

SUBJECT: Revisions to monitoring of certain aging and disability service providers

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, Gonzalez, Hopson, Laubenberg, Naishtat, V. Taylor

0 nays

3 absent — Morrison, Hughes, Hunter

SENATE VOTE: On final passage, April 14 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Rachel Hammon, Texas Association for Home Care and Hospice;
(*Registered, but did not testify*: Larry Farrow, Texas Hospice; Michael Gutierrez; Maxcine Tomlinson, Texas and New Mexico Hospice Organization)

Against — None

On — (*Registered, but did not testify*: Karen Nelson, HHSC Office of Inspector General)

BACKGROUND: A home and community support services agency (HCSSA) provides home health, hospice, or personal assistance services in a client's residence or a community-based independent living environment. HCSSAs are regulated by the Department of Aging and Disability Services (DADS) and must be licensed to operate. An HCSSA license is valid for two years. DADS may inspect a HCSSA office on site at any time in response to a complaint and for licensure renewal.

The Office of Inspector General (OIG) was created by the 78th Legislature in 2003 to prevent and reduce waste, abuse, and fraud in the Texas health and human services system. The inspector general is appointed by the governor.

DIGEST: CSSB 223 would revise provisions relating to the surveying, regulation, and compliance enforcement for HCSSAs, nursing facilities, adult day

care services, and consumer-directed services. It also would grant new authority to the OIG and HHSC regarding access to Medicaid provider information and provider participation.

HCSSAs. CSSB 223 would require HCSSAs to provide DADS inspectors a safe workspace while conducting surveys. DADS would have to at least semiannually provide joint surveyor and HCSSA staff training on subjects that addressed the 10 most common violations of federal or state law, and could charge a fee of up to \$50 per person for the training. HHSC would have to adopt rules specifying which license application information must be reported if changed since the application was filed, and license holders would be required to pay a \$50 fee to update the information. The bill would authorize HHSC to adopt rules regarding an HCSSA administrator's responsibilities. HHSC would have to adopt all rules by July 1, 2012.

Nursing facilities. Among the criteria of past compliance history that DADS would have to evaluate for license applications and renewals, CSSB 223 would authorize DADS to consider and evaluate the compliance history of the applicant for any period during which the applicant operated a facility in Texas or another state. DADS could exclude an entity from receiving a Texas nursing facility license throughout its lifetime, instead of a maximum of 10 years, if it had substantially failed to comply with state laws and rules. This exclusion provision would apply only to conduct that occurred on or after the effective date. The bill would newly authorize DADS to charge up to a \$50 per person fee for its semiannual training for long-term care facility staff on subjects that address the 10 most common violations of federal and state law. HHSC would have to adopt all rules by July 1, 2012, regarding this new fee.

Consumer-directed services. CSSB 223 would define a financial management services agency as an entity that contracted with DADS to serve as a fiscal and employer agent for a Medicaid recipient in a consumer-directed services program (in which recipients, called individual employers, hired their own service providers, such as personal attendants). The bill would authorize financial management services agencies to obtain and forward to the individual employer criminal history information of an applicant or employee. The bill would require individual employers to immediately discharge any employee whose criminal record barred employment. The bill also would make conforming changes regarding

criminal history administrative actions to reference financial management services or individual employers.

Adult day care facilities. DADS could newly assess an administrative penalty not to exceed \$500 per violation against a person who violated adult day care facility regulations or standards, made a false statement of material fact on a license application or an investigation, refused to allow a surveyor to inspect the premises or required records, interfered with enforcement, failed to pay a penalty within 30 days of assessment, or failed to notify the department of a change in ownership before an ownership change. DADS could not collect the penalty for certain infractions if the facility corrected the violation within 45 days. The facility would have to maintain the correction for at least a year, or DADS could impose a penalty three times greater than the original penalty. The bill also would specify DADS reporting requirements to the affected facility, opportunities for facilities to request and participate in a hearing contesting the violation or penalty, administrative law judge responsibilities, and provisions relating to penalty payment and interest accrual.

