

SUBJECT: Allowing nursing facilities to pursue certain misappropriated funds

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Leach, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

2 nays — Davis, Dutton

WITNESSES: For — Alyse Meyer, LeadingAge Texas; (*Registered, but did not testify*: Leticia Caballero, HMG Healthcare, LLC; Deseray Matteson, Texas Health Care Association; Guy Herman, Travis County Probate Court; Tom Nobis; Thomas Parkinson)

Against — None

DIGEST: HB 1593 would allow a nursing facility to file an action against a resident's responsible payor for an amount owed by the resident under certain circumstances.

A facility could sue a responsible payor, defined as a person who had legal access to a resident's income or resources available to pay for nursing facility care and who had signed an admission agreement or other contract with the facility in which the person agreed to provide payment for the resident's facility care from the resident's resources, if:

- before admission of the resident, the facility obtained financial information from the resident or responsible payor showing the amount of financial resources that the resident had available to pay for nursing facility care; and
- after the resident began to reside at the facility, the responsible payor misappropriated the resident's resources to a degree that the resident was unable to afford to pay for the resident's care.

A nursing facility also could file an action for injunctive relief against a resident's responsible payor who misappropriated the resident's resources

to the degree that the resident could not pay for care. A court could grant any appropriate injunctive relief to prevent or abate the conduct.

The prevailing party in an action filed under the bill could recover attorney's fees, but a nursing home facility could not recover a total amount, including damages and attorney's fees, that exceeded the amount the responsible payor had misappropriated from the resident.

The bill would take effect September 1, 2021, and would apply only to a cause of action that accrued on or after that date.

**SUPPORTERS
SAY:**

HB 1593 would help prevent financial abuse of nursing home residents and protect nursing homes from financial shortfalls associated with such abuse by allowing nursing homes to pursue debts and injunctive relief against a responsible third party who improperly diverted a resident's funds that were needed to pay for their care. Many nursing home residents' funds are handled by responsible third parties, often a resident's children or family members, because the residents lack the cognitive ability to manage their own financial affairs. This arrangement can expose nursing home residents to financial abuse and exploitation by the responsible third parties, who sometimes improperly divert or steal the residents' funds.

Under federal law nursing homes may not require responsible third parties to commit their own funds to pay for a resident's care but may request that a responsible party agree to provide payment from the resident's income or resources. However, Texas laws on legal standing and contractual privity render these agreements unenforceable, resulting in a loophole that effectively allows responsible third parties to misappropriate residents' funds. It is difficult for nursing homes to hold these third parties accountable, and without payment for a resident's care, a nursing home is left to either provide charity care to the resident, discharge the resident, or bring a legal action against the resident for unpaid fees. HB 1593 would address these limited choices, which result in unfair outcomes for both the facility and the resident, by allowing facilities to pursue debts against a third party who improperly diverted funds and to seek injunctive relief in

limited circumstances.

The limitations in the bill's provisions ensure that a responsible payor will not be held unfairly financially liable when the resident they are assisting is unable to pay for care at a facility. The bill only allows a nursing facility to recover a resident's funds that were misappropriated by a responsible payor, and the responsible payor's personal funds could not be accessed for unpaid nursing home bills. Further, the provisions of the bill would only apply to instances in which a resident had the financial resources to pay for care, a third party contractually committed those funds to the resident's care, and the third party then misappropriated the resident's funds, breaching the contract with the nursing facility. These limitations would ensure that a responsible payor was not subject to unwarranted legal actions solely because a resident was unable to pay the bill.

CRITICS
SAY:

HB 1593 could subject responsible third parties to unfair legal action by allowing nursing facilities to sue responsible third parties for the debts of a resident. If a nursing facility resident ran out of money for care and a responsible payor had contracted with the nursing home to provide facility payment from the resident's income or resources, the responsible payor could be subject to litigation for misappropriation of the funds even if that person was uninvolved in how the resident's money was spent.