BILL ANALYSIS

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C.S.S.B. 1839
By: Moncrief
Health & Human Services
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Committee Report (Substituted)

DIGEST AND PURPOSE

The nursing home industry is facing a crisis in this state. Liability insurance rates are rising quickly, availability to insurance is dwindling, and lawsuit settlements are growing. C.S.S.B. 1839 is a comprehensive approach to addressing the nursing home crisis facing Texas. This approach looks at the current system including quality of care, insurance rates, and damage awards.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTIONS 7.02 (Section 531.058, Government Code), 9.01 (Section 242.855, Health and Safety Code), and to the commissioner of health and human services in SECTION 7.04.

SECTION BY SECTION ANALYSIS

SECTION 1.01. SHORT TITLE. Authorizes this Act to be cited as the Long-Term Care Facility Improvement Act.

SECTION 1.02. LEGISLATIVE INTENT; PURPOSE. Sets forth the legislative intent and purpose of this Act.

ARTICLE 2. NOTICE OF EXEMPLARY DAMAGES IN CERTAIN ACTIONS

SECTION 2.01. Amends Chapter 242B, Health and Safety Code, by adding Section 242.051, as follows:

> Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES. (a) Requires the court to notify the Texas Department of Human Services (department) if exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution.
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> (b) Requires the department, if the department receives notice under Subsection (a), to maintain the information contained in the notice in the records of the department relating to the history of the institution.

SECTION 2.02. Makes application of this article prospective.

ARTICLE 3. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTION

SECTION 3.01. Amends Section 32.021(i) and (k), Human Resources Code, as follows:

> (i) Authorizes a record of the department, including a record of a department survey, complaint investigation, incident investigation, or survey report, that relates to an institution, including an intermediate care facility for the mentally retarded, to be introduced into evidence in certain proceedings if the record is admissible under the Texas Rules of Evidence. Deletes exception as

provided by Subsections (j) and (k). Deletes text regarding state Medicaid program. Makes a conforming change.

(k) Authorizes a department surveyor or investigator to testify in a civil action under certain criteria if the testimony is admissible under the Texas Rules of Evidence. Makes conforming changes.

SECTION 3.02. Amends Chapter 242B, Health and Safety Code, by adding Section 242.050, as follows:

Sec. 242.050. ADMISSIBILITY OF CERTAIN DOCUMENTS OR TESTIMONY. Provides that Sections 32.021(i) and (k), Human Resources Code, govern the admissibility in a civil action against an institution of certain items.

SECTION 3.03. Amends Chapter 252B, Health and Safety Code, by adding Section 252.045 to make a conforming change.

SECTION 3.04. Repealer: Section 32.021(j) (relating to certain civil actions), Human Resources Code.

SECTION 3.05. Makes application of this article prospective.

ARTICLE 4. DATA REPORTING FOR CERTAIN LIABILITY INSURANCE COVERAGE

SECTION 4.01. Amends Chapter 38, Insurance Code, by adding Subchapter F, as follows:

SUBCHAPTER F. DATA REPORTING BY CERTAIN LIABILITY INSURERS

Sec. 38.251. INSURER DATA REPORTING. (a) Requires each insurer that writes professional liability insurance policies for nursing institutions licensed under Chapter 242, Health and Safety Code, including an insurer whose rates are not regulated, to, as a condition of writing those policies in this state, comply with a request for information from the commissioner of insurance (commissioner) under this section.

(b) Authorizes the commissioner to require information by certain means consistent with this code applicable to the affected insurer that the commissioner believes will allow the commissioner to carry out certain duties.

(c) Sets forth provisions relating to privileged and confidential information.

Sec. 38.252. RECOMMENDATIONS TO LEGISLATURE. Requires the commissioner to assemble information and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of the legislation described by Section 38.251 and to report the commissioner’s findings and recommendations to the legislature.

ARTICLE 5. AVAILABILITY OF AND COVERAGE UNDER CERTAIN PROFESSIONAL LIABILITY INSURANCE

SECTION 5.01. Amends Section 2(2), Article 5.15-1, Insurance Code, to redefine "health care provider."

