

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 93
By: Moncrief
Health Services
3/1/1999
Committee Report (Substituted)

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 are 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, C.S.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 247.0011(b), 247.005(d), 247.024(b), 247.026(i), 247.0261(a), and 247.030(a), 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, including adopting rules relating to the assessment of the condition and service needs of each resident, and by promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident. Provides that assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Provides that assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

Sec. 247.002. DEFINITIONS. Defines "assisted living facility," and "controlling person," and redefines "personal care services." Deletes the definition of "personal care facility." Makes conforming changes.

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

Sec. 247.004. EXEMPTIONS. Provides that this chapter does not apply to a boarding facility that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management or laundry services, but that does not provide personal care services; or to a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Mental Health and Mental Retardation (TXMHMR) and that is monitored by TXMHMR or its designated local authority in accordance with standards set by TXMHMR.

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. Prohibits a person establishing or operating a facility that is not required to be licensed under this chapter from using the term “assisted living” in referring to the facility or the services provided at the facility. Authorizes a person establishing or operating a facility that is not required to be licensed, but elects to be licensed under this chapter to use the term “assisted living” in referring to the facility or the services provided at the facility. Authorizes DHS to issue a provisional license only if the facility meets certain requirements. Reinstates previously deleted text from Subsections (d)(2)-(5).

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; DISPOSITION OF REVENUE. 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, and in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$750. Requires the board to establish, by rule, a base fee schedule and a per bed fee schedule. Redesignates Subsections (b)-(c). Reinstates Section 247.024(b).

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

Sec. 247.026. STANDARDS. Sets forth 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 licensure as a licensed facility does not indicate state review, approval, or endorsement of the rehabilitation services. Prohibits an individual from serving as the manager of an assisted living facility with 17 beds or more, unless the individual has an associate’s degree in nursing, health care management, or a related field from a public or private institution of higher education; or has at least one year of experience working in management or in the health care industry. Authorizes the board, by rule, to require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities no later than the first anniversary of the date the manager begins employment in that capacity.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. Requires DHS, by rule, to adopt a procedure by which building plans are submitted. Requires DHS to set reasonable deadlines for review of submitted plans. Requires DHS, within 30 days, rather than promptly, to review plans submitted under this section for compliance with DHS architectural requirements and inform the person of the results of the review. Prohibits DHS from changing the architectural requirements that comply

with 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. Provides that the review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the DLR.

Sec. 247.027. INSPECTIONS. Authorizes DHS to inspect an assisted living facility annually and to inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

Sec. 247.0271. 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 manager 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 an assisted living facility classified under this section, including standards imposing adequate requirements relating to medication supervision. 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. Redesignated from existing Section 247.029. Makes conforming changes.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. Makes no changes.

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

Sec. 247.043. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT. Requires DHS to notify the Department of Protective and Regulatory Services the results of an investigation of abuse or neglect; 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 documents or records of the investigation. Provides that providing 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. Redesignated from existing Section 247.046. 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. New heading: ADVISORY COMMITTEE ON ASSISTED LIVING FACILITIES

Sec. 247.051. ADVISORY COMMITTEE. Provides that the Advisory Committee on Assisted Living Facilities consists of nine members appointed by the board. Requires the commissioner of human services (commissioner) to appoint two staff members from DHS to serve as nonvoting members. Requires the commissioner to appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation, in appointing staff members under this subsection. Requires the committee to advise DHS on standards for licensing assisted living facilities and on the implementation of this chapter.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Sec. 247.061. New heading: COORDINATION BETWEEN AGENCIES. Deletes existing Section 247.061 regarding the Pilot Program. Makes conforming changes.

Sec. 247.062. New heading: DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMER'S GUIDE. Makes conforming changes.

Sec. 247.063. REFERRALS. Requires TXMHMR or a local mental health or mental retardation authority (authority) to report the name, address, and telephone number of the facility to DHS, if TXMHMR or an authority gains knowledge of an assisted living facility that is not operated or licensed by TXMHMR, the authority, or DHS and that has four, rather than three, or more residents who are unrelated to the proprietor of the facility.

Sec. 247.0631. ACCESS. Authorizes an employee of the TXMHMR or an employee of local an authority to enter a facility and provide services to a resident of the facility.

Sec. 247.064. RESIDENTS' BILL OF RIGHTS. Makes conforming changes.

Sec. 247.065. PROVIDERS' BILL OF RIGHTS. Requires each assisted living facility to post a providers' bill of rights in a prominent place in the facility. Requires the providers' bill of rights to provide that a provider of personal care services has certain rights.

