

BILL ANALYSIS

C.S.H.B. 3533
By: Raymond
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that inspection procedures in certain long-term care facilities are not sufficient to ensure that inspections are conducted properly and by individuals with knowledge of such facilities. C.S.H.B. 3533 seeks to address this issue by revising certain inspection procedures and by creating a long-term care legislative oversight committee.

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 SECTIONS 1 and 3 of this bill.

ANALYSIS

C.S.H.B. 3533 amends the Health and Safety Code to authorize an officer or employee of an assisted living facility of which a Health and Human Services Commission (HHSC) employee who is a licensed health care professional in Texas conducts an inspection, and an officer or employee of an intermediate care facility for individuals with an intellectual disability of which such an HHSC employee conducts an inspection, survey, or investigation, to require the HHSC employee to provide proof of licensure before the HHSC employee conducts the inspection, survey, or investigation, as applicable. The bill requires the HHSC employee, on the inspection checklist of HHSC for an assisted living facility, and HHSC or a representative of HHSC, on the inspection form of HHSC for an intermediate care facility for individuals with an intellectual disability, to include a brief description of the evidence that supports a finding that a violation occurred and the name and title of the person who found each violation. The bill requires the executive commissioner of HHSC to adopt rules to ensure that among the community services regions HHSC uniformly administers inspections, surveys, and investigations and consistently interprets and enforces the rules and laws regulating assisted living facilities and licensed intermediate care facilities for individuals with an intellectual disability. The bill requires the executive commissioner to prepare and deliver a semiannual progress report on uniform administration, interpretation, and enforcement to HHSC and the appropriate health and human services legislative standing committees.

C.S.H.B. 3533 prohibits an applicable inspector, HHSC, or the HHSC representative, as applicable, from conducting an additional inspection, survey, or investigation during an additional exit conference and from using an additional exit conference to retaliate against an assisted living facility or an intermediate care facility for individuals with an intellectual disability for filing a complaint against the inspector, HHSC, or the HHSC representative regarding an inspection, survey, or investigation or for requesting an administrative hearing to

contest a finding of a violation of applicable statutory provisions governing the facility. The bill prohibits the inspector, HHSC, or the HHSC representative from requiring such a facility, as applicable, through an inspection, survey, or investigation or the final official statement of violations, to take any action that conflicts with a written order of a physician. The bill requires a facility to provide evidence that the statement of violations conflicts with a written order of a physician in the facility's plan to correct violations but specifies that a facility is not required to correct a violation that conflicts with the written orders of a physician.

C.S.H.B. 3533 amends the Human Resources Code to create the six-member long-term care legislative oversight committee, the members of which are appointed by the lieutenant governor and the speaker of the house of representatives, as applicable. The bill sets out provisions relating to the committee's composition, administration, powers and duties, and reporting requirements. The bill requires the committee to meet at the call of the presiding officer; receive, review, and comment on rules proposed by HHSC; and review recommendations for legislation proposed by HHSC or the attorney general relating to a licensed convalescent and nursing facility and related institutions, a licensed assisted living facility, and a licensed intermediate care facility for individuals with an intellectual disability. The bill requires the lieutenant governor and the speaker of the house of representatives to appoint the presiding officer of the committee on an alternating basis and requires the speaker of the house of representatives to appoint the first presiding officer of the committee. The bill's provisions relating to the committee expire September 1, 2021.

C.S.H.B. 3533 requires the executive commissioner of HHSC to adopt rules necessary to implement the bill's provisions and requires HHSC, not later than December 1, 2017, to modify inspection forms to conform to the bill's provisions. The bill makes its provisions applicable only to an inspection, survey, or investigation conducted on or after January 1, 2018.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3533 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 247.027, Health and Safety Code, is amended by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

(c) On application of an assisted living facility licensed under this chapter, a municipal fire marshal may grant a waiver for a violation of a life safety requirement or fire safety standard cited in the commission's final official statement of violations after an inspection conducted under this section if the fire marshal finds that:

(1) the facility met all applicable life safety requirements and fire safety standards at the time the facility was initially licensed; and

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 247.027, Health and Safety Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(2) the waiver will not have an adverse effect on resident health and safety.

(d) An assisted living facility that receives a waiver under Subsection (c) is not required to include the waived violation in the facility's plan of correction submitted under Section 247.0271.

(e) A commission employee may not conduct an inspection of an assisted living facility unless the employee is a health care professional licensed in this state. An officer or employee of a facility may require the commission employee to provide proof of the licensure before the commission employee conducts an inspection.

