

- SUBJECT:** Admitting nursing home surveys as evidence in civil cases
- COMMITTEE:** Human Services — favorable, without amendment
- VOTE:** 7 ayes — Naishtat, Chavez, Ehrhardt, Noriega, Raymond, Villarreal, Wohlgemuth
- 0 nays
- 2 absent — J. Davis, Telford
- SENATE VOTE:** On final passage, April 19 — 29-0
- WITNESSES:** For — Bruce Bower, Texas Senior Advocacy Coalition; Greg Hooser, Texas Association of Homes and Services for the Aging; Mike Ramsey, Texas Trial Lawyers Association; Lee Spiller, Citizens Commission on Human Rights; Marie Wisdom, Advocates for Nursing Home Reform; *Registered but did not testify:* David Bragg, AARP; Michael Crowe, Texas Assisted Living Association; David Latimer, Texas Association of Homes and Services for the Aging; Abby Sandlin, Texas Watch
- Against — None
- BACKGROUND:** Human Resources Code, sec. 32.021, sets forth administrative guidelines for the state’s Medicaid program, the state-federal medical assistance program for the poor, elderly, and disabled. Medicaid is administered by the Texas Department of Human Services (DHS) and pays for nursing home care for low-income elderly or disabled individuals. DHS also regulates nursing homes by administering the state’s licensing program. As a part of its duties, DHS conducts surveys of nursing home operations, which may include information about violations of standards for participation in Medicaid.
- Prior to 1995, the state did not regulate the use of DHS survey reports, which were governed solely by the Texas Rules of Evidence, and admissibility was largely at the judge’s discretion. The 74th Legislature barred admission of these documents from use as evidence in civil cases. In 1997, the 75th Legislature permitted limited use of these documents in certain cases.

Current law prohibits surveys, complaint investigations, or other documents that show that a nursing home has violated a standard for participation in the state Medicaid program from being used as evidence in a civil trial. These documents can be used if the state is a party to the action or in other cases if they are being used to establish notice to an institution of a relevant finding or under any rule of the Texas Rules of Evidence. This law does not limit testimony by a DHS surveyor or investigator who is testifying on matters related to requirements for licensure or certification for participation in the state Medicaid program.

DIGEST:

SB 1590 would permit DHS documents to be introduced as evidence under the Texas Rules of Evidence in a civil action, enforcement action, or related proceeding. It also would permit testimony from a department surveyor or investigator if the testimony were admissible under the Texas Rules of Evidence.

The bill also would include the admission of these documents and the testimony of a department surveyor in a civil action involving a nursing home or an intermediate care facility for the mentally retarded (ICF-MR).

SB 1590 would repeal Human Resources Code, sec. 32.021(j), which set up situations for when a survey, complaint, or incident investigation was admissible as evidence in a civil action, so that the broader standard set by the bill could take precedence.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. It would apply only to actions that were commenced on or after the effective date. Prior actions would be governed by prior law.

**SUPPORTERS
SAY:**

SB 1590 is needed to ensure that evidence could be introduced in civil cases in accordance with the Texas Rules of Evidence. Current law is confusing because it includes various scenarios under which nursing home surveys may be introduced and permits it when admissible by the Texas Rules of Evidence. This makes the statute interpretable to mean that the evidence only can be used to support specific points in a civil case, which was not the intent of the original legislation. This bill would create one, clear standard for the use of this evidence and ensure that it was applied uniformly under

the Texas Rules of Evidence.

The Texas Rules of Evidence provide guidelines about admissibility, but the final determination is made by the trial judge. This bill would not allow or disallow evidence, only would leave it up to the judge to decide about the relevance or prejudice of certain documents.

This bill would extend the regulation of the admissibility of surveys specifically to include ICF-MRs. These facilities are substantially similar to nursing homes in that they are privately run, but beds are publicly funded, provide 24-hour care for individuals in a long-term care setting, and are licensed by DHS. The documents generated through the licensing oversight for ICF-MRs should be treated the same as those for nursing homes.

**OPPONENTS
SAY:**

SB 1590 would allow documents to be introduced into a civil case that could be misleading. Surveys performed by DHS may not be accurate or truly representative of what is going on in the nursing home. They also are open to appeal by the nursing home or ICF-MR. These documents should not be admitted into evidence until all appeals were exhausted to ensure that the information in the documents was accurate and not misleading.

SB 1590 could increase nursing home liability insurance premiums, which already are high, by encouraging lawsuits based on erroneous or inaccurate information. If a nursing home is sued, it can take significant time and resources to clear up the suit even if the nursing home is not liable. Even well-run nursing homes sometimes are forced to settle because the cost of a defense can be so high.