

SUBJECT: Licensing and regulation of group homes

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Rose, S. King, J. Davis, Hughes, Naishtat
0 nays
4 absent — Eissler, Herrero, Parker, Pierson

WITNESSES: For — Derek Daniels, Texas Assisted Living Association; Glen Hartman, San Antonio/Bexar County Commission for the Elderly; AArce Hayes, Advocacy, Inc., Mental Health America, Texas Mental Health Consumers; Carlos Higgins, Texas Silver-Haired Legislature; Jane Johnson, Montgomery Co., Houston area TORCH; Nick Monreal, Alamo Area Council of Governments, Area Agency on Aging; Kathy Schoeneberg, Texas Organization of Residential Care Homes; (*Registered, but did not testify*: Dennis Borel, Coalition of Texans with Disabilities; James Jonas, City of San Antonio; Lee Spiller, Citizens Commission on Human Rights; Guy Herman; Melanie Oldham)

Against — (*Registered, but did not testify*: Lora Butter, Mission Road Developmental Center; Richard Hernandez, EduCare Community Living)

On — Dolores Carrillo, Personal Attendant Coalition of Texas; Cathy Robles Cranston, ADAPT of Texas, Personal Attendant Coalition of Texas; Bob Kafka, ADAPT, PACT; Keith Lofton, ADAPT of Texas, PACT; Jennifer McPhail, ADAPT of Texas; Albert Metz, ADAPT of Texas; Paul Reyes, ADAPT, PACT; Danny Saenz, ADAPT of Texas; Carole Smith, Private Providers Association of Texas; Terral Smith, Texas Legal Services Center - Facility Victim Program; Marie Lupe Vasquez, ADAPT, PACT; Carrie Warner, ADAPT, PACT; David Wittie, ADAPT of Texas; Amy Young, Texas Council for Developmental Disabilities; Freddy Gonzalez; Nelson Peet; (*Registered, but did not testify*: Gene Rodgers, ADAPT of Texas)

BACKGROUND: The Health and Safety Code contains the licensing statutes for many types of care facilities regulated by the Department of Aging and Disability Services (DADS).

DIGEST:

CSHB 1168 would create Health and Safety Code, ch. 254 to regulate group home facilities. A group home facility would be an establishment that provided services, including community meals, light housework, meal preparation, transportation, shopping, money management, or laundry services to three or more elderly or disabled residents. A group home would exclude facilities already regulated under the following licensing statutes:

- Home and Community Support Services;
- Convalescent and Nursing Homes;
- Continuing Care Facilities;
- Assisted Living Facilities; and
- Intermediate Care Facilities for the Mentally Retarded (ICF-MRs).

Licensing requirements. A facility seeking a group home license would submit an application and license fee to DADS. After inspection and investigation, DADS could issue a two-year license for the facility that included the maximum number of residents that could reside at the facility. The license could be renewed upon inspection and submission of a renewal report and fee.

The executive commissioner of HHSC could adopt and enforce minimum standards relating to:

- the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions ensuring the residents' health, safety, and protection from fire hazard;
- sanitary and related conditions, including water supply, sewage disposal, food handling, and general hygiene;
- equipment essential to the residents' health and welfare;
- the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of general resident safety policies;
- policies and procedures for the control of communicable diseases;
- specialized nutrition support;
- requirements for in-service education of the operator and each employee who had contact with residents;
- the regulation of the number and qualification of the operator and each employee responsible for providing services to residents; and
- quality of life.

DADS would consult with state and local agencies to maintain standards relating to the humane treatment of residents. DADS could assist local authorities in supplementing state rules with rules meeting local needs.

Group homes would have a reasonable time to comply with newly adopted standards, including fire safety standards. The time to comply could not exceed 12 months. DADS could deny, suspend, or revoke a license if a home did not meet licensing requirements. The applicant or licensee would have a right to a hearing on the matter.

Plans to construct or modify a facility would have to be approved by DADS before construction, and DADS could collect a reasonable fee to conduct the plan review. Each home would have to conspicuously post in a public area its license number, information pertaining to inspections, and the complaints process.

Inspections. Specialized DADS staff or a county or municipal authority designated by the agency could inspect or investigate a facility at any reasonable time and would have to be granted access to books, records, and other documents maintained on behalf of the facility. DADS could collect evidence of conditions threatening the health and safety of a resident, including making photocopies and taking photographs in a manner that was as respectful of resident privacy as possible. If taking a resident's photograph, the inspector would have to obtain the resident's permission to the greatest extent possible and publicly could not reveal a resident's identity. A home, operator, or employee of a home would not be civilly liable for surrendering confidential information.