SECTION 5.02. Amends Section 8, Article 5.15-1, Insurance Code, as follows:

Sec. 8. New heading: EXEMPLARY DAMAGES UNDER MEDICAL PROFESSIONAL LIABILITY INSURANCE. Authorizes no policy of medical professional liability insurance

issued to or renewed for a health care provider or physician in this state to include coverage for exemplary damages that may be assessed against the health care provider or physician; provided, however, that the commissioner may approve an endorsement form that provides for coverage for punitive damages to be used on a policy of medical professional liability insurance issued to a hospital, as the term "hospital" is defined in this article, or to a for-profit or not-for-profit nursing home.

SECTION 5.03. Amends Chapter 5B, Insurance Code, by adding Article 5.15-4, as follows:

Art. 5.15-4. BEST PRACTICES FOR NURSING HOMES. (a) Requires the commissioner to adopt best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes.

(b) Authorizes an insurance company or the Texas Medical Liability Insurance Underwriting Association, in determining rates for professional liability insurance applicable to a for-profit or not-for-profit nursing home, to consider whether the nursing home adopts and implements the best practices adopted by the commissioner under Subsection (a) of this article.

(c) Requires the commissioner, in developing or amending best practices for for-profit and not-for-profit nursing homes, to consult with the Health and Human Services Commission and a task force appointed by the commissioner. Requires the task force to be composed of certain representatives.

(d) Provides that the best practices for risk management and loss control adopted under this article do not establish standards of care for nursing homes applicable in a civil action against a nursing home.

SECTION 5.04. Amends Section 2(6), Article 21.49-3, Insurance Code, to redefine "health care provider."

SECTION 5.05. Amends Article 21.49-3(3A), Insurance Code, by adding Subsection (c) to provide that a for-profit or not-for-profit nursing home not otherwise eligible under this section for coverage from the association is eligible for coverage if the nursing home demonstrates, in accordance with the requirements of the association, that the nursing home made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers and was unable to obtain substantially equivalent coverage and rates.

SECTION 5.06. Amends Article 21.49-3(4B(1)), Insurance Code, to change a reference from "board" to "commissioner" and to add language provide that, for the purposes of this article, rates, rating plans, rating rules, rating classifications, territories, and policy forms for for-profit nursing homes are subject to the requirements of Article 5.15-1 of this code to the same extent as not-for-profit nursing homes.

SECTION 5.07. Amends Article 21.49-3(4A), Insurance Code, to read as follows:

Sec. 4A. POLICYHOLDER'S STABILIZATION RESERVE FUND. (a) Adds language providing that the purpose of the fund is to ensure the financial soundness of the association. Authorizes the fund to be used only for the purposes of this article.

(c) Deletes reference to "policyholder's."

(d) Requires collections of the stabilization reserve fund charge, except as provided by Subsection (e) of this section, to continue only until such time as the net balance of the

stabilization reserve fund is not less than the projected sum of premiums to be written in the year following valuation date.

(e) Authorizes the commissioner, if in any fiscal year the incurred losses and defense and cost-containment expenses from physicians or any single category of health care provider result in a net underwriting loss and exceed 25 percent of the stabilization reserve fund, as valued for that year, by order to direct the initiation or continuation of the stabilization reserve fund charge for physicians or that category of health care provider until the fund recovers the amount by which those losses and cost-containment expenses exceed 25 percent of the fund.

(f) Requires the stabilization reserve fund to be credited with all stabilization reserve fund charges collected from policyholders and to be charged with any deficit from the prior year's operation of the association.

(g) Sets forth provisions relating to the stabilization reserve fund.

(h) Authorizes the stabilization fund to be terminated only by law, notwithstanding Sections 11, 12, and 13 of this article.

(i) Requires that, notwithstanding Section 11 of this article, on termination of the stabilization reserve fund, all assets of the fund be transferred to the general revenue fund to be appropriated for purposes related to ensuring the kinds of liability insurance coverage that may be provided by the association under this article.

