

SUBJECT: Regulating boarding home and assisted living facilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Rose, Herrero, Darby, Hernandez, Legler, Walle
0 nays
3 absent — Elkins, Hughes, Naishtat

WITNESSES: For — (*On original bill*): Joan Bartz, University Hills Neighborhood Association; Randall Chapman, Texas Legal Services Center; Carlos Higgins, Texas Silver-Haired Legislature; Jane Metzinger, Mental Health America of Greater Dallas; (*Registered, but did not testify*): Pamela Bolton, Texas Watch; Ben Campbell, TORCH, Life Steps of Texas; Lauren DeWitt, Citizens Commission on Human Rights; Susan Rocha, City of San Antonio; Al Weber and Jobeth Worden, University Hills Neighborhood Association) (*On committee substitute*): Jane Metzinger, Mental Health America of Greater Dallas; (*Registered, but did not testify*): Susanne Elrod, Texas Council of Community MHMR Centers; Richard Hernandez, EduCare Community Living; Greg Hooser and Carole Smith, Private Providers Association of Texas)

Against — (*On original bill*): (*Registered, but did not testify*): Susanne Elrod, Texas Council of Community MHMR Centers; Richard Hernandez, EduCare Community Living; Carole Smith, Private Providers Association of Texas; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association)

On — (*On original bill*): Nick Monreal, Alamo Area Council of Governments, Bexar Assisted Living Task Force

BACKGROUND: The Health and Safety Code contains licensing and permitting statutes for many types of care facilities regulated by the Health and Human Services Commission (HHSC) and its assisting agencies, including the Department of Family and Protective Services (DFPS), which investigates abuse and neglect in facilities.

DIGEST:

CSHB 216 would create Health and Safety Code, ch. 254 to regulate boarding home facilities. A boarding home facility would be defined as an establishment that provided services, including community meals, light housework, meal preparation, transportation, shopping, money management, or laundry services to three or more elderly or disabled residents who were unrelated to the owner. A boarding home would not include facilities already regulated under the following licensing statutes:

- Home and Community Support Services;
- Convalescent and Nursing Homes;
- Continuing Care Facilities;
- Assisted Living Facilities; and
- Intermediate Care Facilities for the Mentally Retarded (ICF-MRs).

The executive commissioner of HHSC would adopt and publish model standards for the operation of a boarding home facility relating to:

- the construction or remodeling of a facility;
- sanitary conditions;
- reporting and investigating of injuries, incidents, and unusual accidents and other policies to ensure resident health and safety;
- assistance with self-administering medication;
- requirements for in-service education of the facility's staff;
- criminal history record checks; and
- assessment and periodic monitoring to ensure a resident did not require personal care, nursing, or other services not provided by a boarding home facility, and was capable of self-administering medication.

A county or municipality could require a permit to operate a boarding home facility and could require the facilities to comply with the standards developed by the executive commissioner. Fees for issuance and renewal of the permit and inspections could be set, and fines for noncompliance with county or municipal regulations could be imposed.

Boarding home facilities would be required to display the permit and:

- a sign specifying how complaints may be registered;

- a notice stating that inspections and related reports are available for public inspection and providing a telephone number to obtain information about the facility;
- a summary of the most recent inspection;
- the name, location, and contact information for the closest local public health agency and a local organization that represents or serves elderly or disabled individuals, including toll-free numbers.

A county or municipality could inspect or investigate a facility at any reasonable time and would have to be granted access to books, records, and other documents maintained on behalf of the facility. Two or more counties could cooperate and contract with each other for permitting and inspecting of boarding home facilities.

A person having cause to believe that an elderly or disabled person was in a state of abuse, neglect, or exploitation would make a report to DFPS and employees of a facility would be held liable for failing to report such issues.

HHSC would establish a competitive grant program that promoted innovation and effectiveness in the local regulation of boarding home facilities, including:

- public-private initiatives;
- cooperative arrangements among local agencies and governmental entities;
- use of mental health or social services personnel;
- public awareness and education campaigns; and
- other activities that improve local regulation and quality of life of residents.

The commission could require a county or municipality to spend local matching funds as a condition for the award of a grant, and could establish procedures to administer the grant program. A contract would be entered into with the grant recipient, whereby the commission could monitor and enforce the terms of the contract.

The bill would take effect September 1, 2009, and a boarding home facility could not be required to obtain a permit from a county or municipality before September 1, 2010.

SUPPORTERS
SAY:

CSHB 216 would provide standards for residents living in unlicensed boarding home facilities. Boarding home residents usually are elderly, or physically or mentally challenged and need protections. While some boarding home facilities operate in a legitimate fashion, many others take advantage of residents and do not provide adequate care and accommodations.

The bill would provide comprehensive regulatory alternatives to ensure that these fragile individuals no longer are targets of financial exploitation, abuse, and neglect. The large increase in the last decade in the boarding house, personal care, and assisted-living industries reflects the needs of the long-term care resident population. Traditional nursing homes can be expensive and beyond some families' means, leading them to turn to the less expensive "boarding homes," which often are understaffed, overcrowded, and physically unsafe environments.

Current law does not address standards for the boarding house facilities found throughout the state. State agencies do not have the authority to oversee them, and local governments are limited under current law due to residential zoning rules. CSHB 216 would address this problem by providing local communities, which have a greater, more personal interest in tighter controls and proper monitoring, the authority to regulate boarding house facilities. These homes impact the residents of the community — both those in the home itself, and those in the neighborhoods in which the homes are located. Boarding home facilities often have a history of disturbances and high call volume to law enforcement.

Small, licensed assisted-living facilities often must compete for residents with boarding homes that do not provide adequate levels of care. Licensed facilities have added costs for licensing fees and compliance with state laws. Certain bad-actor boarding homes take advantage of the lack of oversight by providing lesser levels of care and facility standards so that they can offer to board residents more inexpensively than other facilities. This creates an imbalance in which residents requiring higher levels of care — hence higher expenses for a facility — gravitate to assisted-living centers, while less demanding residents gravitate to boarding homes. This creates a business disadvantage for other types of residential facilities. In providing for local oversight of boarding home facilities, CSHB 216 would create a more level playing field for various types of care providers.

Operators of home and community-based services (HCS) programs that provide residential services would not be included in the permitting requirements of CSHB 216. HCS programs already must meet certain standards and criteria to become certified Medicaid providers.

The fiscal note on the bill is of little consequence in comparison to the large number of people whose health, safety, and civil rights would be protected through greater regulation and monitoring of boarding homes.

**OPPONENTS
SAY:**

CSHB 216 would cost the state \$1 million in general revenue-related funds. The state is not in a position to create new programs and make new fiscal outlays during a period of fiscal austerity. Interested community members could play a role in bringing bad-actor homes to the attention of law enforcement without instituting new, costly licensing standards.

NOTES:

The LBB estimates a cost of \$500,000 per year for fiscal 2010-11 to implement the provisions of CSHB 216.

The committee substitute removed language in the filed version that would require HCS providers to be subject to the bill and that deaths in a boarding home facility reported to the state remain confidential.