

BILL ANALYSIS

Senate Research Center
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S.B. 93
By: Moncrief
Health Services
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DIGEST

Currently, Texas law requires assisted living facilities to be licensed and regulated by the Texas Department of Human Services (DHS). The assisted living industry is the fastest-growing segment of health care today. Assisted living facilities provide support services in a residential setting that maximize a resident's independence, and is an alternative to medical or institutional care. This bill would ensure that an assisted living facility delivers the best quality of life and care by promoting policies of dignity, autonomy, independence, and consumer protection, and would increase the efforts of DHS in identifying unlicensed assisted living facilities.

PURPOSE

As proposed, S.B. 93 regulates assisted living facilities based on the current personal care facility statute, and promotes policies allowing an assisted living resident to remain in an assisted living facility longer without being prematurely placed in a nursing home.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Human Services in SECTION 1 (Sections 247.005, 247.0261, and 247.030, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 247, Health and Safety Code, as follows:

CHAPTER. 247. New heading: ASSISTED LIVING FACILITIES.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 247.001. SHORT TITLE: Assisted Living Facility Licensing Act.

Sec. 247.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. Establishes this chapter to ensure that assisted living facilities (facilities) in this state deliver the highest quality care. Provides that this chapter and its rules establish minimum acceptable standards of care. Provides that any violation of the minimum standards of care is a violation of law. Sets forth the quality care components. Sets forth requirements for the Texas Department of Human Services (DHS) to protect residents of assisted living facilities. Requires this chapter to accomplish the intentions identified in this section.

Sec. 247.002. DEFINITIONS. Defines "assisted living facility," "board," "controlling person," "department," "personal care services," and "qualified religious society." Deletes the definition of a personal care facility. Makes conforming and nonsubstantive changes.

Sec. 247.003. APPLICATION OF OTHER LAW. Makes conforming changes.

Sec. 247.004. EXEMPTIONS. Makes conforming changes.

Sec. 247.005. CONTROLLING PERSON. Provides that a controlling person has the ability to directly or indirectly influence the direction or the management, expenditure of money, or policies of a facility. Defines "controlling person." Provides that a controlling person is not an employee, lender, secured creditor, landlord or individual not directly influencing the operation of a facility.

Authorizes DHS to adopt certain rules.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 247.021. LICENSE REQUIRED. Requires a person providing personal care services to three or more individuals unrelated to the provider and residing on the facility's premises to obtain a license and comply with all facility requirements. Authorizes DHS to issue a provisional license only if the facility seeks the license no later than the 30th day after the first notification date. Deletes text on facility violations and disclosing information. Makes conforming and nonsubstantive changes.

Sec. 247.022. LICENSE APPLICATION. Makes conforming changes.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. Provides that a license is issued to a controlling person with respect to an applicant or facility meeting all requirements. Makes conforming changes.

Sec. 247.0231. COMPLIANCE RECORD IN OTHER STATES. Authorizes DHS to require an applicant or license holder to provide information on compliance by the applicant, license holder, or a controlling person regarding regulatory requirements in another state where the applicant, license holder, or controlling person operates or operated a facility.

Sec. 247.024. New heading: FEES. Requires the Texas Board of Human Services (board) to set license fees on the basis of the number of beds in assisted living facilities required to pay the fee. Deletes text on certain fees for personal care facilities. Makes conforming changes.

Sec. 247.025. ADOPTION OF RULES. Makes a conforming change.

Sec. 247.026. STANDARDS. Sets forth requirements for standards set by the board. Requires the board to require facilities providing brain injury rehabilitation services to include in the consumer disclosure statement a specific statement that a licensed facility does not indicate state review, approval, or endorsement of the rehabilitation services. Prohibits an individual from serving as the administrator of an assisted living facility with 17 beds or more unless the person has certain qualifications. Makes conforming changes.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. Requires DHS, by rule, to adopt a procedure by which building plans are submitted. Requires DHS to promptly review plans submitted for compliance with architectural requirements and to inform the person of the results of the review. Prohibits DHS from changing the architectural requirements that comply with the DHS plans unless a change is required by federal law or the person fails to complete the project within a reasonable time. Authorizes DHS to charge a fee to conduct a review. Requires the fee collected to be deposited in the general revenue fund to the credit of the assisted living account and to be appropriated only to DHS to conduct reviews.

Sec. 247.027. INSPECTIONS. Makes a conforming change.

Sec. 2457.0271. INSPECTOR TRAINING. Requires DHS to develop and implement a training program to provide specialized training to DHS employees who inspect facilities. Requires the training to emphasize the distinction between a facility and an institution licensed under Chapter 242. Requires DHS to consult with operators of facilities and consumers of personal care services provided by living facilities or the consumers' legal representatives to develop and update the training program.

Sec. 247.028. ASSISTANCE BY DEPARTMENT. Makes conforming changes.

Sec. 247.029. FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE. Sets forth qualifications for the administrator of an assisted living facility. Makes a conforming change.

Sec. 247.030. FACILITIES FOR SUPERVISION OF MEDICATION AND GENERAL WELFARE. Requires the board, by rule, to establish a classification and license for a facility that provides only medication and general supervision of residents' welfare. Requires the board to

adopt minimum standards for a facility. Requires the board to modify the standards applied to a facility to reflect the level of services provided by that facility.

Sec.247.031. MUNICIPAL ENFORCEMENT. Makes conforming changes.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. Authorizes DHS to deny, suspend, or revoke a license for any violation of this chapter. Provides that a denial, suspension, or revocation of a license by the DHS and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. Makes conforming changes.