SECTION 5.08. Amends Article 21.49-3, Insurance Code, by adding Section 4B, as follows:

Sec. 4B. LIABILITY FOR EXEMPLARY DAMAGES; EXPIRATION. (a) Provides that the association is not liable for exemplary damages under a professional liability insurance policy that covers a for-profit or not-for-profit nursing home and that excludes coverage for exemplary damages awarded in relation to a covered claim award under Chapter 41, Civil Practice and Remedies Code, or any other law. Provides that this subsection applies without regard to the application of the common law theory or recovery known in Texas as the "Stowers Doctrine." Provides that this subsection does not affect the application of that doctrine to the liability of the association for compensatory damages.

(b) Provides that this section does not affect the contractual duties imposed under an insurance policy.

(c) Provides that this section does not prohibit a for-profit or not-for-profit nursing home from purchasing a policy to cover exemplary damages.

(d) Provides that this section only applies to the liability of the association for exemplary damages under an insurance policy delivered, issued for delivery, or renewed by the association to a for-profit or not-for-profit nursing home on or after January 1, 2002, and applies only to coverage provided under the policy for any portion of the term of the policy that occurs before January 1, 2006. Provides that this section applies only to the liability of the association for exemplary damages with respect to a claim for which a notice of loss or notice of occurrence was made, or should have been made, in accordance with the terms of the policy, on or after January 1, 2002, but before January 1, 2006.

(e) Provides that this section expires January 1, 2007.

SECTION 5.09. Amends Chapter 21E, Insurance Code, by adding Article 21.49-3d, to read as

follows:

Art. 21.49-3d. REVENUE BOND PROGRAM AND PROCEDURES FOR CERTAIN LIABILITY INSURANCE

Sec. 1. LEGISLATIVE FINDING; PURPOSE. Sets forth provisions regarding legislative finding and purpose.

Sec. 2. DEFINITION. Defines "association," "bond resolution," "board," and "insurer."

Sec. 3. BONDS AUTHORIZED; APPLICATION OF TEXAS PUBLIC FINANCE AUTHORITY ACT. (a) Requires the Texas Public Finance Authority, on behalf of the fund, to issue revenue bonds to meet certain criteria.

(b) Provides that, to the extent not inconsistent with this article, Chapter 1232, Government Code, applies to bonds issued under this article. Provides that in the event of a conflict, this article controls.

Sec. 4. APPLICABILITY OF OTHER STATUTES. Provides that certain laws apply to bonds issued under this article to the extent consistent with this article.

Sec. 5. LIMITS. Authorizes the Texas Public Finance Authority to issue, on behalf of the association, bonds in a total amount not to exceed $75 million.

Sec. 6. CONDITIONS. (a) Authorizes bonds to be issued at public or private sale.

(b) Authorizes bonds to mature not more than 10 years after the date issued.

(c) Requires bonds to be issued in the name of the association.

Sec. 7. ADDITIONAL COVENANTS. Authorizes the board, in a bond resolution, to make additional covenants with respect to the bonds and the designated income and receipts of the association pledged to their payment and to provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the bonds.

Sec. 8. SPECIAL ACCOUNTS. (a) Authorizes a bond resolution to establish special accounts, including an interest and sinking fund account, reserve account, and other accounts.

(b) Requires the association to administer the accounts in accordance with Article 21.49-3 of this code.

Sec. 9. SECURITY. (a) Provides that bonds are payable only from the maintenance tax surcharge established in Section 10 of this article or other sources the fund is authorized to levy, charge, and collect in connection with paying any portion of the bonds.

(b) Provides that bonds are obligations solely of the association. Provides that bonds do not create a pledging, giving, or lending of the faith, credit, or taxing authority of this state.

(c) Requires each bond to include a statement that the state is not obligated to pay any amount on the bond and that the faith, credit, and taxing authority of this state are not pledged, given, or lent to those payments.

(d) Requires each bond issued under this article to state on its face that the bond is

payable solely from the revenues pledged for that purpose and that the bond does not and may not constitute a legal or moral obligation of the state.

Sec. 10. MAINTENANCE TAX SURCHARGE. (a) Provides that a maintenance tax surcharge is assessed against certain entities.

(b) Requires the maintenance tax surcharge to be set in an amount sufficient to pay all debt service on the bonds. Provides that the maintenance tax surcharge is set by the commissioner in the same time and is required to be collected by the comptroller on behalf of the association in the same manner as applicable maintenance taxes are collected under Article 5.24 of this code.