Sec. 247.066. APPROPRIATE PLACEMENT DETERMINATION. Prohibits DHS from requiring the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services provided by the facility in accordance with its license; or obtained by the resident from other providers. Requires DHS to consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives, in assessing whether a resident can receive adequate care at a facility.

Sec. 247.067. HEALTH CARE PROFESSIONALS. Provides that "health care professional" includes a physician, registered nurse, physical therapist, and occupational therapist. Provides that this subsection does not authorize a health care professional to provide ongoing services to a chronically ill resident comparable to the services available in an institution licensed under Chapter 242. Requires a health care professional providing services under this subsection to maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

Sec. 247.068. 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 Title 6, Human Resources Code, by adding Chapter 105, as follows:

CHAPTER 105. RESIDENTIAL FACILITIES FOR THE ELDERLY

Sec. 105.001. DEFINITIONS. Defines “establishment,” “qualifying adult resident,” and “supportive services.”

Sec. 105.002. EXEMPT FACILITIES. Sets forth facilities which are exempt from the application of this chapter.

Sec. 105.003. DISCLOSURE REQUIRED IN CONTRACT. Requires an establishment that is not required to be licensed as an assisted living facility under Chapter 247, Health and Safety Code, to execute a contract with each of its residents that contains, in addition to other required information, certain information.

SECTION 5. AMENDMENT. Amends Section 123.004, Human Resources Code, to make a conforming change.

SECTION 6. REFERENCE TO PERSONAL CARE FACILITY. Provides that a reference in law to a personal care facility means an assisted living facility, as defined by Section 247.002, Health and Safety Code, as amended by this Act. Provides that a reference in law to the Advisory Committee on Personal Care Facilities means the Advisory Committee on Assisted Living Facilities established under Section 247.051, Health and Safety Code, as amended by this Act.

SECTION 7. ENFORCEMENT OF LICENSURE REQUIREMENT. Requires, no later than January 1, 2000, DHS to meet certain requirements. Provides that this section takes effect on the first date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 8. 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 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 expire September 1, 2001. Provides that this section takes effect on the first date possible under Section 39, Article III, Texas Constitution.

SECTION 9. 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 10. DEADLINE: CONSUMER DISCLOSURE STATEMENT. Requires DHS to adopt the consumer disclosure statement no later than September 1, 1999.

SECTION 11. TRANSITION: REQUIRED EDUCATIONAL COURSE FOR MANAGERS OF CERTAIN FACILITIES. Makes application of this Act prospective.

SECTION 12. LEGISLATIVE INTENT. Provides that Section 247.045(d), Health and Safety Code, as amended by this Act, is intended to emphasize 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 13. WAIVERS. Requires a state agency affected by any provision to request the waiver or authorization and to delay implementing that provision until the waiver or authorization is granted, if, before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision.

SECTION 14. 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 15. Effective date: September 1, 1999.

SECTION 16. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Relating clause.

Amends the relating clause as follows: “relating to the regulation of assisted living facilities and requiring disclosures by certain other facilities serving persons who are elderly or disabled,” rather than, “relating to the regulation of assisted living facilities.”

SECTION 1.

Amends Section 247.0011, Health and Safety Code, to require DHS to protect residents of assisted living facilities by adopting rules relating to the assessment of the condition and service needs of each resident and promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident. Adds Subsection (c), to provide that assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Provides that assisted living services should enhance a person’s ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person’s needs change. Deletes Subsection (d), requiring this chapter to be construed broadly.

Amends Section 247.002(1)(A), Health and Safety Code, to redefine “assisted living facility” as an establishment that furnishes, in one or more facilities, food and shelter to four or more persons, rather than three or more persons. Deletes the definition of “personal care facility.” Makes conforming and nonsubstantive changes.

Amends Section 247.004(1), Health and Safety Code, to provide that this chapter does not apply to a boarding facility that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management or laundry services, but that does not provide personal care services. Makes conforming changes.

Adds Section 247.004(4), Health and Safety Code, to provide that this chapter does not apply to a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Mental Health and Mental Retardation (TXMHMR) and that is monitored by the TXMHMR or its designated local authority in accordance with standards set by TXMHMR.

Amends Section 247.0021(b), Health and Safety Code, to authorize a person establishing or operating a facility that is not required to be licensed, but elects to be licensed under this chapter to use the term “assisted living” in referring to the facility or the services provided at the facility. Authorizes DHS to issue a provisional license only if the facility meets certain requirements. Reinstates previously deleted text from Subsections (d)(2)-(5) regarding DHS issuing a provisional license to a facility. Redesignates Subsections (d)-(e). Deletes text regarding personal care services provided to a person through an agency licensed under Chapter 142 to four or more individuals, rather than three or more individuals. Deletes text on facility violations and disclosing information. Makes conforming and nonsubstantive changes.

