

BILL ANALYSIS

Senate Research Center
80R4731 JLL-D

S.B. 1649
By: Janek
Health & Human Services
4/20/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

More than 100 nursing homes change hands each year in Texas. When a change of ownership occurs the state has an interest in both the license to operate the facility and the Medicaid contract that finances resident services. Addressing these interests allows the state to focus on the primary interests of quality of care and accountability.

The state retains an interest in the prior owner who is the Medicaid contractor to ensure that there has been no overpayment. In order to recoup any money the prior owner might owe the state, the Department of Assistive and Disability Services (DADS) is currently authorized to place a hold on vendor payments. However, the state's ability to withhold payments is limited when the prior owner notifies DADS of a change in ownership. As a requirement for holding an amount equal to an average month's payments, DADS must receive notice of a change of ownership at least one month prior to the effective date of the change. Between 2004 and the present, 46 percent of prior owners have provided the state with at least 30 days notice; 35 percent provided the state with six to 16 days notice; and 19 percent provided less than six days notice.

As proposed, S.B. 1649 prohibits a temporary license from being issued within 31 days of an application for a license to provide DADS time to determine whether an applicant meets licensing requirements. Prohibiting DADS from issuing a temporary license to the new owner before the 31st day after receipt of both the application for license and the written consent of the existing license holder assures that the prior owner will provide DADS 30 days notice of a change of ownership, thereby allowing a vendor to hold the equivalent of an average of 30 days of payments. Extenuating circumstances may necessitate the transfer of ownership and operations in a period less than 30 days; therefore, DADS is required to develop criteria in which this prohibition could be waived. DADS is also required to establish criteria to allow DADS to complete a desk review rather than on-site inspection before issuing a license to a new owner; allowing for the efficient use of state resources in certain instances.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Department of Human Services (DHS), the following amendments affect the Department of Aging and Disability Services (DADS), as the successor agency to DHS.]

SECTION 1. Amends Section 242.0336, Health and Safety Code, by amending Subsections (a) and (c) through (g) and by adding Subsections (b-1), (b-2), (c-1), (c-2), and (d-1), as follows:

(a) Provides that a temporary change of ownership license is a temporary 90-day license, rather than temporary license, issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b-1) Prohibits the Texas Department of Human Services (DHS) from issuing a temporary change of ownership license before the 31st day after the date DHS has received the both the application for the license and the written consent of the institution's

existing license holder to the issuance of a temporary change of ownership license, except as provided by Subsection (b-2).

(b-2) Requires DHS to establish criteria under which DHS is authorized to waive the 30-day requirement of Subsection (b-1) if DHS finds application of the requirement is impractical under the circumstances, including circumstances involving legal proceedings or other events that affect the ownership of the institution by the existing license holder, notwithstanding Section 242.0335 (Expedited Issuance of Change of Ownership License to Certain Current License Holders), Health and Safety Code.

(c) Makes a conforming change.

(c-1) Authorizes DHS to place a 30-day hold on vendor payments to the existing license holder after receipt of the application and written consent described by Subsection (b-1). Requires DHS to establish criteria for the release of withheld vendor payments to the existing license holder.

(c-2) Provides that the effective date of a temporary change of ownership license issued under this section is the date requested in the application unless DHS does not receive the application and written consent described by Subsection (b-1) at least 30 days before that date, in which case DHS is authorized to issue a temporary change of ownership license effective on a date that allows DHS to place a 30-day hold on vendor payments to the existing license holder.

(d) Makes a conforming change.

(d-1) Requires DHS to establish criteria under which a desk review of the facility's compliance with applicable requirements is authorized to be substituted for the on-site inspection or survey under Subsection (d).

(e) Makes conforming and nonsubstantive changes.

(f) Makes conforming and nonsubstantive changes.

(g) Makes conforming and nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.