(c) Requires the department, on determining the rate of assessment, to increase the maintenance tax rate applicable to correctly reported gross premiums for liability insurance to a rate sufficient to pay all debt service on the bonds, subject to the maximum maintenance tax rate applicable to the insurer under Article 5.24 of this code. Authorizes the department, if the resulting tax rate is insufficient to pay all debt service on the bonds, to assess an additional surcharge not to exceed one percent of correctly reported gross premiums for liability insurance to cover all debt service on the bonds. Provides that in this code, the maintenance tax surcharge includes the additional maintenance tax assessed under this subsection and the surcharge assessed under this subsection to pay all debt service of the bonds.

(d) Authorizes the association and each insurer to pass through the maintenance tax surcharge to each of its policyholders.

(e) Provides that as a condition of engaging in the business of insurance in this state, an insurer agrees that if the company leaves the market for liability insurance in this state the insurer remains obligated to pay, until the bonds are retired, the insurer's share of the maintenance tax surcharge assessed under this section in an amount proportionate to that insurer's share of the market for liability insurance in this state as of the last complete reporting period before the date on which the insurer ceases to engage in that insurance business in this state. Requires the proportion assessed against the insurer to be based on the insurer's gross premiums for liability insurance for the insurer's last reporting period. Provides, however, that an insurer is not required to pay the proportionate amount in any year in which the surcharge assessed against insurers continuing to write liability insurance in this state is sufficient to service the bond obligation.

Sec. 11. TAX EXEMPT. Provides that the bonds issued under this article, and any interest from the bonds, and all assets pledged to secure the payment of the bonds are free from taxation by the state or a political subdivision of this state.

Sec. 12. AUTHORIZED INVESTMENTS. Provides that the bonds issued under this article constitute authorized investments under Article 2.10 and Subpart A, Part I, Article 3.39 of this code.

Sec. 13. STATE PLEDGE. Provides that the state pledges to and agrees with the owners of any bonds issued in accordance with this article that the state will not limit or alter the rights vested in the association to fulfill the terms of any agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, any premium or interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners are fully met and discharged. Authorizes the association to include this pledge and agreement of the state in any agreement with the owners of the bonds.

Sec. 14. ENFORCEMENT BY MANDAMUS. Provides that a writ of mandamus and all other legal and equitable remedies are available to any party at interest to require the association and any other party to carry out agreements and to perform functions and duties under this article, the Texas Constitution, or a bond resolution.

SECTION 5.10. Requires the commissioner of insurance, not later than December 1, 2001, to adopt the initial best practices for for-profit and not-for-profit nursing homes adopted as required by Article 5.15-4, Insurance Code, as added by this article.

SECTION 5.11. Provides that Section 11, Article 5.15-1, Insurance Code, as added by this article, and Sections 2, 3A, and 4, Article 21.49-3, Insurance Code, as amended by this article, apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2002. Provides that a policy delivered, issued for delivery, or renewed before January 1, 2002, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 6. MANDATORY LIABILITY INSURANCE FOR NURSING INSTITUTIONS

SECTION 6.01. Amends Chapter 242B, Health and Safety Code, by adding Section 242.0372, as follows:

Sec. 242.0372. LIABILITY INSURANCE COVERAGE. (a) Provides that in this section, "health care liability claim" has the meaning assigned by the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, V.T.C.S.).

(b) Requires an institution, to hold a license under this chapter, to maintain professional liability insurance coverage against the liability of the institution for a health care liability claim.

(c) Requires the insurance coverage maintained by an institution under this section to meet certain criteria.

(d) Provides that to the extent permitted by federal law and applicable state and federal rules, the cost of insurance coverage required to be maintained under this section is an allowable cost for reimbursement under the state Medicaid program.

SECTION 6.02. (a) Provides that notwithstanding Section 242.0372, Health and Safety Code, as added by this article, and subject to Subsection (b) of this section, an institution licensed under Chapter 242, Health and Safety Code, is not required to maintain professional liability insurance as required by that section before September 1, 2002.

