

BILL ANALYSIS

Senate Research Center

H.B. 2109
By: Truitt (Uresti)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1999, the 76th Legislature made it the official policy of the State of Texas to permit assisted living residents to age in place. The idea is to permit residents to remain in an assisted living facility provided that the resident does not pose a danger to themselves or others. In 2001, the 77th Legislature developed a statutory procedure to help facilitate aging in place, permitting assisted living residents to remain in a facility provided that the resident or their family, the resident's physician, and the facility provided the Department of Aging and Disability Services (DADS) with written information demonstrating that the resident could remain safely in the facility. If the process was followed, neither the facility nor the residents were to be penalized by DADS.

Recently, there have been reports of some DADS officials not following, or even ignoring, this placement process. This has resulted in residents being forced from assisted living facilities without the benefit of the placement process developed in 2001. Assisted living facilities are afraid that their residents or their staff will be targeted by DADS officials if they attempt to enforce their rights.

H.B. 2109 emphasizes and clarifies for DADS that the placement process is to be properly utilized without fear of penalty or retaliation. It also provides that DADS may assess a penalty, if a provider repeatedly or intentionally violates the process; or if a final finding by DADS, after exhausting any appeals or other due process, determines the process has been followed, and the placement is inappropriate, but the facility still refuses to discharge the resident.

H.B. 2109 amends current law relating to agency action concerning assisted living facilities, including regulation of inappropriate placement of residents at facilities and provides a penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 247.066, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 247.066, Health and Safety Code, by adding Subsections (b-1), (d-1), (d-2), (f), (g), and (h) and amending Subsections (c), (d), and (e), as follows:

(b-1) Provides that, if a facility identifies a resident who the facility believes is inappropriately placed at the facility, the facility is not required to move the resident if the facility obtains the written statements and waiver prescribed by Subsection (c).

(c) Provides that, if a resident is inappropriately placed at a facility, rather than if a Department of Aging and Disability Services (DADS) inspector determines that a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility determines or is informed of DADS's determination that a resident is inappropriately placed at the facility, rather than the date that the facility is informed of the specific basis of the inspector's determination, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from DADS of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) Requires the facility, if DADS determines, rather than if a DADS inspector determines, that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements and waiver prescribed by Subsection (c) that would allow the resident to remain in the facility, to discharge the resident. Provides that the resident is allowed 30 days after the date of discharge to move from the facility. Requires that a discharge required under this subsection be made notwithstanding any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code, and the terms of any contract. Deletes existing text prohibiting DADS, notwithstanding the determination of the inspector, from assessing an administrative penalty against the facility because of the inappropriate placement.

(d-1) Authorizes DADS, if a facility is required to discharge the resident because the facility has not obtained the written statements prescribed by Subsection (c) or DADS not approve a waiver based on the written statements submitted, to:

(1) assess an administrative penalty against the facility if the facility intentionally or repeatedly disregards DADS criteria for obtaining a waiver for inappropriate placement of a resident;

(2) seek an emergency suspension or closing order against the facility under Section 247.042 (Emergency Suspension or Closing Order) if DADS determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or

(3) seek other sanctions against the facility under Subchapter C (General Enforcement) in lieu of an emergency suspension or closing order if DADS determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

(d-2) Requires the executive commissioner of the Health and Human Services Commission by rule to develop criteria under which DADS may determine when a facility has intentionally or repeatedly disregarded the waiver process.

(e) Requires DADS, to facilitate obtaining the written statements required under Subsections (b-1) and (c)(1)-(3), to develop standard forms that are required to be used under Subsections (b-1) or (c)(1)-(3), as appropriate. Requires DADS to develop criteria under which DADS will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b-1) or (c)(4).

(f) Requires DADS to ensure that each facility and resident is aware of the waiver process described by Subsection (c) for aging in place. Requires that a facility include with the facility disclosure statement required under Section 247.026(b)(4)(B) (requiring that the standards require an assisted living facility to provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by DADS) information regarding the policies and procedures for aging in place described by this section.

(g) Requires DADS, in cooperation with assisted living service providers, to develop cost-effective training regarding aging in place, retaliation, and other issues determined by DADS.

(h) Requires DADS to require surveyors, facility supervisors, and other staff, as appropriate, to complete the training described by Subsection (g) annually.

SECTION 2. Amends Section 247.068, Health and Safety Code, by adding Subsection (c), as follows:

(c) Prohibits a DADS employee from retaliating against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

- (1) complaining about the conduct of a DADS employee;
- (2) disagreeing with a DADS employee about the existence of a violation of this chapter or a rule adopted under this chapter; or
- (3) asserting a right under state or federal law.

SECTION 3. Effective date: upon passage or September 1, 2011.