

BILL ANALYSIS

Senate Research Center

C.S.S.B. 84
By: Moncrief
Health and Human Services
4-13-97
Committee Report (Substituted)

DIGEST

Currently, the Texas Board of Nursing Facility Administrators (TBNFA) is responsible for the licensure and regulation of the nursing facility administrator profession. TBNFA was reconstructed following a 1993 review of the agency by the Sunset Commission and there is a dispute as to whether TBNFA has adequately performed its function. Article I of this bill abolishes TBNFA and transfers the authority, duties, obligations, and responsibilities to the Texas Department of Human Services (department). Article 2 of this bill would reestablish the TBNFA under the department, but Article 2 only goes into effect if Article 1 expires.

PURPOSE

As proposed, C.S.S.B. 84 abolishes the Texas Board of Nursing Facility Administrators and transfers all authority, duties, obligations, and responsibility to Texas Department of Human Services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Health under SECTION 1.01 (Sections 242.302(a) and (b), 242.304(a), 242.306(b), 242.307(d), 242.308(c)-(e), 242.311(a), 242.312(c), (e), and (f), 242.313(d) and (e), Health and Safety Code), to the Department of Human Services under SECTIONS 1.01 and 2.01(Sections 242.317(a), 316.318, and 242.322(a), Chapter 242I, Health and Safety Code), and to the Texas Board of Nursing Facility Administrators under SECTION 2.01 (Sections 242.305(a) and (b), 242.307(a), 242.309(a), 242.311(b), 242.312(d), 242.313(c)-(e), 242.316(a), 242.317(c), (e), and (f), 242.318(d) and (e), and 242.323, Chapter 242I, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE I

SECTION 1.01. Amends Chapter 242, Health and Safety Code, to include Subchapter I, as follows:

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. Defines "nursing facility," "nursing facility administrator," and "practice of nursing facility administration."

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT. Requires the Texas Board of Health (board) to adopt rules consistent with this subchapter.

Sec. 242.303. NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE. Provides that the Nursing Facility Administrators Advisory Committee (committee) is appointed by the governor. Sets forth provisions regarding membership and terms. Requires the committee to advise the board on the licensing of nursing facility administrators, including the content of applications under Section 242.306. Requires the committee to review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Provides that failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary

action. Requires the committee to review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. Sets forth provisions regarding appointments, compensation, expenses, and vacancies.

Sec. 242.304. FEES; FUNDS. Requires the board, by rule, to set reasonable and necessary fees to cover the cost of administering this subchapter. Requires the Texas Department of Human Services (department) to receive and account for funds received under this subchapter. Sets forth the provisions regarding receiving, depositing, and disbursement of funds.

Sec. 242.305. PRACTICING WITHOUT A LICENSE. Prohibits any person from acting as a nursing facility administrator or representing to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Sec. 242.306. LICENSE APPLICATION; QUALIFICATIONS. Sets forth the conditions for submitting an application. Requires the board to prescribe the form of the application and may, by rule, establish dates by which applications and fees must be received. Sets forth the educational, training, and experience prerequisites for taking the licensing examination. Requires an applicant who has not completed the course of instruction and training to present evidence of having completed sufficient education to enable the applicant to engage in nursing facility administration, prior to taking the examination.

Sec. 242.307. EXAMINATION. Sets forth requirements for licensing examinations including authorizing the board, by rule, to establish additional educational requirements to be met by an applicant who fails the examination three times.

Sec. 244.308. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. Sets forth the requirements for a license and temporary license under this subchapter. Authorizes the board, by rule, to provide for the issuance of a temporary license. Requires rules adopted under this section to include time limit for practicing under a temporary license. Authorizes the board, by rule, to provide for inactive status.

Sec. 242.309. PROVISIONAL LICENSE. Requires the department to grant a provisional license upon application. Sets forth the qualifications for an applicant for provisional license. Requires the department to process the application within a specified time.

Sec. 242.310. LICENSE RENEWAL. Sets forth the procedures and requirements for renewing a license.

Sec. 242.311. MANDATORY CONTINUING EDUCATION. Requires the board, by rule, to establish a minimum number of hours of continuing education required to renew a license under this subchapter. Authorizes the department to assess the continuing education needs of license holders and to require license holders to attend continuing education courses specified by the board. Requires the board to identify the key factors for the competent performance of a license holder's duties. Requires the department to adopt a procedure to assess a license holder's participation in continuing education programs.

Sec. 242.312. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. Sets forth the requirements for the department regarding complaints and the investigation of complaints. Requires the board, by rule, to establish certain guidelines concerning investigation of complaints filed with the department.

