

SUBJECT: Administrative penalties for home and community support services agencies

COMMITTEE: Public Health— favorable, without amendment

VOTE: 5 ayes — Berlanga, Hirschi, Davila, Glaze, Maxey

0 nays

3 absent — Coleman, Delisi, Janek

SENATE VOTE: On final passage, April 21 — voice vote

WITNESSES: For — Heather Vasek and Sara Speights, Texas Association of Home Care; Jennifer Cernoch, Texas Respite Resource Network; Barrett Markland, Advocacy Inc.; Larry Farrow and Greg Hooser, Texas Hospice Organization; Jonas Schwartz, United Cerebral Palsy of Texas; Bob Kafka, ADAPT of Texas

Against — None

On — Julia Beechinor, Texas Department of Health

BACKGROUND : Home and community support services agencies provide health, hospice or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location. Typical home health services include nursing, physical therapy, occupational therapy, intravenous therapy, dialysis, and nutritional counseling.

Home and community support services agencies must be licensed by the Texas Department of Health (TDH) and provide affidavits attesting to adequate financial resources to provide required services. Appropriately licensed or permitted health care professionals and qualified dialysis technicians may be authorized to administer medications. Licensing fees range from \$200 to \$1,000.

DIGEST: SB 1247 would authorize TDH to implement administrative penalties of \$100 to \$1,000 for each violation of licensing requirements; the department would have to establish a graduated schedule of penalties appropriate to the seriousness of the violation and taking into account other relevant considerations. The schedule also would have to include deadlines for correcting violations that did not adversely affect patient health and safety. Each day of a continuing violation would constitute a separate violation.

The bill also would implement standard administrative hearing and other procedures for violations.

SB 1247 would require home health agencies to submit information on their owner, chief financial officer and administrator to TDH to enable the department to conduct criminal background checks on these persons. The base amount of licensing fees would be raised to \$300 from \$200.

The bill also would require that a person administering medication to a home or community support client act under the delegated authority of a physician rather than be a qualified dialysis technician.

SB 1247 would take effect September 1, 1997.

SUPPORTERS SAY: SB 1247 would improve state oversight of home and community based services by authorizing criminal background checks of owners and managers and using administrative penalties to punish violators. Currently TDH is limited in its response to violations: it can request that agencies make necessary changes or rescind the agency's license. Administrative penalties would give the department a middle course of action to spur violators into making needed corrections. These penalties also would more appropriately penalize agencies to suit the level of infraction without revoking their ability to do business in the state.

Criminal background checks would ensure all persons involved in home and community services were screened as a way of preventing program fraud or patient care abuse; currently, the department checks the background of unlicensed direct patient care givers, while licensed health care professionals are screened through their respective boards.

Allowing unlicensed individuals to administer medications under the direction of a physician would conform the law to current home and community care practices and to department rules. Patient care would be protected because physicians would not delegate such an important duty without strict controls or assurances, and department rules and Board of Medical Examiner rules allow such delegation by physicians only under specific circumstances.

OPPONENTS SAY: SB 1247 would give TDH overly broad discretion to use administrative penalties. This could lead to situations in which administrative fines would be recommended for violations that were anomalies or that constitute minor, readily correctable infractions.

NOTES: Rep. Berlanga plans to offer a floor amendment to define how TDH could use administrative penalties.