

SUBJECT: Balances in the nursing and convalescent home trust fund

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 18 ayes — Junell, West, Coleman, Cuellar, Delisi, Flores, Gallego, Glaze, Gutierrez, McReynolds, P. Moreno, Mowery, Pickett, Pitts, Staples, Tillery, S. Turner, Van de Putte

0 nays

9 absent — Eiland, Farrar, Giddings, Hartnett, Heflin, Hochberg, Janek, Luna, Puente

WITNESSES: For — None

Against — None

On — Eric Bost, Bobby Halfmann, and Jim Lehrman, Texas Department of Human Services; Tim Graves, Texas Health Care Association

BACKGROUND: The state maintains a nursing and convalescent home trust fund to provide emergency assistance funds to alleviate an immediate threat to the health and safety of nursing home residents. The Texas Department of Human Services (DHS) may disburse money from the fund only under a court order and a finding that an emergency exists. This usually occurs when the state needs to take over a nursing home's operations through a trusteeship.

The fund is maintained through per-bed fees assessed on nursing homes by DHS as needed to maintain the required balance of \$500,000. At the end of each fiscal year, any unencumbered amount in excess of \$500,000 is transferred to general revenue.

DIGEST: CSHB 2909 would raise the allowable excess fund balance to \$10 million and would authorize DHS to adopt an annual fee if the amount in the fund was less than \$10 million. The bill also would authorize DHS to charge and collect the fee more than once each year only if necessary to make emergency disbursements. DHS would have to notify the governor and the Legislative Budget Board (LBB) when making second and subsequent assessments.

Total fees assessed in a year could not exceed \$20 per licensed nursing home bed.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. The change in the allowable excess fund balance would apply only to the unencumbered amount in the fund at the end of the current fiscal year.

**SUPPORTERS
SAY:**

The changes proposed by CSHB 2909 are necessary to meet the needs of residents in the event that multiple nursing homes require conservatorship. This happened in the Tarrant County region in January 1999, when the state took over 13 facilities owned by Sensitive Care Corp. because of fraudulent practices and found the facilities to be essentially bankrupt.

Taking control over bankrupt and mismanaged facilities is an expensive but necessary task to help vulnerable residents who have nowhere else to live. Although nursing home operators must pay the expenses of a trusteeship over one of their facilities, their underlying financial circumstances can be so bad that they do not have sufficient resources to do so.

The amount of \$10 million was chosen because it would provide a more appropriate and effective response to true emergencies. For example, at one time this year, the state faced a possible cost of more than \$8.5 million just to keep the 13 Sensitive Care homes operating for about four months while seeking buyers or relocating the residents.

Assessing nursing homes to maintain this fund would be a good way to make sure that the industry has a vested responsibility in taking care of some of its problems. Texas nursing homes as a group would be less willing to protect bad facilities and more willing to support better regulation if they had to help pay for some of the negligent and intentionally bad practices of some nursing home owners and operators. Assessing an industry to support an emergency fund is common public policy — for example, it is used to address potential problems in the insurance industry and proprietary schools. The assessments would occur over a period of time so that nursing homes would not take a big “hit” all at once, and nursing homes’ contributions would be capped at \$20 per bed.

OPPONENTS
SAY:

Raising the fund balance to \$10 million may be too high. The problems the state experienced with Sensitive Care Corp. were unusual, and the state now knows of better ways to avoid similar occurrences in the future.

Asking all nursing homes to pay for the problems of a few bad operators would not necessarily improve the overall quality of care in Texas' nursing homes. The cost of the assessments could wind up being passed on to consumers and the Medicaid program.

NOTES:

The committee substitute changed the original bill by adding the provisions that would require DHS to notify the governor and LBB when making two or more fund assessments in a year and that would cap total assessments at \$20 per licensed nursing home bed.

Other bills introduced this session in response to the Sensitive Care Corp. nursing homes situation include:

- ! HB 3625 by Naishtat/SB 1198 by Moncrief, which passed the Senate on the Local and Uncontested Calendar on April 8, requiring surety bonds, both pending before the House Human Services Committee;
- ! HB 3627 by Naishtat/SB 1292 by Zaffirini, monitoring the financial condition of nursing facilities; and
- ! HB 3628 by Naishtat/SB 1197 by Moncrief, relating to trusteeship of a nursing home.

SB 1292, which passed the Senate on the Local and Uncontested Calendar on April 13, and SB 1197, which passed the Senate on March 31, both have been reported favorably by the House Human Services Committee and recommended for the Local, Consent, and Resolutions Calendar.