Sec. 242.313. SANCTIONS. Establishes the conditions under which the board is authorized to revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation. Requires the board, by rule, to adopt a broad schedule of sanctions for violations under this subchapter. Requires the board, by rule, to establish criteria to regarding deficiencies and sets forth provisions regarding the criteria. Requires the disciplinary action to be reversed if a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated.

Sec. 242.314. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. Authorizes the department to issue a written reprimand to a license holder who violates this subchapter or require the violator to participate in continuing education programs. Requires the department to specify which continuing education programs may be attended and the number of hours that must be completed.

Sec. 242.315. ADMINISTRATIVE PENALTY AS SANCTIONS. Sets forth the requirements for an administrative penalty against a person licensed or regulated under this subchapter, who violated this subchapter or a rule adopted by the board.

Sec. 242.316. NOTICE AND HEARING. Requires the department to notify the person who allegedly committed the violation, if the department determines a violation has occurred. Sets forth the requirements for notification of the violation. Sets forth the procedures by which a person can, upon notification, request a hearing or accept the penalty. Requires the department to notify the person and hold a hearing, if the person does not respond to the notice regarding the violation. Sets forth the requirements for notification of the hearing.

Sec. 242.317. INFORMAL PROCEEDINGS. Requires the department, by rule, to adopt procedures governing informal proceedings. Requires rules adopted under this section to provide the complainant and license holder an opportunity to be heard.

Sec. 242.318. MONITORING OF LICENSE HOLDER. Requires the department, by rule, to develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Requires rules adopted under this section to include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 242.319. CIVIL PENALTY. Requires a person who violates this subchapter to be liable to the state for a civil penalty of \$1,000 for each day of the violation. Requires the attorney general to bring an action to recover a civil penalty, at the request of the department.

Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL. Requires the attorney general to provide legal assistance as necessary in enforcing the provisions of the subchapter. Provides that this requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Sec. 242.321. OFFENSE. Provides that a person commits a Class B misdemeanor if the person knowingly or intentionally violated Section 242.304.

Sec. 242.322. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter. Provides that an act by a person under Subsection (a) does not constitute a violation of this section under certain conditions. Provides that a violation of this section is an unlawful practice and authorizes a civil action to be brought by a licensed nursing facility administrator against a person for its violation. Sets forth additional provisions regarding a civil action. Defines "person."

SECTION 1.02. Amends Section 232.002, Family Code, to conform to Section 85, Chapter 751, Acts of the 74th Legislature, 1995, and further amended to make conforming and nonsubstantive changes.

SECTION 1.03. Effective date for Article 1: September 1, 1997.

SECTION 1.04. Abolishes the Texas Board of Nursing Facility Administrators (TBNFA). Provides that the department assumes functions of TBNFA on the effective date of this article. Provides that the obligations, rights, contracts, and records of the TBNFA are transferred to the department. Requires all rules of TBNFA in place on the effective date of this article to continue in effect as rules of the department, provided that the committee shall review the rules by March 1, 1998, and any rules not readopted by the department before that date shall be abolished. Sets forth provision regarding the transference of property, employees, unexpended funds, licenses, complaints, investigations, and other proceedings.

SECTION 1.05. Sets forth provisions regarding initial appointments to the committee.

SECTION 1.06. Provides that if the federal government issues a ruling that the system established under this article for licensure of nursing facility administrators does not comply with federal regulations, this article expires and Article 2 of this Act takes effect.

ARTICLE 2

SECTION 2.01. Amends Chapter 242, Health and Safety Code, by adding Subchapter I, as follows:

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. Defines "board," "nursing facility," "nursing facility administrator," or "administrator," and "practice of nursing facility administration."

Sec. 242.302. TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS. Provides that TBNFA is within the department. Sets forth provisions regarding the composition of TBNFA. Provides that appointments to TBNFA shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

Sec. 242.303. MEMBERSHIP REQUIREMENTS. Sets forth requirements for a member of TBNFA who is an administrator. Sets forth prohibitions for a member or employee of TBNFA.

Sec. 242.304. GROUNDS FOR REMOVAL. Sets forth the grounds for removal from TBNFA.

Sec. 242.305. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES. Sets forth requirements for TBNFA regarding the election of a presiding officer and an assistant presiding officer. Requires TBNFA to hold at least two regular meetings each year as provided by rules adopted by TBNFA. Provides that a majority of the members constitutes a quorum. Provides that each member of TBNFA is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Sec. 242.306. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURES ACT. Provides that TBNFA is subject to Chapters 551 and 2001, Government Code.