Each licensing period, DADS would conduct at least two unannounced inspections and could require additional unannounced inspections. DADS would randomly select a certain number of these inspections to occur between 5 p.m. and 8 a.m. If appropriate, DADS could invite a citizen advocate who advocated for elderly or disabled persons to participate in the inspections. It would be an offense for someone to knowingly inform an unauthorized person of the date, time, or other information regarding an unannounced inspection.

DADS would establish a form to summarize each inspection report and complaint investigation report. DADS would establish procedures to make forms and reports regarding group homes available to consumers, residents, and the relatives of residents.

Following an investigation or inspection, DADS would list each violation and the law or rule it violated. The inspector would conduct an exit interview conveying this information to the group home operator and would provide a written list of the violations. A group home would have to submit a corrective action plan to correct the violations by the 10th day after receipt of the final list of violations.

Enforcement and penalties. DADS could petition a district court for a temporary restraining order to restrain a person from continuing a violation or operating without a license. The suit would be brought in the county in which the alleged violation occurred or in Travis County.

A person operating a group home without a license would commit a criminal offense punishable by a fine of up to \$1,000 for the first offense and up to \$500 for each subsequent offense. Each day the operator remained open after conviction would be a subsequent offense.

A person who committed a violation in connection with operation of a group home would be liable for a civil penalty not less than \$100 and not more than \$10,000 for each violation if the violation threatened the health and safety of a resident. Each day of a continuing violation would constitute a separate ground for recovery.

DADS could institute an administrative penalty for violations pertaining to regulation of a group home. The penalty would be not less than \$100 or more than \$1,000 for each violation, with the total penalty for a continuing violation not to exceed \$5,000. The executive commissioner of the HHSC would determine violations punishable by an administrative penalty and the amount of penalty that could be assessed for each violation. Unless the violation involved the health and safety of a patient, the facility would have 45 days to correct the violation, if a corrective action plan had been implemented, without being subjected to administrative penalty.

If the violation did not pose an immediate threat to the health and safety of a patient, DADS could offer amelioration. If the violator opted for amelioration, the money that would have been charged for an administrative penalty could be applied to correct the violation. A person opting for amelioration would have to submit an amelioration plan and would waive the person's right to administrative hearing. DADS would be limited in the number of times it could offer amelioration in a two-year

period and could require that an amelioration plan result in conditions that exceeded required standards.

Facility closures. DADS could issue an emergency suspension or closure against a facility if a violation would create an immediate threat to the health and safety of a resident. HHSC would develop a memorandum of understanding with county and municipal agencies to establish emergency placements for displaced residents and could reimburse the facility for costs associated with emergency placements. An order suspending a license or closing a facility would be valid for 10 days after the licensee received written notice.

A facility that closed would provide written notice of closure to each resident, DADS, and the local mental health authority. The facility would also attempt to inform residents' relatives. If the closure was temporary, the notice would note when the facility would reopen and the contact information for the facility operator. A facility no longer could charge new fees when the facility closed. It would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to fail to provide notice. A facility would provide a closure report summarizing final actions of the facility, including attempts to relocate residents.

Reports. A person having cause to believe that an elderly or disabled person was in a state of abuse, neglect, or exploitation would make a report to DADS, and employees of a facility would be held liable for failing to support such issues. An employee, volunteer, resident, or family member of a resident would have grounds for a suit if the facility took retaliatory action for making a complaint, reporting a violation, or cooperating in an investigation against a facility.

A group home would submit a report to DADS concerning the death of a facility resident or a former resident who had died within 24 hours of leaving the facility. All referrals of elderly or disabled persons to a group home would be reported to DADS, and governmental and private entities could not refer elderly or disabled persons to unlicensed homes.

DADS would include in its biennial report to the Legislature information regarding the number of group home license applicants and licensees, facility closures, investigations conducted, and a description of penalties assessed.

General provisions. The elderly and disabled persons general revenue account would be established for enforcement purposes and for transitional housing and case management services. The account would contain general appropriations to implement group home licensing as well as fees and penalties associated with regulation.

A facility could not administer medicine to a resident. The facility only could assist the resident with self-administration of a medicine through storing, scheduling times for administration, or refilling prescriptions for a medicine.

A facility could not receive any form of payment from an entity furnishing services or materials to the facility or residents for a fee.

The bill would take effect September 1, 2007, and a group home would not be required to be licensed until January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 1168 would create minimum standards for residents living in group home facilities. Most often, group home residents are elderly or disabled and need civil rights protections. While many group home facilities operate in a legitimate fashion, many others take advantage of residents and do not provide adequate care and accommodations.

