

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1111
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State Affairs
3/25/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Department of Aging and Disability Services (DADS) is statutorily authorized in certain circumstances to seek the placement of a court-appointed trustee to oversee the operations of a nursing facility, assisted living facility, or Intermediate Care Facility for the Mentally Retarded (ICF-MR). DADS is permitted to request a court-appointed trustee if the home is operating without a license; DADS has revoked or suspended the facility's license; suspension or revocation procedures are pending and DADS determines that there is imminent threat to the health and safety of the residents; DADS determines that an emergency exists that presents immediate threat to the health and safety of the residents; or the facility is closing and arrangements for relocation of the residents to another facility have not been made.

DADS has experienced trouble recruiting these court-appointed trustees. One issue often cited is that these trustees, while operating at the behest of the state, are not employees of the state and therefore do not have immunity from civil lawsuit. Historically, Travis County district courts have approved requests by court-appointed trustees for payment of incurred legal fees from the facilities' trust funds; however, such authority is not specifically stated in statute.

C.S.S.B. 1111 provides that a DADS-requested, court-appointed trustee to a nursing facility, assisted living facility, or ICF-MR facility is not liable for civil damages for an action made in good faith in the official scope of the trustee's duties. Additionally, C.S.S.B. 1111 authorizes a court to order DADS to disburse emergency assistance funds to a court-appointed trustee, and authorizes trustees to use the funds to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities.

[**Note:** While the statutory reference in this bill is to the Texas Department of Human Services (TDHS), the following amendments affect the Department of Aging and Disability Services (DADS), as the successor agency to TDHS.]

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 Subchapter D, Chapter 242, Health and Safety Code, by adding Section 242.0947, as follows:

Sec. 242.0947. LIMITATION ON CIVIL LIABILITY AND PAYMENT OF REASONABLE LEGAL FEES ACTUALLY INCURRED BY CERTAIN TRUSTEES.

(a) Provides that this section applies only to a trustee of a nursing home or assisted living facility appointed under Section 242.094 (Involuntary Appointment).

(b) Provides that a trustee is not liable for civil damages for an action made in good faith in the official scope of the trustee's duties.

(c) Entitles the trustee to payment for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities.

(d) Authorizes a trustee of a home, notwithstanding Section 242.096(b) (relating to the use of the emergency assistance fund only in the case of immediate threat to residents), or any other law, to use the emergency assistance funds under Section 242.096 to pay for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities. Authorizes the court, notwithstanding Section 242.096(c) (relating to disbursement of funds by Texas Department of Human Services (TDHS) or any other law, to order TDHS to disburse emergency assistance funds to the trustee to pay for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities.

(e) Authorizes a trustee of an assisted living facility, notwithstanding Section 242.0965(b) (relating to the use of the emergency assistance fund only in the case of immediate threat to residents), or any other law, to use the emergency assistance funds under Section 242.0965 (Assisted Living Facility Trust Fund and Emergency Assistance Funds) to pay for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities. Authorizes the court, notwithstanding Section 242.096(c) (relating to disbursement of funds by TDHS), or any other law, to order TDHS to disburse emergency assistance funds to the trustee to pay for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities.

SECTION 2. Amends Subchapter D, Chapter 252, Health and Safety Code, by adding Section 252.0935, as follows:

Sec. 252.0935. LIMITATION ON CIVIL LIABILITY AND PAYMENT OF LEGAL FEES ACTUALLY INCURRED BY CERTAIN TRUSTEES. (a) Provides that this section applies only to a trustee of a facility who is appointed under Section 252.093 (Involuntary Appointment).

(b) Provides that a trustee is not liable for civil damages for an action made in good faith in the official scope of the trustee's duties.

(c) Authorizes a trustee, notwithstanding Section 252.095(c) (relating to disbursement of funds by TDHS), or any other law, to use the emergency assistance funds under Section 252.095 (Emergency Assistance Fee) to pay for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities. Authorizes a court, notwithstanding Section 252.095(d) (relating to a court ordering TDHS to disburse funds) or any other law, to order TDHS3/25/2009 to disburse emergency assistance funds to the trustee to pay for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's responsibilities.

SECTION 3. (a) Makes application of Sections 242.0947(b) and 252.0935(b), Health and Safety Code, as added by this Act, prospective.

(b) Makes application of Sections 242.0947(c)-(e) and 252.0935(c), Health and Safety Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2009.