Sec. 242.307. POWERS AND DUTIES OF THE BOARD. Authorizes TBNFA to adopt rules that are consistent with this subchapter regarding ethics, qualifications for applicants for licenses and license renewal, the spending of funds, the establishment of reasonable and necessary fees, the establishment of a minimum numbers of hours of continuing education for license renewal, and the assessment of the continuing needs of license holders. Provides that TBNFA is the licensing authority for the healing arts and requires TBNFA to meet certain requirements.

Sec. 242.308. ADMINISTRATIVE FUNCTIONS. Requires the department to serve as the administrator of the licensing activities under this subchapter and to provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter.

Authorizes the department, under certain conditions, to secure and provide for compensation for certain services, and to employ certain persons.

Sec. 242.309. FEES; FUNDS. Requires TBNFA, by rule, to set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. Authorizes TBNFA, by rule, to set different licensing fees for different categories of licenses. Sets forth provisions regarding the receiving, accounting, and depositing of funds received under this subchapter. Authorizes the department to receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Sec. 242.310. PRACTICING WITHOUT A LICENSE. Prohibits a person from acting as a nursing facility administrators or from representing to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Sec. 242.311. LICENSE APPLICATION; QUALIFICATIONS. Requires an applicant for a nursing facility administrator's license to submit a sworn application that is accompanied by the application fee. Authorizes the board to prescribe the form of the application and, by rule, to establish dates by which applications and fees must be received. Sets forth requirements for an applicant for a nursing facility administrator's license.

Sec. 242.312. EXAMINATION. Set forth requirements for TBNFA regarding the licensing examination. Authorizes TBNFA to establish, by rule, additional educational requirements to be met by an applicant who fails the examination three times.

Sec. 242.313. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. Provides that a person who meets the requirements for licensing under this subchapter is entitled to receive a license. Provides that a nursing facility administrator's license is not transferable. Requires a person licensed under this subchapter to notify TBNFA of the license holder's correct mailing address. Sets forth additional provisions regarding a license and authorizes TBNFA, by rule, to adopt a system under which licenses expire on various dates during the two-year period. Sets forth provisions regarding temporary licenses and inactive status.

Sec. 242.314. PROVISIONAL LICENSE. Requires TBNFA, on application, to grant a provisional license under this subchapter. Sets forth requirements for an applicant for a provisional license under this section. Authorizes an applicant for a provisional license to be excused from certain requirements if TBNFA makes certain determinations. Sets forth additional provisions regarding a provisional license.

Sec. 242.315. LICENSE RENEWAL. Authorizes a person to renew an unexpired license by paying to TBNFA before the expiration of the license the required renewal fee. Sets forth provisions applicable if a person's license has expired. Requires TBNFA, at least 30 days before the expiration of a person's license, to send written notice of the impending expiration to the person.

Sec. 242.316. MANDATORY CONTINUING EDUCATION. Authorizes TBNFA, by rule, to establish a minimum number of hours of continuing education required to renew a license under this subchapter. Authorizes TBNFA to assess the continuing education needs of license holders and to require license holders to attend certain continuing education courses.

Sec. 242.317. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. Requires TBNFA to keep an information file about each complaint filed with TBNFA regarding a person licensed under this subchapter. Sets forth requirements regarding the keeping of an information file. Sets forth provisions regarding the filing of a written complaint with TBNFA. Authorizes TBNFA, by rule, to adopt a form to standardize information concerning complaints made to TBNFA. Sets forth additional provisions regarding complaints and the investigation of complaints.

Sec. 242.318. SANCTIONS. Authorizes TBNFA to revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written

reprimand, require participation in continuing education, or place an administrator on probation, after due notice and hearing, and on proof of certain grounds. Authorizes TBNFA, if a license sanction is probated, to require the license holder to take certain actions. Provides that a license holder is entitled to a hearing in accordance with rules promulgated by TBNFA before a sanction is imposed under this section. Requires TBNFA, by rule, to adopt a broad schedule of sanctions for violations under this chapter and to use the schedule for any sanction imposed as the result of a hearing conducted in accordance with the rules. Requires the board, by rule, to establish criteria to regarding deficiencies and sets forth provisions regarding the criteria. Requires the disciplinary action to be reversed if a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated.

Sec. 242.319. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. Authorizes TBNFA, in addition to the other disciplinary actions authorized under this subchapter, to issue a written reprimand under this subchapter to a license holder who violates this subchapter or require a license holder who violates this subchapter to participate in continuing education programs. Requires TBNFA to specify the continuing education programs that may be attended and the number of hours that must be completed.

Sec. 242.320. ADMINISTRATIVE PENALTY AS SANCTION. Authorizes the department to imposed an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by TBNFA under this subchapter. Sets forth provisions regarding the amount of the penalty and the basis of the penalty.