(b) Prohibits the Texas Department of Human Services, before September 1, 2003, from taking any enforcement action, including an action to suspend or revoke a license, because an institution fails to maintain professional liability insurance as required by Section 242.0372, Health and Safety Code, as added by this article, if the department determines, considering the totality of the circumstances, that the institution does not have the financial ability to obtain the insurance without jeopardizing the quality of care to residents.

ARTICLE 7. SURVEYS AND RELATED PROCESSES

SECTION 7.01. Amends Chapter 22, Human Resources Code, by adding Section 22.037, to read as follows:

Sec. 22.037. TRAINING AND CONTINUING EDUCATION RELATED TO CERTAIN

LONG-TERM CARE FACILITIES. (a) Defines "long-term 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) Requires a surveyor who is a health care professional licensed under the laws of this state, except as provided by Subsection (e), to receive a minimum of 50 percent of the professional's required continuing education credits, if any, in gerontology or care for individuals with cognitive or physical disabilities, as appropriate.

(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 or care for individuals with cognitive or physical disabilities, as appropriate.

SECTION 7.02. Amends Chapter 531B, Government Code, by adding Sections 531.056, 531.057, and 531.058, to read as follows:

Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN INSTITUTIONS AND FACILITIES. (a) Requires the Health and Human Services Commission (commission) to adopt procedures to review certain criteria.

(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. (a) 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) Prohibits a quality-of-care monitor from interfering with, impeding, or otherwise adversely affecting the performance of the duties of a surveyor, inspector, or

investigator of the Texas Department of Human Services.

(g) Requires quality-of-care monitors to assess certain criteria.

(h) Requires the quality-of-care monitor to include in an assessment visit to meet certain criteria.

(i) Requires the identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (h)(2) to remain confidential and prohibits the person's identity from being disclosed to any person under any other provision of this section.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) Authorizes rapid response teams to visit long-term care facilities that request the commission's assistance. Prohibits a visit under this subsection from occurring before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(o) 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, 247, or 252, Health and Safety Code, or in accordance with Chapter 32, 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), Human Resources Code, or Chapter 242, 247, or 252, Health and Safety Code. Requires the informal dispute resolution process to require certain criteria to be met.

(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 7.03. Amends Section 32.021(d), Human Resources Code, to require the department to

include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), P.L. 100-203, Nursing Home Reform Amendments of 1987, provided that the department is required to meet certain criteria. Deletes language relating to requirements of the informal dispute resolution process.

SECTION 7.04. 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 7.05. 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 7.06. (a) Provides that effective January 1, 2002, certain criteria concerning the Texas Department of Human Services and the Health and Human Services Commission are prospective.

(b) Prohibits the Health and Human Services Commission, in implementing Section 531.057, Government Code, as added by this article, from transferring to the commission employees or funding from the regulatory functions of the Texas Department of Human Services.

ARTICLE 8. AMELIORATION OF VIOLATIONS

SECTION 8.01. Amends Section 242.071, Health and Safety Code, as follows:

Sec. 242.071. AMELIORATION OF VIOLATION. (a) Authorizes the commissioner, in lieu of demanding, rather than ordering, payment of an administrative penalty assessed under Section 242.066, rather than 242.069, in accordance with this section, to allow, rather than require, the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) Requires the department to offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) Prohibits the department from offering amelioration to a person if certain conditions exist.

(d) Requires the department to offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) Requires a person to whom amelioration has been offered to file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. Requires the person, in submitting the plan, to agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) Requires a plan for amelioration, at a minimum, to meet certain criteria.

(g) Authorizes the department to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules

adopted under this chapter.

(h) Requires the department to approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. Requires the department, on approval of a person's plan, to deny a pending request for a hearing submitted by the person under Section 242.067(d).

(i) Prohibits the department from offering amelioration to certain persons.

(j) Provides that in this section, "immediate jeopardy to health and safety" means a situation in which there is a high probability that serious harm or injury to a resident could occur at any time or already has occurred and may occur again if the resident is not protected from the harm or if the threat is not removed.

SECTION 8.02. Amends Section 252.071, Health and Safety Code, as follows:

(a) Makes conforming changes.