Sec. 247.003. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT. Requires DHS to notify the Department of Protective and Regulatory Services the investigation results; notify a health and human services agency that contracts with the facility the results of the investigation; and to provide a contracting health and human services agency access to DHS's documents or records of the investigation. Provides that access to a confidential document or record does not constitute a waiver of confidentiality. Makes conforming changes.

Sec. 247.044. INJUNCTION. Makes conforming changes.

Sec. 247.045. CIVIL PENALTIES. Authorizes the attorney general to institute and conduct a suit to collect a penalty and fees at the request of DHS. Deletes text on civil penalties for personal care facilities with unlicensed providers. Makes conforming changes.

Sec. 247.046. COOPERATION AMONG AGENCIES. Makes conforming changes.

Sec. 247.047. TRANSITION. Makes a conforming change.

Sec. 247.048. REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS. Requires DHS to conduct regional training programs for local government representatives and appropriate state agencies relating to concerns of facilities. Requires training programs to provide participants certain information.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 247.061. New Heading: PILOT PROGRAM: OFFICE OF ASSISTED LIVING FACILITY OMBUDSMAN. Deletes text on the advisory committee. Makes conforming changes.

Sec.247.062. COORDINATION BETWEEN AGENCIES. Makes conforming changes.

Sec. 247.063. New heading: DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMER'S GUIDE. Makes conforming changes.

Sec. 247.064. REFERRALS. Makes conforming changes.

Sec. 247.0641. ACCESS. Authorizes an employee of the Texas Department of Mental Health and Mental Retardation or an employee of a local mental health and mental retardation authority to enter a facility and provide services to a resident of the facility.

Sec. 247.065. RESIDENTS' BILL OF RIGHTS. Makes conforming changes.

Sec. 247.066. PROVIDERS' BILL OF RIGHTS. Makes conforming changes.

Sec. 247.067. APPROPRIATE PLACEMENT DETERMINATION. Prohibits DHS from removing or relocating a resident of a facility if the resident's presence does not endanger others and the resident can receive adequate care through the services provided by the facility or obtained by the resident from other providers. Requires DHS to consider all relevant factors in assessing

whether a resident can receive adequate care at a facility, including the placement preference of the resident and the resident's family or other representatives.

Sec. 247.068. HEALTH CARE PROFESSIONALS. Defines "health care professionals." Authorizes a health care professional to provide services within the professional's scope of practice to a resident of a facility at the facility.

Sec. 247.069. RETALIATION PROHIBITED. Prohibits a licensed person from retaliating against another person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder. Provides that this section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

SECTION 2. AMENDMENT. Amends Section 250.001(3), Health and Safety Code, to redefine "facility." Makes conforming and nonsubstantive changes.

SECTION 3. AMENDMENT. Amends Section 36.002, Human Resources Code, to make a conforming change.

SECTION 4. AMENDMENT. Amends Section 123.004, Human Resources Code, to make a conforming change.

SECTION 5. REFERENCE TO PERSONAL CARE FACILITY. Provides that a reference in law to a personal care facility means an assisted living facility.

SECTION 6. ENFORCEMENT OF LICENSURE REQUIREMENT. Requires DHS to identify and license all facilities no later than January 1, 2000. Requires DHS to submit a report to the governor and legislature describing the results of DHS' efforts. Sets forth information the report must include. Provides that this section takes effect on the first date possible under Section 39, Article III, Texas Constitution.

SECTION 7. WORK GROUP ON TEXAS ACCESSIBILITY STANDARDS. Requires DHS and the Texas Department of Licensing and Regulation (DLR) to form a joint work group to study and make recommendations to agencies concerning the Texas Accessibility Standards and other architectural requirements to facilities required to be licensed. Requires the work group to meet certain standards. Requires the DHS and DLR to include in the work group representatives of developers and providers of facilities and consumers of personal care services provided by facilities. Requires the members of the work group to elect a presiding officer and any other necessary officers. Requires the work group to meet at the call of the presiding officer. Provides that a member of the work group receives no compensation for serving on the work group. Provides that the work group is not subject to Chapter 2110, Government Code. Provides that the work group dissolves and this section expires September 1, 2001. Provides that this section takes effect on the first date possible under Section 39, Article III, Texas Constitution.

SECTION 8. COMMUNITY-BASED ALTERNATIVES PROGRAM RATE METHOD. Requires DHS to develop and implement a new reimbursement method for personal care services funded through the community-based alternatives program. Provides that this section takes effect on the first date possible under Section 39, Article III, Texas Constitution.

SECTION 9. DEADLINE: CONSUMER DISCLOSURE STATEMENT. Requires DHS to adopt the consumer disclosure statement no later than January 1, 2000.

SECTION 10. LEGISLATIVE INTENT. Provides that it is the authority of the attorney general to institute and conduct a suit to collect a penalty and fees. Prohibits the amendment from being construed to mean that the attorney general lacked that authority before the effective date of this Act.

SECTION 11. WAIVERS. Requires a state agency to request a waiver from a federal agency and may delay implementing that provision until the waiver or authorization is granted, if, before implementing any provision of this Act, a state agency determines a waiver is necessary.

SECTION 12. CONFLICTS. Provides that to the extent of any conflict, this Act prevails over another Act of the 76th Legislature, Regular Session, 1999, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 13. Effective date: September 1, 1999.

SECTION 14. Emergency clause.