a one-year approval within 30 days if an organization satisfied all requirements. Accreditation agencies would have to notify DPRS within seven days if they revoked the accreditation of a

child care facility. A facility would not be able to operate with revoked accreditation unless granted a license by DPRS.

An accreditation agency would have to obtain from DPRS information from the central registry of reported cases of child abuse and neglect to determine if a child care provider seeking to register was listed as a person who abused or neglected a child. The agency or DPRS could conduct criminal history checks on an operator or employee of a child care facility seeking to register. DPRS would be able to revoke an application or renewal certificate under accreditation based on the results of the background checks.

DPRS could conduct limited inspections of a facility accredited under the alternative program if it received a complaint of child abuse or neglect or a complaint about violations of standards that would create an immediate threat to the health or safety of the children in the facility. DPRS would also be able to suspend a facility's certificate for 10 days in cases of immediate threats to the health and safety of the children at the facility. DPRS also could remove the children if necessary. The facility could appeal DPRS actions.

CSHB 2482 would specify that the authority of local, regional and state fire inspection officials would not be affected by these provisions.

The bill also would stipulate that provisions for regulating child care facilities through alternative accreditation bodies would not give governmental agencies authority over the ministry or teaching of these facilities, the religious environment, or their ability to select and supervise qualified personnel and control the terms of employment.

CSHB 2482 would take effect on September 1, 1997. DPRS would have to adopt alternative accreditation rules by March 1, 1998.

**SUPPORTERS
SAY:**

CSHB 2482 would help remedy the lack of quality, affordable child care in Texas by allowing faith-based organizations to operate child care facilities without having to undergo state regulatory procedures that may conflict with their missions and goals. Many of these organizations find it hard to comply with extensive government regulations because of the budget constraints

under which they operate. More importantly, some faith-based organizations value their religious identity to the extent that they feel uncomfortable subordinating their ministry to governmental regulation and may genuinely fear that the state will undermine their religious ideas and practices.

Apart from these superficial differences, state regulators and faith-based organizations share a common mission: to care for the children of Texas. These organizations view this mission as a sacred trust and are therefore amenable to vigorous oversight by private agencies that maintain the highest standards. There are already many nationally recognized alternative accreditation agencies with standards far superior to Texas standards.

In December 1996, Gov. Bush unveiled the report of his faith-based task force that called for more emphasis on private philanthropy as an alternative to welfare and other state programs. One of the report's recommendations was to allow faith-based organizations to be accredited by private entities as an alternative to undergoing state licensing procedures for certifying facilities and programs for child care and other juvenile services.

An alternative accreditation process would provide the flexibility needed to enlist faith-based organizations in the effort to satisfy child care needs in Texas. Similar legislation has proven successful in Florida, where communities have seen increased availability of long-term residential child care services at a decreased cost to taxpayers. At least nine other states also have carved out exceptions to their regulatory processes to account for the uniqueness of religious child care providers. These exceptions range from complete exemptions from licensing requirements to an alternative accreditation system such as the one proposed by CSHB 2482. Furthermore, there has not been one single successful constitutional challenge to any of these systems.

CSHB 2482 would provide a reasonable alternative accreditation process for religious entities while retaining safeguards to ensure the safety of children. The state would retain all its police powers to conduct investigations in cases of abuse and neglect, suspend the accreditation agency's license, and even remove children in emergency situations. CSHB 2482 also would allow criminal history checks to be conducted and provide for revocation of

accreditation. Local municipalities would still be able to enforce local fire, health and safety codes.

Ultimately, the success of CSHB 2482 will be up to the consumers, who will always seek out the best possible child care alternative. The bill cannot guarantee that problems will not arise; even under current licensing procedures, tragedies do occur in child care facilities. A government license does not guarantee that people will always act wisely. There will always be irresponsible elements in society. However, national accreditation agencies are likely to steer clear of fringe groups for fear of losing their status.

CSHB 2482 would build on existing exemptions for religious educational facilities in the Human Services Code. The bill would not raise issues of separation of church and state or equal protection concerns because its provisions would not be limited to faith based organizations. Any private organization that met the standards would be able to participate in the alternative accreditation process. Requiring that these facilities meet standards “substantially similar to” existing state standards would not be vague or confusing; this legal phrase is common in case law and has already been used in several bills filed this session.

**OPPONENTS
SAY:**

Lurking behind CSHB 2482 is a real potential for litigation from separation of church and state issues. Making a distinction or granting an exemption for religious reasons will always raise constitutional problems. In addition, because CSHB 2482 would provide different standards for different groups, it would likely generate equal protection issues. While states can regulate child care, they cannot treat entities differently based on religion.

Requiring an entity to comply with state regulations does not compromise freedom of religion. Existing child care standards do not make reference to or restrict curriculum issues, philosophy or religious orientation. These regulations concern the safety and welfare of children and are about numbers, such as staff-to-child ratio and maximum group size; they are not based on content.

At best, CSHB 2482 would not magically make it possible for faith-based organizations to provide child care and, at worst, could potentially place many Texas children at physical, emotional or developmental risk by

allowing for the accreditation of fringe groups with outdated notions of proper disciplinary measures for children. Parents seeking child care may be lulled by this “accredited status” and leave their children vulnerable under a false sense of security. The minimum standards for child care in Texas already are among the lowest in the country; it makes little sense to exempt facilities from these standards.

**OTHER
OPPONENTS
SAY:**

Any alternative accreditation process should provide for standard that meet or exceeds the state’s minimum standards instead of being substantially similar to those standards. The language is vague and open for subjective interpretation, and could ultimately lead to litigation.

NOTES:

The committee substitute required that accrediting agencies have inspection procedures substantially similar to or exceeding state standards and that they obtain information from the central registry of child abuse cases, and allowed DPRS to suspend certificates and remove children from facilities in emergency situations and to suspend or revoke approvals of accrediting organization in certain situations.

The companion bill, SB 1071 by Sibley, et al., has been referred to the Senate Health and Human Services Committee.