

BILL ANALYSIS

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S.B. 1082
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DIGEST AND PURPOSE

Currently, nursing facilities are regulated by the state under two basic statutory provisions, Chapter 242 of the Health and Safety Code and Chapter 32 of the Human Resources Code. Chapter 32 of the Human Resources Code designates the Health and Human Services Commission (HHSC) as the state agency designated to administer the Medicaid program while the Texas Department of Human Services (TDHS) is charged with the responsibility of conducting the investigation, survey, complaint investigation, and incident investigation functions under both Chapter 242, Health and Safety Code, and Chapter 32, Human Resources Code. As proposed, S.B. 1082 improves the administration, performance, and accountability of the respective agencies charged with the regulation of nursing facilities and clarifies and strengthens the due process requirements relating to the licensing, inspection, survey, investigation, and enforcement functions. The bill transfers the responsibility for providing the “Informal Dispute Resolution” process from TDHS to HHSC and creates within HHSC an Office of Program Integrity and an Internal Affairs Office to ensure the consistent, competent, and faithful performance of certain duties relating to the administration of the Medicaid program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 1 (Sections 531.056 and 531.057, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 531B, Government Code, by adding Sections 531.056, 531.057, and 531.058, as follows:

Sec. 531.056. INFORMAL DISPUTE RESOLUTION. (a) Requires the Health and Human Services Commission (commission) by rule to establish an informal dispute resolution process in accordance with this section. Requires the process to provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the Texas Department of Human Services under Section 32.021(d) (relating to administration of the program), Human Resources Code, or under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Health and Safety Code. Requires the informal dispute resolution process to require certain procedures.

(b) Requires the commission to adopt rules to adjudicate claims in contested cases.

(c) Requires an attorney for the commission, before the informal dispute resolution is conducted, to perform certain duties.

(d) Prohibits the Texas Department of Human Services (department) from pursuing a monetary penalty in relation to a violation if the evidence of the violation does not meet the requirements of Subsection (c)(2).

(e) Prohibits the commission from delegating its responsibilities to administer the

informal dispute resolution process established by this section to another state agency.

Sec. 531.057. PROGRAM INTEGRITY OFFICE; CODE OF CONDUCT. (a) Requires the commission to establish a program integrity office (office) within the commission to ensure the consistent, competent, and faithful performance of duties by employees and agents of the department or another state agency responsible for licensing, inspecting, surveying, or investigating institutions licensed under Chapter 242, Health and Safety Code, or certified in accordance with Chapter 32 (Medical Assistance Program), Human Resources Code.

(b) Requires the office to regularly review the process for inspecting, surveying, and investigating the institutions described by Subsection (a), and requires the office to make recommendations to the commissioner of human services or other appropriate agency head, the speaker of the house of representatives, the lieutenant governor, and the governor concerning certain information and procedures.

(c) Requires the commission by rule to adopt a code of conduct for state employees described by Subsection (a) and provide sanctions for a violation of the code of conduct or any applicable rule or law.

(d) Requires the commissioner of health and human services (commissioner) to appoint an advisory committee composed of representatives of affected individuals and entities to assist the commission in developing the code of conduct and the rules necessary to implement this section.

Sec. 531.058. INTERNAL AFFAIRS OFFICE. (a) Requires the commission to establish an internal affairs office within the office established under Section 531.057. Requires the internal affairs office to perform certain duties.

(b) Prohibits an employee or agent of the commission, TDHS, or another state agency from retaliating, directly or indirectly, against a person for filing a complaint with the internal affairs office under Subsection (a). Provides that a violation of this subsection constitutes a violation of the code of conduct adopted under Section 531.057.

(c) Provides that a proceeding to sanction a state employee under this section is a contested case subject to Chapter 2001, Government Code.

SECTION 2. Amends Section 242.037, Health and Safety Code, by adding Subsection (i) to require the Texas Department of Human Services (department) to identify in its rules each violation of a rule or standard for which a penalty may be assessed under this chapter or in accordance with Chapter 32, Human Resources Code.

SECTION 3. Amends Section 242.0445, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Adds language relating to what the department or the department's representative conducting an inspection is required to do to include identifying the specific reasons under Section 242.0665(b) for the denial, if the institution is denied a right to correct the violation. Makes a conforming change.

(b) Changes a reference from "a written list" to "official notice." Requires the official notice to include a written list of the violations and a list of recommendations for the facility's plan to correct the violations. Makes a conforming change.

(d) Authorizes a facility, not later than 24 hours before the time scheduled for the exit conference, to provide to the department's representative additional documentation to

demonstrate a violation identified in the inspection, survey, or investigation has not occurred.

(e) Prohibits the department from imposing a penalty or remedy under this chapter or in accordance with Chapter 32, Human Resources Code, for a violation identified or confirmed in an inspection, survey, or investigation under Section 242.043 or 242.044, or in accordance with Chapter 32, Human Resources Code, unless the violation is included in the official notice required by Subsection (b).

SECTION 4. Amends Chapter 242B, Health and Safety Code, by adding Section 242.0447, as follows:

Sec. 242.0447. DUTIES OF REPRESENTATIVES. Requires the department to adopt written policies requiring representatives of the department to treat the residents of the institution and the institution's staff with courtesy, consideration, and respect when conducting an inspection, survey, or investigation under Section 242.043 or 242.044 or in accordance with Chapter 32, Human Resources Code.

SECTION 5. Amends Section 242.066, Health and Safety Code, by amending Subsection (e) and adding Subsection (i), as follows:

(e) Adds language relating to information the department is required to consider when determining the amount of a penalty to include the cash flow and financial condition of the facility.

(i) Authorizes the department to impose only one administrative penalty for each violation identified or confirmed in an inspection, survey, or investigation.

SECTION 6. Amends Section 242.0665, Health and Safety Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Makes a conforming change.

(d) Prohibits the department from denying a right to correct unless actual harm to a resident has been identified with respect to a violation described by Subsection (b).

SECTION 7. Amends Section 242.070, Health and Safety Code, to prohibit the department from assessing a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

SECTION 8. Amends Section 32.021(d), Human Resources Code, to delete language relating to certain requirements for the informal dispute process; to add language to require the Health and Human Services Commission to develop rules to adjudicate claims in contested cases, including claims unresolved by the informal dispute resolution process of the Health and Human Services Commission; and make a conforming change.

SECTION 9. Requires the commissioner of health and human services, not later than January 1, 2002, to adopt the code of conduct required by Section 531.057, Government Code, as added by this Act, and any rules necessary to implement Section 531.056, 531.057, and 531.058, Government Code, as added by this Act.

SECTION 10. Provides that effective on January 1, 2002:

(1) all property and records in the custody of the Texas Department of Human Services related to the informal dispute resolution function under Section 32.021(d), Human Resources Code, as it existed before amendment by this Act, and all funds appropriated by the legislature

to the Texas Department of Human Services for the function;

(2) a rule or form adopted by the Texas Department of Human Services that relates to the informal dispute resolution function under Section 32.021(d), Human Resources Code, as it existed before amendment by this Act, is a rule or form of the Health and Human Services Commission and remains in effect until altered by that agency;

(3) the assumption of the informal dispute resolution function by the Health and Human Services Commission does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters; and

(4) an action brought or proceeding commenced before the assumption by the Health and Human Services Commission of the informal dispute resolution function under this Act is effected, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the date of the assumption of the function by the Health and Human Services Commission.

SECTION 11. Effective date: September 1, 2001.