

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1593
By: Moncrief
Health & Human Services
3/30/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the survey process regarding long-term care is contentious, thereby creating an uncooperative environment between providers and regulators. This contributes to lower-quality care for residents in institutions. C.S.S.B. 1593 increases educational and training requirements for surveyors and providers, increases evaluation and review processes, requires an annual report to the legislature, creates an early detection system for health and safety risks in facilities, and transfers the dispute resolution processes from the purview of the Department of Human Services to that of the Health and Human Services Commission.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Health and Human Services Commission in SECTION 2 (Section 531.058, Government Code) and to the Texas Department of Human Services in SECTION 3 (Section 32.021, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 22, Human Resources Code, by adding Section 22.037, as follows:

Sec. 22.037. TRAINING AND CONTINUING EDUCATION RELATED TO CERTAIN LONG-TERM CARE FACILITIES. Defines "long-term care facility," "provider," and "surveyor."

(b) Requires the Texas Department of Human Services (department) to require a surveyor to complete a basic training program before the surveyor inspects, surveys, or investigates a long-term care facility. Requires the training to include observation of the operations of a long-term care facility unrelated to the survey, inspection, or investigation process for a minimum of 10 working days within a 14-day period.

(c) Requires the department to semiannually provide training for surveyors and providers on subjects that address at least one of the 10 most common violations by long-term care facilities under federal or state law.

(d) Provides that, except as provided by Subsection (e), a surveyor who is a health care professional licensed under the laws of this state is required to receive a minimum of 50 percent of the professional's required continuing education credits, if any, in gerontology.

(e) Requires a surveyor who is a pharmacist to receive a minimum of 30 percent of the pharmacist's required continuing education credits in gerontology.

SECTION 2. Amends Chapter 531B, Government Code, by adding Sections 531.056, 531.057, and 531.058, as follows:

Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN INSTITUTIONS AND FACILITIES. Requires the Health and Human Services Commission (commission) to adopt procedures to review certain violations and patterns related to violations and to review the performance of duties by certain employees and agents.

(b) Requires the commission to annually report to the speaker of the house of representatives, the lieutenant governor, and the governor on the findings of the review conducted under Subsection (a).

Sec. 531.057. QUALITY ASSURANCE EARLY WARNING SYSTEM FOR LONG-TERM CARE FACILITIES; RAPID RESPONSE TEAMS. Defines "long-term care facility" and "quality-of-care monitor."

(b) Requires the commission to establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. Requires the early warning system to include analysis of financial and quality-of-care indicators that would predict the need for the commission to take action.

(c) Requires the commission to establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, unannounced, aperiodic basis, including nights, evenings, weekends, and holidays.

(d) Requires priority for monitoring visits to be given to long-term care facilities with a history of patient care deficiencies.

(e) Prohibits quality-of-care monitors from being deployed by the commission as a part of the regional survey team in the conduct of routine, scheduled surveys.

(f) Requires quality-of-care monitors to assess the overall quality of life in the long-term care facility and specific conditions in the facility directly related to patient care.

(g) Requires the quality-of-care monitor to include in an assessment visit observation of the care and services rendered to residents; and formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

(h) Requires the identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (g) to remain confidential and prohibits the identity from being disclosed to any person under any other provision of this section.

(i) Requires the findings of a monitoring visit, both positive and negative, to be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(j) Authorizes the quality-of-care monitor to recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.

(k) Requires conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident to be reported immediately to the regional office supervisor for appropriate action and, as appropriate or as required by law, to law enforcement, adult protective services, or other responsible agencies.

(l) Provides that any record, except as provided by Subsections (m), (n), and (o), whether written or oral, or any written or oral communication may not be subject to discovery or introduction into evidence in any civil or administrative action against a long-term care facility arising out of matters that are the subject of quality-of-care monitoring, and prohibits a person who was in attendance at a monitoring visit or evaluation from being permitted or required to testify in any civil or administrative action as to any evidence or other matters produced or presented during the monitoring visits or evaluations.

(m) Provides that information, documents, or records otherwise available from other sources are not immune from discovery or use in a civil or administrative action solely because the information, document, or record was reviewed in connection with quality-of-care monitoring.

(n) Prohibits a person who participates in quality-of-care monitoring visits or evaluations from being prevented from testifying as to matters within the person's knowledge, but prohibits that person from being asked about the person's participation in the activities.

(o) Provides that the exclusion from discovery or introduction of evidence under this section in any civil or administrative action does not apply when the quality-of-care monitor makes a report to the appropriate authorities regarding a threat to the health or safety of a resident.

(p) Requires the commission to create rapid response teams composed of health care experts that can visit long-term care facilities identified through the commission's early warning system.

(q) Authorizes rapid response teams to visit long-term care facilities that request the commission's assistance.

(r) Prohibits the rapid response teams from being deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), 247 (Assisted Living Facilities), or 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code, or in accordance with Chapter 32 (Medical Assistance Program), Human Resources Code.

Sec. 531.058. INFORMAL DISPUTE RESOLUTION FOR CERTAIN LONG-TERM CARE FACILITIES. (a) Requires the 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) (Administration of the Program), Human Resources Code, or Chapter 242, 247, or 252, Health and Safety Code. Requires the informal dispute resolution process to require: the institution or facility to request informal dispute resolution not later than the 10th calendar day after notification by the department of the violation of a standard or standards; the commission to complete the process not later than the 30th calendar day after receipt of a request from the institution or facility for informal dispute resolution; and any individual representing an institution or facility in an informal dispute resolution process to register with the commission and disclose certain information.

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

(c) Prohibits the commission from delegating its responsibility to administer the informal

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

SECTION 3. Amends Section 32.021(d), Human Resources Code, to require the department to include in its contracts certain provisions, provided that the department provides for an informal dispute resolution process in the commission as provided by Section 531.058, Government Code; and develops rules to adjudicate claims in contested cases, including claims unresolved by the informal dispute resolution process of the commission. Deletes text regarding a dispute resolution process.

SECTION 4. Requires the commissioner of health and human services, not later than January 1, 2002, to adopt any rules necessary to implement Sections 531.056, 531.057, and 531.058, Government Code, as added by this Act.

SECTION 5. Requires the Texas Department of Human Services, not later than January 1, 2002, to develop training necessary to implement Section 22.037, Human Resources Code, as added by this Act.

SECTION 6. Provides that, effective 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 are transferred to the Health and Human Services Commission;
- (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 7. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from the original as follows:

- Makes reference to gerontology instead of geriatric care.
- Includes a pharmacist and nutritionist with a registered nurse in the definition of “quality-of-care monitor.”
- In proposed Section 531.057, Government Code, adds a new Subsection (h) and redesignates subsequent Subsections (h)-(q) as (i)-(r). In Subsection (k), replaces “threaten” with “create

an immediate threat.” Adds exceptions to Subsection (l).

- Removes previously proposed Sections 531.058(c) and (d), Government Code, regarding requirements of an attorney before an informal dispute resolution and a prohibition of the Texas Department of Human Services from pursuit of a monetary penalty. Redesignates proposed Subsection (e) as Subsection (c).