

- SUBJECT:** Pre-inspection license for certain assisted living license applicants
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 9 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price, Spitzer  
0 nays
- WITNESSES:** For — Donna Hermann, Belmont Village Senior Living; Rose Vera, Silverado Senior Living; Michael Crowe, Texas Assisted Living Association; (*Registered, but did not testify:* Alyse Meyer, LeadingAge Texas; Deanna L. Kuykendall, Texas Alliance of Brain Injury Providers; Diana Martinez, Texas Assisted Living Association; Rachel Hammon, Texas Association for Home Care and Hospice; Scot Kibbe, Texas Health Care Association)  
  
Against — None  
  
On — Amanda Fredriksen, AARP; Patty Ducayet, Long-term Care Ombudsman Program; (*Registered, but did not testify:* Calvin Green, Department of Aging and Disability Services)
- BACKGROUND:** Licensure for an assisted living facility in Texas is a two-step process. Department of Aging and Disability Services (DADS) staff must first conduct a Life Safety Code inspection to ensure the facility meets requirements regarding construction and fire safety. After DADS determines that the building meets the Life Safety Code requirements, at least one but not more than three residents may be admitted to the facility. Once the facility has between one and three residents, it must submit written notice indicating that the facility is ready for an on-site health inspection, part of the agency’s required survey for licensing a facility. A license is granted upon successful completion of these two inspections.
- DIGEST:** CSHB 1769 would change the current licensing practice for assisted living facilities in good standing with DADS. An assisted living facility in good

standing could request an initial license that did not require an on-site health inspection.

The applicant would be considered in good standing if it had operated an assisted living facility in Texas for six consecutive years, during which time none of the applicant's facilities:

- had a violation resulting in harm or an immediate threat of harm to a resident likely to cause serious injury, impairment, or death; and
- had sanctions of any kind imposed against them, including civil or administrative penalties, denial, suspension, or revocation of a license, or emergency closure.

The bill would prohibit DADS from requiring an assisted living facility to admit residents before DADS issued the license. Providers would be required to submit policies and procedures to DADS for approval and to verify employee background checks and credentials.

The bill would require DADS to conduct a survey of the facility within 90 days of the initial license being issued. Until the survey was completed, the facility would be required to disclose to any residents and prospective residents that DADS had not yet completed the survey until the survey was completed.

The bill would take effect September 1, 2015. The Health and Human Services executive commissioner would be required to adopt rules necessary to implement the law's changes as soon as practicable after the effective date.

**SUPPORTERS  
SAY:**

CSHB 1769 would change the current licensing practice for assisted living facilities in good standing to allow for a more thorough and efficient process. Under current law, new assisted living facilities must admit one to three residents after the Life Safety Code inspection and before submitting written notice to DADS indicating that the facility is ready for a health inspection, a process that has led to unreasonably long wait times for facility approval. In 2014, new facilities waited more than a month on

average before DADS was able to complete the second inspection and grant licensure.

The current process places a few residents at the facility before approving a license, but this is far too small a sample size and creates uncertainty for families of prospective residents awaiting a placement because the provider cannot predict a move-in date. Waiting for licensure has meant housing future residents in hotels and having the facility's staff take care of residents 24 hours a day at the hotel. Getting facilities open in a more timely manner would save residents and their families a great deal of stress.

The bill also would enable a more cost-conscious approach to licensure for facilities. Currently, the process requires facilities to hire and train many more staff than they have residents. This can mean that as many as 35 staff members are caring for only three residents, which is inefficient and unnecessary.

The good standing requirement in the bill would ensure the safety of residents because only established and reputable operators with a successful six-year track record with DADS could obtain the early license. The definition of good standing also strikes the right balance by setting high facility operator standards without ruling out facilities that have recorded minor violations that do not put residents at any serious risk.

The bill would require that facilities disclose to residents and prospective residents the fact that a survey has not been completed. Providers would inform residents about this during the intake process and would post notice within the facility. Families would have access to the same information.

The bill would bring Texas standards for licensing in line with those of other states. In many states, facilities can admit residents after passing a Life Safety Code inspection, and granting licensure to assisted living facilities before the health inspection is the norm.

OPPONENTS  
SAY:

When the state issues a license, it is putting its seal of approval on that entity, a step that should not be taken lightly. Residents and their families would see licensure as a state endorsement. Assisted living facilities in good standing instead should be issued a temporary license, not full licensure as the bill would allow. That would convey to the public that certain licensing requirements had not yet been met. The public deserves a trusted inspection process that evaluates these facilities to meet the needs of older Texans.

It is important to conduct an on-site health inspection while a few residents are living in the facility, as current law requires. The bill could result in licenses being granted to some assisted living facilities before inspectors could make key determinations, including: whether assisted living was the appropriate place for residents or whether a higher level of care was required; if residents had been assessed and an individualized service plan has been developed to meet their needs; whether residents were able to evacuate the building; or whether staff were administering medications safely to residents. These are fundamental responsibilities of an assisted living facility that would not be evaluated under this bill and could be important to the safety and wellbeing of assisted living residents.

The bill's definition of good standing would be insufficient and would take into account only the most egregious violations. Some violations could be serious without qualifying as resulting in harm or immediate threats. This could lead to an operator violating certain rights of residents while still meeting the criteria for the early license. These rights include a 30-day notice before discharge, the right to practice the religion of one's choice, and the right to criticize one's care. The state should ensure that basic rights are being honored before granting a facility its license.

Requiring disclosure to residents and prospective residents that DADS had not yet conducted the required survey may not be sufficient, especially for residents in memory care units suffering from Alzheimer's disease and dementia. National studies of people living in assisted living indicate that 60 percent of this population suffers from dementia. These residents may not be capable of understanding the implications of the

situation, and the bill should require that disclosure be directly provided to a resident's family as well.

NOTES:

Like the committee substitute, the bill as introduced would have prevented DADS from requiring that a license applicant admit a resident to the facility before the department conducted an on-site health inspection. None of the other provisions in the committee substitute, other than the effective date, appear in HB 1769 as introduced.

In its fiscal note, the Legislative Budget Board estimates a cost of about \$329,000 due to the cost of DADS conducting an additional 90 initial health inspections annually during fiscal 2016-17.

The Senate companion bill, SB 785 by Uresti, was placed on the intent calendar April 13 and not again placed on the intent calendar April 16.