Amends Section 247.024, Health and Safety Code, to reinstate the previously deleted heading, FEES; DISPOSITION OF REVENUE, rather than FEES.

Amends Section 247.024(a)(2), Health and Safety Code, to require the board to set license fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$750.

Amends Section 247.024(b), Health and Safety Code, to require the board to establish, by rule, a base fee schedule and a per bed fee schedule. Redesignates Subsections (b)-(c). Reinstates Section 247.024(b), previously deleted text regarding fees or penalties collected and deposited in the state treasury.

Amends Section 247.026(h)(1), Health and Safety Code, to prohibit an individual from serving as the manager, rather than administrator, of an assisted living facility that has 17 beds or more, unless the individual has an associate's degree in nursing, health care management or a related field from a public or private institution of higher education; or has at least one year of experience working in management, rather than the health care industry, or meets certain provisions. Authorizes the board, by rule, to require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities no later than the first anniversary of the date the manager begins employment in that capacity.

Amends Section 247.0261(b), Health and Safety Code, to require DHS within 30 days, rather than promptly, to review plans submitted under this section for compliance with DHS' architectural requirements and inform the person of the results of the review.

Adds Section 247.0261(e), Health and Safety Code, to provide that the review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the DLR.

Amends Section 247.027, Health and Safety Code, to authorize, rather than require, DHS to inspect an assisted living facility annually and to inspect a facility at other reasonable times as necessary to assure compliance with this chapter. Makes a conforming change.

Amends Section 247.029, Health and Safety Code, to prohibit an individual from serving as the manager, rather than administrator, of an assisted living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has certain qualifications.

Amends Section 247.030(b), Health and Safety Code, to require the board to adopt minimum standards for an assisted living facility classified under this section, including standards imposing adequate requirements relating to medication supervision.

Amends Section 247.041, Health and Safety Code, to require relocation procedures to be adopted as part of the memorandum of understanding adopted under Section 247.061, rather than Section 247.062.

Amends SUBCHAPTER D. ADVISORY COMMITTEE ON ASSISTED LIVING FACILITIES, to reinstate previously deleted Subsections (a)-(d). Requires the commissioner of human services (commissioner) to appoint two, rather than one, members from DHS to serve as nonvoting advisory members. Requires the commissioner to appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation, in appointing staff members under this subsection. Makes conforming changes.

Reinstates previously deleted SUBCHAPTER E. Redesignates Sections 247.062-247.068.

Amends Section 247.064(b), Health and Safety Code, to require TXMHMR or the authority to report the name, address, and telephone number of the facility to DHS, if TXMHMR or a local mental health or mental retardation authority gains knowledge of an assisted living facility that is not operated or licensed by TXMHMR, the authority or DHS and that has four, rather than three, or more residents who are unrelated to the proprietor of the facility. Makes conforming changes.

Amends Section 247.066, Health and Safety Code, to prohibit DHS from requiring the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through

services provided by the facility in accordance with its license; or obtained by the resident from other providers. Requires DHS to consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives, in assessing whether a resident can receive adequate care at a facility. Makes conforming changes.

Amends Section 247.067, Health and Safety Code, to provide that "health care professional" includes a physician, registered nurse, physical therapist, and occupational therapist. Provides that this subsection does not authorize a health care professional to provide ongoing services to a chronically ill resident comparable to the services available in an institution licensed under Chapter 242. Requires a health care professional providing services under this subsection to maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

Amends SECTION 4, by adding Chapter 105, RESIDENTIAL FACILITIES FOR THE ELDERLY. Redesignates SECTIONS 5-16.

Adds Section 105.001, Health and Safety Code, to define "establishment," "qualifying adult resident," and "supportive services."

Adds Section 105.002, Health and Safety Code, to provide that certain facilities are exempt from the application of this chapter.

Adds Section 105.003, Health and Safety Code, to require an establishment that is not required to be licensed as an assisted living facility under Chapter 247, Health and Safety Code, to execute a contract with each of its residents that contains, in addition to other required information, certain information.

Amends SECTION 6, Health and Safety Code, to provide that a reference in law to the Advisory Committee on Personal Care Facilities means the Advisory Committee on Assisted Living Facilities established under Section 247.051, Health and Safety Code, as amended by this Act.

Amends SECTION 10, Health and Safety Code, to require DHS, no later than September 1, 1999, rather than January 1, 2000, to adopt the consumer disclosure statement required by Section 247.026(b)(3)(B), Health and Safety Code, as added by this Act.

Adds SECTION 11, Health and Safety Code, to make application of this Act prospective.