OIG. The bill would authorize the OIG to obtain criminal history record information from the Department of Public Safety. The bill would specify that the OIG could access criminal history information for a person with a direct or indirect ownership interest of 5 percent or more in a provider.

The bill also would authorize the OIG to put a hold on Medicaid reimbursement on receipt of reliable evidence of willful misrepresentation or fraud and would refer to federal Medicaid rules on time limits for when the provider would have to be notified.

The bill would include the OIG among the agencies that had a duty to share information relating to fraud and abuse (in addition to HHSC, other HHS agencies, and the Medicaid fraud enforcement division of the attorney general, as under current law). The agencies could enter into a memorandum of understanding to share criminal history record information of health care professionals.

The OIG would be newly authorized to suspend Medicaid providers' billing privileges, revoke their enrollment, or deny their applications. Both HHSC and the OIG could take these actions based on any exclusion or debarment of a provider from a state or federally funded health care

program, on the provider's failure to bill for medical assistance within a 12-month period, or on any of the federally required provider screening or enrollment provisions.

New provider conditions of eligibility. HHSC would have to require provider applicants for Medicaid to disclose all owners and part owners, any managing employees, and agents or subcontractors that were at least 5 percent owned by the applicant. The bill also would authorize HHSC to adopt rules in conformity with federal regulations that would allow them to impose temporary moratoriums, caps, or other limits on the enrollment of new providers determined to have a significant potential for fraud, waste, or abuse.

New Medicaid violations. Under the bill, providers would violate Medicaid regulations if they failed to maintain documentation to support a claim for payment in accordance with regulation and would be liable for either the claim amount or the payment of an administrative penalty, not to exceed \$500 for each violation.

Effective date. The bill would take effect September 1, 2011.

**SUPPORTERS
SAY:**

SB 223 would improve the state's oversight of long-term care providers and its ability to identify fraud and prevent bad actors from receiving taxpayer dollars, which should be used to provide health care for our neediest citizens. It would conform state law to new federal health care reform requirements regarding Medicaid regulation, in particular relating to provider ownership and criminal history, and amend the law to reflect current state policies or to improve state enforcement options.

According to the fiscal note, the bill would generate about \$506,658 during fiscal 2012-13 from training and administrative fees. The training fees would be appropriate because they would cover state costs in training providers how to meet Medicaid program and licensure requirements. Providers benefit from this training by providing improved quality of care and avoiding having to pay penalties from deficient operations.

The OIG provisions also are needed to streamline administrative processes and clarify current law. For example, currently the OIG must submit a separate written request for each licensed professional's criminal history information, even though this information may be available online through the various licensing boards' websites. A memo of understanding among OIG,

OAG, and other agencies will allow for more effective information sharing and protect the confidentiality of provider data. Documentation is critical in proving that taxpayer dollars were spent on care that was needed and was actually provided. The documentation provisions would help give flexibility for an OIG response to claims investigations in which the providers maintained incomplete records. Instead of withholding payment for cases in which documentation was incomplete, the OIG could determine whether the service was appropriately provided and pay the claim but also attach a penalty for poor documentation.

OPPONENTS
SAY:

This bill would authorize DADS to charge a fee for trainings it now provides free-of-charge. A \$50 per-person fee could be a disincentive for staff to participate in training on the 10 most common violations of federal and state law, and would thereby ultimately affect the safety and quality of care in those facilities.

NOTES:

The major changes the House committee substitute made to the Senate-passed version of the bill were:

- requiring DADS to impose fees on trainings now held for long-term care facilities;
- specifying that Medicaid providers or applicants would have to disclose any managing employees and certain agents or subcontractors;
- revising the definition of an HCSSA administrator and the administrator's responsibilities; and
- removing a requirement that HCSSAs provide a surveyor with a workspace that would allow the surveyor to work in private.