

## **BILL ANALYSIS**

C.S.S.B. 304  
By: Schwertner  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the most recent Sunset Advisory Commission review of the state's long-term care system determined that the Department of Aging and Disability Services issued only a handful of sanctions for the almost 19,000 violations against nursing facilities. The parties assert that many of these violations included repeat violations at the highest levels of severity, such as sexual abuse, resident-on-resident aggression, inadequate treatment of sores and infections, and medication errors. Citing research indicating that Texas has more serious violations per nursing home than most other states, the parties explain that the Sunset Advisory Commission ultimately determined that state penalties were insignificant and a negligible level of state enforcement existed. C.S.S.B. 304 seeks to strengthen regulatory oversight of these facilities.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

### **ANALYSIS**

C.S.S.B. 304 amends the Health and Safety Code to require the executive commissioner of the Health and Human Services Commission to revoke a license of a convalescent or nursing facility or a related institution if the Department of Aging and Disability Services (DADS) finds that the license holder has committed three violations for which the license could be denied, suspended, or revoked, within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident and that each of these violations is reported in connection with a separate survey, inspection, or investigation visit that occurred on separate entrance and exit dates. The bill prohibits the executive commissioner from revoking a license due to such a violation if the violation and the determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the time of the initial exit conference for a survey, inspection, or investigation; if the violation is not included on the final statement of violations; or if the violation has been reviewed under the informal dispute resolution process established for certain long-term care facilities and a determination was made that the violation should be removed from the license holder's record or that the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident. The bill makes these provisions effective September 1, 2016.

C.S.S.B. 304 authorizes DADS, in the case of revocation of a license of a convalescent or

nursing facility or related institution based on multiple violations committed within a 24-month period that constitute an immediate threat to health and safety related to the abuse or neglect of a resident, to take the following action to ensure the health and safety of residents of the institution: request the appointment of a trustee to operate the institution, assist with obtaining a new operator for the institution, or assist with the relocation of residents to another institution. The bill authorizes the executive commissioner to stay such a license revocation if the executive commissioner determines that the stay would not jeopardize the health and safety of the residents of the facility or place the residents at risk of abuse or neglect. The bill requires the executive commissioner to establish by rule criteria under which a license revocation may be stayed and to follow negotiated rulemaking procedures prescribed by the Negotiated Rulemaking Act for the adoption of rules establishing the criteria. The bill requires the established criteria to permit the executive commissioner to stay a license revocation of a nursing facility for which DADS has deployed a rapid response team, if the facility has cooperated with the rapid response team and demonstrated improvement in quality of care, as determined by the rapid response team. The bill authorizes the executive commissioner to stay a license revocation for a veterans home if the Veterans' Land Board contracts with a different entity to operate the veterans home than the entity that operated the home during the period in which the violations occurred.

C.S.S.B. 304 removes a requirement that priority for monitoring visits be given to long-term care facilities with a history of patient care deficiencies and instead requires monitoring visits to be given to long-term care facilities with a history of patient care deficiencies or that are identified as medium risk through DADS' early warning system. The bill authorizes a long-term care facility to request a monitoring visit. The bill includes among the conditions required to be assessed by a quality-of-care monitor conditions identified through the long-term care facility's quality measure reports based on Minimum Data Set Resident Assessments. The bill requires DADS to schedule a follow-up visit not later than the 45th day after the date of an initial monitoring visit. The bill includes a long-term care facility administrator among the persons to whom conditions observed by a quality-of-care monitor that create an immediate threat to the health or safety of a resident are required to be immediately reported. The bill specifies that the long-term care facilities identified through DADS' early warning system to which a DADS rapid response team may be deployed are facilities identified as high risk, includes a long-term care facility that is a nursing institution and that has committed three violations within a 24-month period that constitute an immediate threat to health and safety related to the abuse or neglect of a resident among the facilities to which a DADS rapid response team may be deployed, and requires a long-term care facility to cooperate with a rapid response team deployed by DADS to improve the quality of care at the facility.

C.S.S.B. 304 amends the Government Code to require the Health and Human Services Commission (HHSC), as part of the informal dispute resolution process for certain long-term care facilities, to contract with an appropriate disinterested person who is a nonprofit organization to adjudicate disputes between a licensed convalescent or nursing facility or related institution and DADS concerning a statement of violations prepared by DADS in connection with a survey conducted by DADS of the institution or facility. The bill establishes that statutory provisions relating to impartial third parties in alternative dispute resolution procedures do not apply to the selection of an appropriate disinterested person and requires the person with whom HHSC contracts to adjudicate all such disputes. The bill requires, as soon as practicable after the bill's effective date, the executive commissioner to adopt the rules necessary to implement the bill's provisions relating to dispute resolution and DADS and HHSC, as appropriate, to revise or enter into a memorandum of understanding as required by a federal agency that is necessary to implement the bill's provisions relating to dispute resolution.

#### **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2015.

## COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 304 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

### SENATE ENGROSSED

SECTION 1. (a) It is the intent of the legislature that Section 242.061, Health and Safety Code, as amended by this section, establish a ceiling or maximum number of violations related to the abuse and neglect of a resident that a facility can commit before the Department of Aging and Disability Services is required to revoke the facility's license. The changes in law made by this section are not intended to limit or diminish the department's permissive authority to revoke a license under Chapter 242, Health and Safety Code.

(b) Section 242.061, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (e) to read as follows:

(a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(3) "Neglect" has the meaning assigned by Section 260A.001.