(f) The commission employee shall include on the commission's inspection checklist:

(1) a brief description of the evidence that supports a finding that a violation occurred; and

(2) the name and title of the person who found each violation.

(g) The executive commissioner shall adopt rules to ensure that among the community services regions the commission uniformly administers inspections and consistently interprets and enforces the rules and laws regulating the assisted living facilities. The executive commissioner shall prepare and deliver a semiannual progress report on uniform administration, interpretation, and enforcement to the commission and the appropriate health and human services legislative standing committees.

SECTION 2. Section 247.0271, Health and Safety Code, is amended.

SECTION 3. Section 252.038, Health and Safety Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) On application of a facility licensed under this chapter, a municipal fire marshal may grant a waiver for a violation of a life safety requirement or fire safety standard cited in the commission's final official statement of violations after an inspection, survey, or investigation conducted under this chapter if the fire marshal finds that:

(1) the facility met all applicable life safety requirements and fire safety standards at the time the facility was initially licensed; and

(2) the waiver will not have an adverse effect on resident health and safety.

(g) A facility that receives a waiver under

(c) If a commission employee who conducts an inspection of an assisted living facility is a health care professional licensed in this state, an officer or employee of the facility may require the commission employee to provide proof of licensure before the commission employee conducts the inspection.

(d) The commission employee shall include on the commission's inspection checklist:

(1) a brief description of the evidence that supports a finding that a violation occurred; and

(2) the name and title of the person who found each violation.

(e) The executive commissioner shall adopt rules to ensure that among the community services regions the commission uniformly administers inspections and consistently interprets and enforces the rules and laws regulating the assisted living facilities. The executive commissioner shall prepare and deliver a semiannual progress report on uniform administration, interpretation, and enforcement to the commission and the appropriate health and human services legislative standing committees.

SECTION 2. Same as introduced version.

No equivalent provision.

Subsection (f) is not required to include the waived violation in the facility's plan to correct violations submitted under Section 252.044.

SECTION 4. Section 252.040, Health and Safety Code, is amended by amending Subsection (i) and adding Subsections (j) and (k) to read as follows:

(i) The commission [department] shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section. A commission employee may not conduct an inspection, survey, or investigation of a facility unless the employee is a health care professional licensed in this state. An officer or employee of a facility may require the commission employee to provide proof of the licensure before the commission employee conducts an inspection, survey, or investigation.

(j) The commission or the commission's representative shall include on the commission's inspection form:

(1) a brief description of the evidence that supports a finding that a violation occurred; and

(2) the name and title of the person who found each violation.

(k) The executive commissioner shall adopt rules to ensure that among the community services regions the commission uniformly administers inspections, surveys, and investigations and consistently interprets and enforces the rules and laws regulating the facilities licensed under this chapter. The executive commissioner shall prepare and deliver a semiannual progress report on uniform administration, interpretation, and enforcement to the commission and the appropriate health and human services legislative standing committees.

SECTION 5. Section 252.044, Health and Safety Code, is amended.

SECTION 6. Chapter 161, Human Resources Code, is amended.

SECTION 7. (a) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act.

SECTION 3. Section 252.040, Health and Safety Code, is amended by amending Subsection (i) and adding Subsections (j) and (k) to read as follows:

(i) The commission [department] shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section. If a commission employee who conducts an inspection, survey, or investigation of a facility is a health care professional licensed in this state, an officer or employee of the facility may require the commission employee to provide proof of licensure before the commission employee conducts the inspection, survey, or investigation.

(j) The commission or the commission's representative shall include on the commission's inspection form:

(1) a brief description of the evidence that supports a finding that a violation occurred; and

(2) the name and title of the person who found each violation.

(k) The executive commissioner shall adopt rules to ensure that among the community services regions the commission uniformly administers inspections, surveys, and investigations and consistently interprets and enforces the rules and laws regulating the facilities licensed under this chapter. The executive commissioner shall prepare and deliver a semiannual progress report on uniform administration, interpretation, and enforcement to the commission and the appropriate health and human services legislative standing committees.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

(b) Not later than December 1, 2017, the Health and Human Services Commission shall modify inspection forms to conform to the requirements of this Act.

(c) The changes in law made by this Act apply only to an inspection, survey, or investigation conducted on or after January 1, 2018.

(d) As soon as practicable after the effective date of this Act, the lieutenant governor and the speaker of the house of representatives shall appoint members to the long-term care legislative oversight committee as required by Subchapter J, Chapter 161, Human Resources Code, as added by this Act. The speaker of the house of representatives shall appoint the first presiding officer of the committee.

SECTION 8. This Act takes effect September 1, 2017.

SECTION 7. Same as introduced version.