(b) Requires the department to offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) Prohibits the department from offering amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) Requires the department to offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) Requires a person to whom amelioration has been offered to file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. Requires the person, in submitting the plan, to agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) Requires a plan for amelioration, at a minimum, to meet certain criteria.

(g) Authorizes the department to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) Requires the department to approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. Requires the department, on approval of a person's plan, to deny a pending request for a hearing submitted by the person under Section 252.066(b).

(i) Prohibits the department from offering amelioration to certain persons.

(j) Provides that in this section, "immediate jeopardy to health and safety" means a situation in which there is a high probability that serious harm or injury to a resident could occur at any time or already has occurred and may occur again if the resident is not protected from the harm or if the threat is not removed.

SECTION 8.03. Makes application of this article prospective.

ARTICLE 9. QUALITY ASSURANCE FEE

SECTION 9.01. Amends Chapter 242, Health and Safety Code, by adding Subchapter Q, as follows:

SUBCHAPTER Q. QUALITY ASSURANCE FEE

Sec. 242.851. DEFINITION. Defines "gross receipts."

Sec. 242.852. COMPUTING QUALITY ASSURANCE FEE. (a) Requires a quality assurance fee to be imposed on each institution for which a license fee to be paid under Section 242.034. Sets forth provisions regarding the fee.

(b) Requires the Health and Human Services Commission or the department at the direction of the commission to set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to six percent of the total annual gross receipts for institutions in this state. Provides that the fee is subject to a prospective adjustment as necessary.

(c) Requires the amount of the quality assurance fee to be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) Provides that the quality assurance fee is an allowable cost for reimbursement under the state Medicaid program.

Sec. 242.853. PATIENT DAYS. Requires an institution, for each calendar day, to determine the number of patient days by meeting certain criteria.

Sec. 242.854. REPORTING AND COLLECTION. (a) Requires the Health and Human Services Commission or the department at the direction of the commission to collect the quality assurance fee.

(b) Requires each institution to meet certain criteria.

Sec. 242.855. RULES; ADMINISTRATIVE PENALTY. (a) Requires the Health and Human Services Commission to adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) Prohibits the Health and Human Services Commission from adopting rules granting any exceptions from the quality assurance fee.

(c) Prohibits an administrative penalty assessed under this subchapter in accordance with Section 242.066 from exceeding one-half of the amount of the outstanding quality assurance fee or $20,000, whichever is greater.

Sec. 242.856. QUALITY ASSURANCE FUND. (a) Provides that the quality assurance fund is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Requires the comptroller, notwithstanding any other law, to deposit fees collected under this subchapter to the credit of the fund.

(b) Provides that the fund is composed of certain monies.

(c) Provides that money deposited to the fund remains the property of the fund and

may be used only for the purposes of this subchapter.

(d) Provides that subject to legislative appropriation, quality assurance fees collected under this chapter, combined with federal matching funds, will support or maintain an increase in Medicaid reimbursement for institutions.

Sec. 242.857. REIMBURSEMENT OF INSTITUTIONS. (a) Requires the Health and Human Services Commission to use money in the quality assurance fund, together with any federal money available to match that money, for certain purposes.

(b) Requires the Health and Human Services Commission or the department at the direction of the commission to devise the formula by which amounts received under this section increase the reimbursement rates paid to institutions under the state Medicaid program.

(c) Requires the Health and Human Services Commission to ensure that the formula devised under Subsection (b) provides incentives for institutions to increase direct care staffing and direct care wages and benefits.

Sec. 242.858. INVALIDITY; FEDERAL FUNDS. Requires the commission, if any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the Health and Human Services Commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, to stop collection of the quality assurance fee and to return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the institutions that paid the fees in proportion to the total amount paid by those institutions.

Sec. 242.859. LEGISLATIVE REVIEW; EXPIRATION. Requires the 79th Legislature to review the operation and effectiveness of this subchapter. Provides that unless continued in effect by the 79th Legislature, this subchapter expires effective September 1, 2005.

