

BILL ANALYSIS

Senate Research Center

H.B. 3196
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Legislation enacted last session extended the licensure period for nursing facilities from two years to three years. The legislation did not, however, revise the required fees to account for the extended licensure period. As a result, current licensure fees do not cover the Department of Aging and Disability Services' (DADS) expenses of regulating these facilities.

Nursing facilities can also obtain certification from DADS indicating that the facility is certified to provide specialized care to individuals with Alzheimer's disease. Currently, this certification must be renewed on an annual basis, which is inconsistent with the three-year licensure period for nursing facilities.

Additionally, before constructing a new nursing facility, the future facility must apply to DADS for a waiver through the Medicaid bed allocation process. This process ensures sufficient access to nursing facility care, while also safeguarding against an oversaturation of new facilities. However, applicants are not always following through with construction of the facility after receiving a waiver from DADS. Because these waivers are typically allocated in response to an immediate community need, delays in this process can leave communities struggling to provide necessary care.

To address these issues, H.B. 3196 adjusts the licensure fees for nursing facilities to align with the three-year licensure period; increases the Alzheimer's certification period from one year to three years to be consistent with the three-year licensure cycle; and allows the executive commissioner of the Health and Human Services Commission to require applicants for a Medicaid bed waiver to provide a \$500,000 performance bond, or other financial security, that will be forfeited to DADS if the applicant does not follow through with construction of a new nursing facility within the required time frame.

H.B. 3196 amends current law relating to licensing and certification requirements for certain health facilities and to the allocation of Medicaid beds in certain of those facilities and increases fees.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Human Services is modified in SECTION 1 (Section 242.034, Health and Safety Code) and SECTION 2 (Section 242.040, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 242.040, Health and Safety Code) and SECTION 3 (Section 32.0213, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 242.034(a), Health and Safety Code, as follows:

- (a) Authorizes the Texas Board of Human Services (board) to establish by rule license fees for institutions licensed by the Department of Aging and Disability Services (DADS)

under this chapter (Convalescent and Nursing Homes and Related Institutions). Prohibits the license fee from exceeding \$375, rather than from exceeding \$250, plus:

(1) \$15, rather than \$10, for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

SECTION 2. Amends Section 242.040, Health and Safety Code, by amending Subsection (c) and adding Subsection (f), as follows:

(c) Authorizes the board by rule to adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. Requires that the rules provide for a three-year certification period, rather than for annual certification.

(f) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) (HHSC) by rule to adopt a system under which an appropriate number of certifications issued by DADS expire on staggered dates occurring in each three-year period. Requires DADS, if the expiration date of a certification changes as a result of this subsection, to prorate the certification fee relating to that certification as appropriate.

SECTION 3. Amends Section 32.0213, Human Resources Code, by adding Subsections (d), (e), and (f), as follows:

(d) Authorizes the executive commissioner by rule to require an applicant for Medicaid beds in a nursing facility under a Medicaid bed waiver application to provide a performance bond in the amount of \$500,000 or other financial security as determined by HHSC or an agency operating part of the medical assistance program, as appropriate, to ensure that the applicant provides the Medicaid beds granted to the applicant under the waiver within the time frame required by HHSC or an agency operating part of the medical assistance program, as appropriate. Requires that a performance bond provided under this subsection:

(1) be executed by a corporate entity in accordance with Subchapter A (Certain Required or Permitted Obligations), Chapter 3503, Insurance Code;

(2) be in a form approved by HHSC or an agency operating part of the medical assistance program, as appropriate; and

(3) clearly and prominently display on the face of the bond or on an attachment to the bond:

(A) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance (TDI) under Subchapter B (Department Toll-Free Number for Information and Complaints), Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from TDI by calling the toll-free telephone number.

(e) Prohibits HHSC or an agency operating part of the medical assistance program, as appropriate, from requiring an applicant for Medicaid beds in a nursing facility to obtain a performance bond from a specific insurance or surety agency, agent, or broker.

(f) Requires the executive commissioner by rule to adopt criteria to exempt certain applicants for Medicaid beds from the requirements of Subsection (d), including applicants that are licensed facilities with existing Medicaid bed allocations, criminal justice facilities, teaching facilities, and state veterans homes, and any other applicants that the executive commissioner finds good cause to exempt. Authorizes the executive commissioner to modify the criteria for granting exemptions under this subsection as necessary to meet the objectives of Subsection (d).

SECTION 4. (a) Provides that Section 242.034(a), Health and Safety Code, as amended by this Act, applies only to a license application, including a renewal application, filed on or after the effective date of this Act. Provides that a license application, including a renewal application, filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Provides that Sections 32.0213(d), (e), and (f), Human Resources Code, as added by this Act, apply only to an application filed on or after the effective date of this Act for Medicaid beds in a nursing facility. Provides that an application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2013.