

## **BILL ANALYSIS**

Senate Research Center  
78R8567 AKH-D

C.S.S.B. 421  
By: Carona  
State Affairs  
3/19/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, a number of health care providers, including nursing homes, are able to acquire liability coverage through the Texas Medical Liability Insurance Underwriting Association (association). C.S.S.B. 421 adds assisted living facilities to those facilities that are able to obtain such coverage from the association. In addition, this bill adds assisted living facilities to those facilities that benefit from a certain stabilization reserve fund that is funded by bonds issued by the Texas Public Finance Authority.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2(2), Article 5.15-1, Insurance Code, to redefine “health care provider” to include a for-profit assisted living facility or not-for-profit assisted living facility and an eligible health care practitioner or facility, in accordance with Article 21.49-3, 3B(b) (Texas Medical Liability Insurance Underwriting Association Act).

SECTION 2. Amends Section 8, Article 5.15-1, Insurance Code, to add an assisted living facility to those institutions for which, when a policy of medical professional liability insurance is issued, the commissioner of insurance (commissioner) may approve a form providing for coverage for exemplary damages on that policy.

SECTION 3. Amends Section 2(6), Article 21.49-3, Insurance Code, to redefine “health care provider” to include a for-profit or not-for-profit assisted living facility.

SECTION 4. Amends Section 3A, Article 21.49-3, Insurance Code, to reassign duties and responsibilities of the State Board of Insurance of Texas to the commissioner and add assisted living facilities to those facilities that must make a verifiable but unsuccessful effort to obtain coverage by authorized and eligible surplus lines insurers to be eligible for coverage.

SECTION 5. Amends Section Article 21.49-3, Insurance Code, by adding Section 3B, as follows:

Sec. 3B. ELIGIBILITY OF OTHER HEALTH CARE PRACTITIONERS AND FACILITIES. (a) Defines “health care,” “health care facility,” and “health care practitioner.”

(b) Authorizes the commissioner to perform certain actions after notice and opportunity for hearing.

(c) Entitles a health care practitioner or facility designated under Subsection (b) to receive coverage in accordance with Article 5.15-1 (Professional Liability Insurance for Physicians and Health Care Providers).

(d) Authorizes a commissioner’s order to indicate whether a health care practitioner or

facility designated under Subsection (b) is included under the policyholder's stabilization reserve fund under Section 4A or 4B of this article or whether a separate one is created, operating in the same manner.

SECTION 6. Amends Sections 4(b)(1), (3), and (6), Article 21.49-3, Insurance Code, as follows:

(b)(1) Adds for-profit assisted living facilities to those institutions whose rates, rating plans, rating rules, rating classifications, territories, and policy forms are subject to the requirements of Article 5.15-1 of this code to the same extent as not-for-profit assisted living facilities.

(3) Adds assisted living facilities to those institutions that are exempted from the provision that any deficit sustained by the association with respect to health care providers in any one year shall be recouped by certain procedures. Makes conforming changes.

(6) Adds the rates applicable to professional liability insurance provided by the association to not-for-profit assisted living facilities to those rates that must reflect a certain discount as compared with others in the same category of insureds.

SECTION 7. Amends Section 4A, Article 21.49-3, Insurance Code, as follows:

Sec. 4A. New heading: **POLICYHOLDER'S STABILIZATION RESERVE FUND FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS**. Adds assisted living facilities to those health care providers for which a policyholder's stabilization reserve fund administered under this section does not apply. Deletes Subsection (e) and (f) pertaining to stabilization reserve fund charges and funding. Makes conforming changes.

SECTION 8. Amends the heading of Section 4B, Article 21.49-3, Insurance Code, to read as follows:

Sec. 4B. New heading: **STABILIZATION RESERVE FUND FOR FOR-PROFIT AND NOT-FOR-PROFIT NURSING HOMES AND ASSISTED LIVING FACILITIES**.

SECTION 9. Amends Sections 4B(a), (b), (d), (e), and (h), Article 21.49-3, Insurance Code, to add assisted living facilities to those institutions which benefit from a stabilization reserve fund administered under this section and in the operating plan of the association. Makes conforming changes.

SECTION 10. Amends Section 4C, Article 21.49-3, Insurance Code, by amending Subsections (a) and (c) to make conforming changes and adding Subsection (d-1) to make application of this section prospective to specified dates of policy issuance, coverage commencement, and notice of a claim.

SECTION 11. Amends Section 5(a), Article 21.49-3, Insurance Code, to make conforming changes.

SECTION 12. Amends Section 1, Article 21.49-3d, Insurance Code, to add assisted living facilities to those institutions for which an issuance of bonds to provide funds for professional liability insurance through the association is found by the legislature to be for the benefit of the public.

SECTION 13. Amends Section 3(a), Article 21.49-3d, Insurance Code, to add assisted living facilities to those institutions whose stabilization reserve fund the Texas Public Finance Authority must issue revenue bonds to fund.

SECTION 14. Repealer: Article 21.49-3, Section 3A(c), Insurance Code (requires the commissioner to adopt minimum rating standards, promoting high quality level of care, for for-profit nursing homes before obtaining coverage through the association).

SECTION 15. Effective date: September 1, 2003.

## **SUMMARY OF COMMITTEE CHANGES**

Differs from the original in SECTION 1 by adding proposed text that includes in the redefinition of “health care provider” an eligible health care practitioner or facility, in accordance with Article 21.49-3, 3B(b) (Texas Medical Liability Insurance Underwriting Association Act).

Differs from the original in SECTION 4 by amending Section 3A, Article 21.49-3, Insurance Code, as added by Chapter 1284, rather than Chapter 921, Acts of the 77th Legislature, Regular Session, 2001.

Differs from the original in SECTION 5 by adding Section 3B to Article 21.49-3, rather than relettering and amending Article 24.19-3, Section 3A(c).

Differs from the original in SECTIONS 14 and 15 by inserting a new SECTION 14 and moving the effective date to a new SECTION 15.