

SUBJECT: Assisted living facilities' participation in Joint Underwriting Association

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Seaman, Bonnen, Gallego, Keffer, Taylor, Thompson,
Van Arsdale

0 nays

1 absent — Eiland

SENATE VOTE: On final passage, March 27 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Assisted living facilities are residences for elderly or disabled people who cannot live in their own homes but who do not need the level of care offered in a nursing home. Typical assisted living services include meals; activities such as bathing and dressing, help with medications, housekeeping, laundry, transportation, and shopping.

Insurance Code, art. 5.15-1 regulates rate setting for liability insurance for health-care providers. It requires insurers to consider many factors when setting rates, including the past and prospective loss and expense experience for all professional liability insurance for Texas health-care providers and the impact of risk management courses. Rates must be reasonable and not excessive or inadequate. The statute regulates reporting requirements and the process for changing rates. Liability insurance policies issued to health-care providers or physicians may not include coverage for punitive damages that may be assessed against the provider or physician.

In 1975, the 74th Legislature established the Joint Underwriting Association (JUA) to provide medical liability insurance for physicians and other health-care providers who cannot find coverage in the voluntary, licensed insurance market. The JUA comprises all insurers engaged in writing automobile and other liability insurance in Texas. A nine-member board of directors representing member insurers, physicians, hospitals, and the public governs

the JUA. In 2001, the 77th Legislature enacted SB 1839 by Moncrief, which allowed nursing homes to participate in the JUA.

Under current law, any registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, for-profit or not-for-profit nursing home, radiation therapy center, nonprofit blood bank, migrant health center, or community health center duly licensed or chartered by the state to provide health care may participate in the JUA.

Groups that participate in the JUA also pay into a policyholder's stabilization reserve fund. Annual payment is in proportion to the premium payment for liability insurance through the association. Collections of the stabilization reserve fund continue only until the net balance of the fund equals the sum of premiums in the following year. SB 1839 authorized the state to issue bonds through the Texas Public Finance Authority (TPFA) to fund the initial corpus of the JUA for nursing homes, but the state has not done so yet.

DIGEST:

SB 421 would allow assisted living facilities to obtain liability insurance through the JUA under the same requirements, restrictions, and limitations as nursing homes. The bill also would shift authority from the former Texas Department of Insurance board to the insurance commissioner for prioritizing the order in which categories of physicians, health-care providers, and facilities are deemed eligible to obtain coverage.

Health-care providers and facilities, other than physicians, would be subject to a new eligibility process. After notice and opportunity for a hearing, the commissioner could determine that appropriate liability coverage was not available to a particular type of practitioner or facility and could order its inclusion in the JUA. The order also could designate whether the group would be included in the stabilization fund or if a separate fund would be created.

The bill also would repeal the required adoption of minimum rating standards for for-profit nursing homes that must be met before such a nursing home may obtain coverage through the association.

SB 421 would limit the applicability of the JUA's exclusion of exemplary damages when those damages are not covered by a nursing home or assisted living facility's policy. The exclusion would apply only to assisted living

facility policies delivered or renewed on or after September 1, 2003, and to the portion of the policy's term that occurred before January 1, 2006. The JUA would have to pay exemplary damages for assisted living facilities when the damages were not covered by the assisted living facility's policy if the claim was or should have been made after September 1, 2003, but before January 1, 2006.

SB 421 would extend the authorization for the state to issue bonds through the TPFA to fund the initial corpus of the JUA for nursing homes to include assisted living facilities.

The bill would repeal requirements that reinstate the stabilization fund charges to health-care participants other than nursing homes when the losses attributable to that group exceed 25 percent of the entire losses.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

Assisted living facilities face the same out-of-control premium increases for liability insurance as other health-care providers face, yet they do not have access to the insurer of last resort. Rising liability insurance rates and declining reimbursement have forced many assisted living facilities to operate at a loss. If the state does not address this problem, its network of long-term care for the elderly will continue to deteriorate.

SB 421 would not propose to pay for the assisted living facility industry's liability insurance. Through the JUA, assisted living facilities, like other health-care providers, simply could buy their own coverage. Revenue from the proposed bonds could create a stabilization fund quickly, and members would service the bond debt through maintenance fees.

Assisted living facilities should not have to carry liability insurance in exchange for access to the JUA. That would not be a fair trade, because some facilities could not afford the coverage the JUA offers. Nursing homes would not have to carry liability insurance either if a related bill, HB 3354 by J. Davis, is enacted.

**OPPONENTS
SAY:**

SB 421 might not help assisted living facilities obtain coverage. Nursing homes have found that the JUA offers access, not affordability, and that

coverage through the JUA still is too expensive. The state should focus on other legislative initiatives, such as limiting liability, before adding more groups to the JUA.

If assisted living facilities join nursing homes in the stabilization fund, the law should protect nursing homes against the prospect that assisted living facilities might account for a disproportionate share of losses. While the provider groups may not need the provision that reinstates stabilization fund charges for a group that is accountable for high losses, nursing homes should be protected by implementing higher stabilization charges if assisted living facilities cause the fund to suffer heavy losses.

**OTHER
OPPONENTS
SAY:**

Nursing homes obtained access to the JUA only in exchange for mandatory liability insurance. Assisted living facilities should have to operate under the same mandate in exchange for the benefit of the JUA.

NOTES:

SB 421 is identical to HB 784 by J. Davis, which the House Insurance Committee considered in a public hearing on March 24 and left pending.