

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, an assisted living community that disputes a survey finding from the Department of Aging and Disability Services (DADS) can appeal the finding to the Health and Human Services Commission (HHSC) in a process called informal dispute resolution (IDR). The consolidation of DADS into HHSC will mean that the same agency that is issuing survey findings would be determining the validity of those findings. S.B. 924 establishes a balanced IDR process for assisted living communities by ensuring an independent third party is conducting the IDR hearings and providing a framework.

As proposed, S.B. 924 amends current law relating to informal dispute resolutions for violations of health and safety standards at certain long-term care facilities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission (HHSC) is modified in SECTION 1 (Section 247.051, Health and Safety Code) and SECTION 2 (Section 531.058, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 247.051(a), (c), and (d), Health and Safety Code, as follows:

(a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC), by rule, to establish an informal dispute resolution (IDR) process to address disputes between an assisted living facility, rather than a facility, and HHSC concerning a statement of violations prepared by HHSC. Replaces reference to the Department of Aging and Disability Services (DADS) with HHSC. Requires that the IDR process require:

(1) makes a conforming change;

(2) that the process be completed not later than a certain date, rather than HHSC to complete the process not later than a certain date;

(3) that, not later than a certain day, HHSC forward to the assisted living facility a copy of certain information, including any notes taken by or e-mails or messages sent by an HHSC employee involved with the survey, inspection, investigation, or other visit and excluding certain information, including the name of any complainant, witness, or informant and any information that would reasonably lead to the identification of a complainant, witness, or informant, both of which are required to be redacted from information provided to the assistant living facility. Makes a conforming change;

(4) that full consideration is given to all legal and factual arguments raised during the IDR process, rather than HSSC to give full consideration to all factual arguments raised during the IDR process that meet certain criteria;

(5) that full consideration is given during the IDR process to the provided information, rather than that IDR staff give full consideration to the provided information. Makes a conforming change;

(6) and (7) makes conforming and nonsubstantive changes;

(8) that HHSC bears the burden of proving the violation of a standard or standards; and

(9) that a witness statement provided by an assisted living facility be given the same presumption of truth as a witness statement provided by HHSC, including a witness statement contained in a statement of deficiencies, provided that the assisted living facility and HHSC may challenge the reliability of any witness statement based on the records presented during the course of the IDR process.

(c) Requires an assisted living facility requesting an IDR to reimburse HHSC, rather than DADS, for certain costs. Makes a conforming change.

(d) Establishes the confidentiality of a statement of violations prepared by HHSC, rather than DADS. Makes a conforming change.

SECTION 2. Amends Section 531.058, Government Code, by amending Subsections (a) and (a-1) and adding Subsection (d), as follows:

(a) Requires the IDR process to provide for adjudication of disputes relating to a proposed enforcement action or related proceeding of HHSC, rather than of HHSC or DADS. Requires the process to require:

(1) an institution or facility to request IDR not later than a certain day after notification by HHSC, rather than by HHSC or DADS, as applicable;

(2) the completion of the process not later than certain dates, rather than HHSC to complete not later than certain dates.

(a-1) Requires HHSC, as part of the established IDR process, to contract with an appropriate disinterested person, rather than an appropriate disinterested person who is a nonprofit organization, to adjudicate disputes between an institution or facility licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions), Health and Safety Code, or a facility licensed under Chapter 247 (Assisted Living Facilities), Health and Safety Code, and HHSC concerning a statement of violations prepared by HHSC in connection with a survey conducted by HHSC of the institution or facility. Makes conforming changes.

(d) Requires that the rules adopted by the executive commissioner that relate to a dispute described by Section 247.051(a), Health and Safety Code, incorporate the requirements of Section 247.051 (Informal Dispute Resolution), Health and Safety Code.

SECTION 3. Effective date: September 1, 2017.