Sec. 242.321. NOTICE AND HEARING. Sets forth provisions regarding notice and hearing that are applicable if the department determines that a violation has occurred.

Sec. 242.322. INFORMAL PROCEEDINGS. Requires the department, by rule, to adopt procedures governing certain informal dispositions and informal proceedings.

Sec. 242.323. MONITORING OF LICENSE HOLDER. Requires TBNFA, by rule, to develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Requires rules adopted under this section to include procedures for monitoring a license holder who is required by TBNFA to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 242.324. CIVIL PENALTY. Provides that a person who violates this subchapter is liable to the state for a civil penalty of \$1,000 for each day of violation. Requires the attorney general, at the request of the department, to bring an action to recover a civil penalty established by this section.

Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL. Requires the attorney general to provide legal assistance as necessary in enforcing the provisions of this subchapter. Provides that this requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Sec. 242.326. OFFENSE. Provides that a person commits a Class B misdemeanor if the person knowingly or intentionally violates Section 242.310.

Sec. 242.327. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter. Provides that an act by a person under Subsection (a) does not constitute a violation of this section

under certain conditions. Provides that a violation of this section is an unlawful practice and authorizes a civil action to be brought by a licensed nursing facility administrator against a person for its violation. Sets forth additional provisions regarding a civil action. Defines "person."

SECTION 2.02. Provides that this article takes effect only if Article 1 of this Act expires, on the date that article expires, as provided by SECTION 1.06 of this Act.

SECTION 2.03. Sets forth requirements regarding the making of initial appointments to the TBNFA.

SECTION 2.04. Provides that any rules of the department adopted under Chapter 242I, Health and Safety Code, as added by Article 1 of this Act, or as provided by Section 1.04(b) of this Act, in place on the effective date of this article shall continue in effect as a rule of TBNFA. Provides that the obligations, rights, contracts, and records of the department transferred to that agency by the department under Chapter 242I, Health and Safety Code, as added by Article 1 of this Act, before the expiration of that article, are transferred to TBNFA as necessary under the provisions of Chapter 242I, Health and Safety Code, as added by this article. Provides that a license in effect that was issued by the department under Chapter 242I, Health and Safety Code, as added by Article 1 of this Act, is continued in effect as a license of TBNFA. Provides that a complaint, investigation, or other proceeding relating to the licensure and regulation of nursing facility administrators pending before the department under Chapter 242I, Health and Safety Code, as added by Article 1 of this Act, is transferred without change in status to TBNFA as necessary under the provisions of Chapter 242I, Health and Safety Code, as added by this article.

ARTICLE 3

SECTION 3.01. Repealer: Article 4512q, V.T.C.S. (Texas Nursing Facility Administrators Licensure Act).

SECTION 3.02. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends proposed Section 242.302, Health and Safety Code, to provide that the department is the licensing agency for the healing arts.

Amends proposed Section 242.303, Health and Safety Code, to propose an entirely new section regarding the Nursing Facility Administrators Advisory Committee and remaining renumber proposed sections accordingly.

Amends proposed Section 242.303, Health and Safety Code, to redesignate it as Section 242.304 and delete a provision regarding an account known as the licensed facility administrators account. Provides that members of the committee serve for staggered terms of six years, with the terms of three members, rather than two members, expiring on February 1 of each year.

Amends proposed Sections 242.305-242.311, Health and Safety Code, to make conforming and nonsubstantive changes.

Amends proposed Section 242.312, Health and Safety Code, to redesignate it as Section 242.313 and add certain provisions regarding the establishment, by rule, of certain criteria regarding deficiencies.

Amends proposed Sections 242.314-242.321, Health and Safety Code, to make conforming and nonsubstantive changes.

Adds Section 242.322, Health and Safety Code, regarding protection for refusal to engage in certain conduct.

SECTION 1.02.

Redesignated from proposed SECTION 2, and amended to conform to Section 85, Chapter 751, Acts of the 74th Legislature, 1995, and further amended to make a nonsubstantive change.

SECTION 1.03.

Redesignated from proposed SECTION 4. Provides that this article, rather than Act, takes effect September 1, 1997.

SECTION 1.04.

Redesignated from proposed SECTION 5. Provides that all rules of TBNFA in place on the effective date of this article shall continue as rules of the department, provided that the committee shall review the rules by March 1, 1998, and any rules not readopted by the department before that date shall be abolished; rather than the rules of the abolished TBNFA are continued in effect as rules of the department until superseded by rule of the department. Sets forth a new provision regarding the transference of property, employees, and unexpended funds. Makes conforming changes.

SECTIONS 1.05-3.02.

Sets forth new provisions and makes conforming changes regarding nursing facility administration.