(a-1) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;

(2) committed any act described by Sections 242.066(a)(2)-(6); or

(3) failed to comply with Section 242.074.

(a-2) Except as provided by Subsection (a-3) or (e), the department shall revoke a license under Subsection (a-1) if the

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. (a) It is the intent of the legislature that Section 242.061, Health and Safety Code, as amended by this section, establish a ceiling or maximum number of violations related to the abuse and neglect of a resident that a facility can commit before the executive commissioner is required to revoke the facility's license. The changes in law made by this section are not intended to limit or diminish the department's permissive authority to revoke a license under Chapter 242, Health and Safety Code.

(b) Section 242.061, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (c-1), (e), and (e-1) to read as follows:

(a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(3) "Neglect" has the meaning assigned by Section 260A.001.

(a-1) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;

(2) committed any act described by Sections 242.066(a)(2)-(6); or

(3) failed to comply with Section 242.074.

(a-2) Except as provided by Subsection (a-3) or (e-1), the executive commissioner shall revoke a license under Subsection (a-1) if

department finds that:

(1) the license holder has committed three violations described by Subsection (a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident; and  
(2) each of the violations described by Subdivision (1) are reported in connection with separate surveys, inspections, or investigation visits.

(a-3) The department may not revoke a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation is not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) for a survey, inspection, or investigation;

(2) the violation is not included on the final statement of violations described by Section 242.0445; or

(3) the violation has been reviewed under the informal dispute resolution process established by Section 531.058, Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's record; or

(B) the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident.

No equivalent provision.

(e) The executive commissioner may waive a license revocation required by Subsection (a-2) if the executive commissioner determines that the waiver would not jeopardize the health and safety of the residents of the facility or place the residents at risk of abuse or neglect. The executive

the department finds that:

(1) the license holder has committed three violations described by Subsection (a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident; and  
(2) each of the violations described by Subdivision (1) is reported in connection with a separate survey, inspection, or investigation visit that occurred on separate entrance and exit dates.

(a-3) The executive commissioner may not revoke a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation and the determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) for a survey, inspection, or investigation;

(2) the violation is not included on the final statement of violations described by Section 242.0445; or

(3) the violation has been reviewed under the informal dispute resolution process established by Section 531.058, Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's record; or

(B) the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident.

(c-1) In the case of revocation of a license under Subsection (a-2), to ensure the health and safety of residents of the institution, the department may:

(1) request the appointment of a trustee to operate the institution under Subchapter D;

(2) assist with obtaining a new operator for the institution; or

(3) assist with the relocation of residents to another institution.

(e) The executive commissioner may stay a license revocation required by Subsection (a-2) if the executive commissioner determines that the stay would not jeopardize the health and safety of the residents of the facility or place the residents at risk of abuse or neglect. The executive

commissioner by rule shall establish criteria under which a waiver may be granted as provided by this subsection.

commissioner by rule shall establish criteria under which a license revocation may be stayed under this subsection. The executive commissioner shall follow negotiated rulemaking procedures prescribed by Chapter 2008, Government Code, for the adoption of rules establishing the criteria. The criteria established must permit the executive commissioner to stay a license revocation of a nursing facility for which the department has deployed a rapid response team under Section 255.004, if the facility has cooperated with the rapid response team and demonstrated improvement in quality of care, as determined by the rapid response team.

The executive commissioner may provide a waiver for a veterans home, as defined by Section 164.002, Natural Resources Code, if the Veterans' Land Board contracts with a different entity to operate the veterans home than the entity that operated the home during the period in which the violations described by Subsection (a-2) occurred.

(e-1) The executive commissioner may stay a license revocation required by Subsection (a-2) for a veterans home, as defined by Section 164.002, Natural Resources Code, if the Veterans' Land Board contracts with a different entity to operate the veterans home than the entity that operated the home during the period in which the violations described by Subsection (a-2) occurred.

SECTION 2. Section 242.0615(a), Health and Safety Code, is amended.

SECTION 2. Same as engrossed version.

SECTION 3. Section 255.003, Health and Safety Code, is amended.

SECTION 3. Substantially the same as engrossed version.

SECTION 4. Section 255.004, Health and Safety Code, is amended.

SECTION 4. Same as engrossed version.

SECTION 5. Section 531.058, Government Code, is amended.

SECTION 5. Same as engrossed version.

SECTION 6. (a) As soon as possible after the effective date of this Act, the Department of Aging and Disability Services or the Health and Human Services Commission, as appropriate, shall apply for any waiver or other authorization from a federal agency that is necessary to implement this Act. The department and commission may delay implementing this Act until the waiver or authorization is granted.

SECTION 6. Same as engrossed version.

(b) As soon as practicable after the effective date of this Act:

(1) the executive commissioner of the Health and Human Services Commission

shall adopt the rules necessary to implement Section 531.058(a-1), Government Code, as added by this Act; and

(2) the Department of Aging and Disability Services and the Health and Human Services Commission shall, as appropriate, revise or enter into a memorandum of understanding as required by a federal agency that is necessary to implement Section 531.058(a-1), Government Code, as added by this Act.

SECTION 7. Sections 242.061(a-2) and (a-3), Health and Safety Code, as added by this Act, apply only to a violation committed on or after September 1, 2016. A violation committed before September 1, 2016, is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose. For purposes of this section, a violation was committed before September 1, 2016, if any element of the violation occurred before that date.

SECTION 8. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

(b) Sections 242.061(a-2) and (a-3), Health and Safety Code, as added by this Act, take effect September 1, 2016.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.