SECTION 9.02. Provides that notwithstanding Section 242.852, Health and Safety Code, as added by this article, the quality assurance fee imposed under Subchapter Q, Chapter 242, Health and Safety Code, as added by this article, that is effective for the first month following the effective date of this Act is equal to $5.25 multiplied by the number of patient days as determined under that subchapter. Provides that the quality assurance fee established under this section remains in effect until the Health and Human Services Commission, or the Texas Department of Human Services at the direction of the commission, obtains the information necessary to set the fee under Section 242.852, Health and Safety Code, as added by this Act.

SECTION 9.03. Requires the Health and Human Services Commission to adopt rules as necessary to implement Subchapter Q, Chapter 242, Health and Safety Code, as added by this Act.

SECTION 9.04. Requires a state agency affected by a provision of this Act to request a waiver or authorization and authorizes the agency to delay implementing that provision until the waiver or authorization is granted, if the agency determines before implementing any provision of this Act that a waiver or authorization from a federal agency is necessary.

ARTICLE 10. TEXAS DEPARTMENT OF INSURANCE STUDY AND REPORT

SECTION 10.01. DEFINITIONS. Defines “commissioner” and “department.”

SECTION 10.02. STUDY. Requires the Texas Department of Insurance (department) to study the implementation of Articles 3, 5, and 6 of this Act and, in particular, to study certain other information.

SECTION 10.03. REPORTS. (a) Requires the commissioner, not later than December 1, 2002, to submit an interim report on the study conducted under Section 10.02 of this Act to the governor, lieutenant governor, and speaker of the house of representatives.

(b) Requires the commissioner, not later than December 1, 2004, to submit a final report on the study to the governor, lieutenant governor, and speaker of the house of representatives.

SECTION 10.04. EXPIRATION. Provides that this article expires September 1, 2005.

ARTICLE 11. EFFECT OF ACT; EFFECTIVE DATE

SECTION 11.01. Provides that, to the extent of any conflict, this Act prevails over any other Act of the 77th Legislature, Regular Session, 2001, regardless of the relative dates of enactment, including an Act that has certain intentions.

SECTION 11.02. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from original as follows:

SECTION 1.01. Adds a heading to the section.

SECTION 1.02. Adds a heading to the section and adds new language relating to the legislative intent and purpose of the bill.

Deletes proposed SECTION 5.03 relating to indemnity for exemplary damages, and renumbers subsequent sections accordingly.

SECTION 5.05. Adds language to Section 3A, Article 21.49-3, Insurance Code, to change a reference from "bona fide effort" to "verifiable effort" and "coverage" to "substantially equivalent coverage and rates."

SECTION 5.07. Adds language to Section 4A, Article21.49-3, Insurance Code, to provide that the purpose of the fund is to ensure the financial soundness of the association and to authorize the fund to be used only for the purposes of this article. Adds new Subsections (g)-(i) relating to the stabilization reserve fund.

Adds a new SECTION 5.08 which amends Article 21.49-3, Insurance Code, by adding Section 4B relating to liability for exemplary damages.

SECTION 6.01. Amends proposed Section 242.0372, Health and Safety Code, to change references from "license holder" to "institution."

SECTION 6.02. Adds new Subsection (b) to prohibit the Texas Department of Human Services, before September 1, 2003, from taking any enforcement action, including an action to suspend or revoke a license, because an institution fails to maintain professional liability insurance as required by Section 242.0372, Health and Safety Code, as added by this article, if the department determines, considering the totality of the circumstances, that the institution does not have the financial ability to obtain the insurance without jeopardizing the quality of care to residents.

SECTION 9.01. Amends proposed Section 242.854, Health and Safety Code, to change a reference from "fee" to "quality assurance fee."

SECTION 10.03. Eliminates proposed language requiring the final report to include a recommendation as to whether the changes in law made by Articles 5 and 6 of this Act should be repealed, continued, or modified.

SECTION 11.01. Amends proposed SECTION 11.01 by adding a new heading to the section and by adding language providing that, to the extent of any conflict, this Act prevails over any other Act of the 77th Legislature, Regular Session, 2001, regardless of the relative dates of enactment, including an Act that has certain intentions.

SECTION 11.02. Adds a new SECTION 11.02 to contain the effective date.