CSHB 1168 would provide safeguards for residents. The bill would provide for minimum facility and service standards and could uncover violations of these standards through unannounced inspections. The bill would provide civil, criminal, and administrative penalties that would be tough enough to ensure compliance yet provide latitude for DADS to pursue lesser penalties for facilities willing to take prompt corrective action. When facilities were not willing to comply, CSHB 1168 would provide injunctive relief and emergency closure authority so that the most severe violators could be shut down. The bill would require that DADS create memoranda of understanding with local jurisdictions to facilitate locating emergency housing for displaced residents.

Small, licensed assisted-living facilities often must compete for residents with group homes that do not provide adequate levels of care. Licensed facilities have added costs for licensing fees and to ensure compliance with state laws. Certain bad-actor group homes take advantage of the lack of oversight by providing lesser levels of care and facility standards so that they can offer to board residents more inexpensively than other facilities.

This creates an imbalance in which residents requiring higher levels of care — hence higher expenses for a facility — gravitate to assisted-living centers, while less demanding residents gravitate to group homes. This creates a business disadvantage for other types of residential facilities. In regulating inadequate group home facilities, CSHB 1168 would create a more level playing field for various types of care providers.

Operators of home and community-based services (HCS) programs that provide residential services appropriately would be included in the licensing requirements of CSHB 1168. The standards that HCS programs must meet to become certified Medicaid providers are not as stringent as the standards to which the group home license would subject these programs. These standards also are not backed by the enforcement authority provided by CSHB 1168. If HCS providers want to be a viable alternative to ICF-MRs, they need to be subjected to the same level of stringent oversight.

The fiscal note on CSHB 1168 is of little consequence in comparison to the large number of people whose health, safety, and civil rights would be protected through greater regulation of group homes. The two floor amendments the author intends to accept would resolve concerns over the ability of a person required to register as a sex offender to reside in a group home and the ability of a person to find housing if the person had been displaced from a group home.

OPPONENTS
SAY:

The fiscal note on CSHB 1168 would be well in excess of \$20 million in general revenue-related funds each year. This would be too great a cost to the state at a time when there are more pressing priorities, such as reducing the waiting list for waiver services for the elderly and disabled. Interested community members could play a role in bringing bad-actor homes to the attention of law enforcement without instituting new, costly licensing standards.

OTHER
OPPONENTS
SAY:

While group homes should be licensed, CSHB 1168 should not require group home licensing for home and community-based services (HCS) programs. HCS programs should be excluded because HCS programs already must undergo review for certification as Medicaid providers. For residential HCS facilities with four or more residents, an annual on-site inspection is conducted and the review determines if the facility has met fire code and local building codes. Other extensive provisions in the Texas Administrative Code include ensuring that a facility complies with all

applicable health and safety laws, ordinances, and regulations. These HCS program rules were created by DADS and governed by principles of quality care provision. Sanctions can be assessed, including termination of waiver status and institution of corrective action plans if an HCS program does not meet these guidelines. Licensing of HCS programs would be duplicative and contributes a large portion of the fiscal note on this bill.

As a matter of safety for all group home residents, CSHB 1168 should disallow anyone required to register as a sex offender from residing in a licensed group home. In addition, the bill would not go far enough in requiring DADS to assist displaced residents of closed group homes in finding new homes. Finding new homes can prove difficult for a person with limited income and a high level of assistance needs.

NOTES:

The author intends to accept two floor amendments. One would disallow anyone required to register as a sex offender from residing in a licensed group home. The second amendment would require that DADS and the Department of State Health Services enter into a memorandum of understanding with the Texas Department of Housing and Community Affairs to coordinate housing resources for a person who had been displaced from a group home.

The fiscal note indicates a cost of \$50.1 million in general revenue-related funds in fiscal 2008-09. Costs would continue at between \$24.7 million and \$27.2 million through 2012. Costs would include DADS estimates of the number of group homes that would be licensed multiplied by the cost for FTEs and related expenses that the agency anticipates would be required to perform regulatory functions for this volume of facilities. DADS also anticipates FTE costs associated with developing five memoranda of understanding with each Texas county as well as costs associated with relocating residents if they were displaced from closed facilities. Finally, DADS anticipates technology costs to create a new facility type in their compliance tracking and data repository systems and new forms in the facility enrollment software. The attorney general estimates costs associated with cases filed against non-compliant group homes.

The companion bill, SB 690 by Shapleigh, was scheduled for a public hearing in the Senate Health and Human Services Committee on May 8.