

BILL ANALYSIS

Senate Research Center

S.B. 304
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last year, the Sunset Advisory Commission (Sunset) reviewed the state's long-term care system and determined that DADS issued few sanctions for violations, including many serious and repeat violations, leaving vulnerable Texans in harm's way. For fiscal year 2013, out of 18,735 violations against nursing homes, DADS took a total of 11 enforcement actions.

Texas ranks ninth in the country for serious violations per nursing home. Although DADS staff identified many nursing home providers committing serious violations, including 92 nursing homes that had repeated violations at the highest levels of severity (problems such as sexual abuse, resident-on-resident aggression, inadequate treatment of sores and infections, and medication errors), Sunset determined that state penalties were insignificant and a negligible level of state enforcement existed.

In response to these findings, Sunset unanimously adopted a variety of recommendations to strengthen regulatory oversight, including higher administrative penalties, progressive sanctions for serious or repeated violations, and Senator Schwertner's "three strikes" provision. Senator Schwertner also filed S.B. 304, a standalone bill, that includes an updated "three strikes" provision.

The committee substitute to S.B. 304 requires DADS to revoke the license of a nursing home that commits three immediate threat violations related to the abuse or neglect of a resident, within a 24-month period. Immediate threat is the highest level violation: a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Not more than one "strike" counts for each separate survey, inspection, or investigation. During a multiday survey, if a facility is cited for multiple immediate threat violations, only one counts as a "strike." This ensures S.B. 304 targets systematic bad actors.

A "strike" is excluded if, after informal dispute resolution, the violation is removed or reduced in severity. To create a more equitable system for nursing facilities to contest deficiencies and violations, S.B. 304 would require HHSC to contract with an independent third party for informal dispute resolution between nursing facilities and DADS.

S.B. 304 also grants the executive commissioner of the Health and Human Services Commission the authority to waive the license revocation if the executive commissioner determines that the waiver would not jeopardize the health and safety of residents of the nursing facility or place the residents at risk of abuse or neglect.

Finally, S.B. 304 makes changes to the Quality Monitoring Program to raise the quality of care at nursing homes throughout the state. Specifically, S.B. 304 redirects quality-of-care monitors to focus on long-term care facilities identified as medium risk through DADS' early warning system and refocuses rapid response teams on long-term care facilities identified as high risk through DADS' early warning system.

S.B. 304 amends current law relating to certain violations committed by long-term care facilities, including violations that constitute the abuse and neglect of residents.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 242.061, Health and Safety Code) and SECTION 6 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Provides that it is the intent of the legislature that Section 242.061, Health and Safety Code, as amended by this section, establish a ceiling or maximum number of violations related to the abuse and neglect of a resident that a facility can commit before the executive commissioner of the Health and Human Services Commission (executive commissioner) is required to revoke the facility's license. Provides that the changes in law made by this section are not intended to limit or diminish permissive authority of the Department of Aging and Disability Services (DADS) to revoke a license under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Health and Safety Code.

(b) Amends Section 242.061, Health and Safety Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), (c-1), (e), and (e-1), as follows:

(a) Defines "abuse," "immediate threat to health and safety," and "neglect."

(a-1) Creates this subsection from existing text. Authorizes DADS, after providing notice and opportunity for a hearing to the applicant or license holder, to deny, suspend, or revoke a license if DADS finds that the applicant, the license holder, or any other person described by Section 242.032(d) (relating to the background and qualifications considered by DADS) has committed certain offenses.

(a-2) Requires the executive commissioner to revoke, except as provided by Subsection (a-3) or (e-1), a license under Subsection (a-1) if DADS finds that:

(1) the license holder has committed three or more violations described by Subsection (a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident; and

(2) each of the violations described by Subdivision (1) is reported in connection with a separate survey, inspection, or investigation visit that occurred on separate entrance and exit dates.

(a-3) Prohibits the executive commissioner from revoking a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation and the determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) (requiring DADS or a DADS representative conducting the inspection, survey, or investigation to discuss the violations with the facility's management in an exit conference) for a survey, inspection, or investigation;

(2) the violation is not included on the final statement of violations described by Section 242.0445; or

(3) the violation has been reviewed under the informal dispute resolution process established by Section 531.058 (Informal Dispute Resolution for Certain Long-Term Care Facilities), Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's

record; or

(B) the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident.

(c-1) Authorizes DADS, in the case of revocation of a license under Subsection (a-2), to ensure the health and safety of residents of the institution, to:

(1) request the appointment of a trustee to operate the institution under Subchapter D (Trustees for Nursing or Convalescent Homes);

(2) assist with obtaining a new operator for the institution; or

(3) assist with the relocation of residents to another institution.

(e) Authorizes the executive commissioner to stay a license revocation required by Subsection (a-2) if the executive commissioner determines that the stay would not jeopardize the health and safety of the residents of the facility or place the residents at risk of abuse or neglect. Requires the executive commissioner by rule to establish criteria under which a license revocation may be stayed under this subsection. Requires the executive commissioner to follow negotiated rulemaking procedures prescribed by Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of rules establishing the criteria. Requires that the criteria established permit the executive commissioner to stay a license revocation of a nursing facility for which DADS has deployed a rapid response team under Section 255.004 (Rapid Response Teams), if the facility has cooperated with the rapid response team and demonstrated improvement in quality of care, as determined by the rapid response team.

(e-1) Authorizes the executive commissioner to stay a license revocation required by Subsection (a-2) for a veterans home, as defined by Section 164.002 (Definitions), Natural Resources Code, if the Veterans' Land Board contracts with a different entity to operate the veterans home than the entity that operated the home during the period in which the violations described by Subsection (a-2) occurred.

SECTION 2. Amends Section 242.0615(a), Health and Safety Code, as follows:

(a) Authorizes DADS, after providing notice and opportunity for a hearing, to exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. Provides that the authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a-1), rather than Section 242.061(a).

SECTION 3. Amends Section 255.003, Health and Safety Code, by amending Subsections (b), (e), and (j) and adding Subsections (b-1) and (i-1), as follows:

(b) Requires that monitoring, rather than priority for monitoring, visits be given to long-term care facilities:

(1) Creates this subdivision from existing text; or

(2) that are identified as medium risk through DADS' early warning system.

(b-1) Authorizes a long-term care facility to request a monitoring visit under this section.

(e) Requires quality-of-care monitors to assess:

(1) the overall quality of life in the long-term care facility; and

(2) specific conditions in the facility directly related to patient care, including conditions identified through the long-term care facility's quality measure reports based on Minimum Data Set Resident Assessments.

(i-1) Requires DADS to schedule a follow-up visit not later than the 45th day after the date of an initial monitoring visit conducted under this section.

(j) Requires that conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident be reported immediately to the long-term care facility administrator, to the regional office supervisor for appropriate action and, as appropriate or required by law, to law enforcement, adult protective services, other divisions of DADS, or other responsible agencies.

SECTION 4. Amends Section 255.004, Health and Safety Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Defines "abuse," "immediate threat to health and safety," and "neglect."

(a-1) Creates this subsection from existing text. Requires DADS to create rapid response teams composed of health care experts that can visit a long-term care facility that:

(1) is identified as high risk through DADS' early warning system, rather than facilities identified through DADS' early warning system; or

(2) if the long-term care facility is a nursing institution, has committed three violations described by Section 242.061 (a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident.

(a-2) Requires a long-term care facility to cooperate with a rapid response team deployed under this section to improve the quality of care provided at the facility.

SECTION 5. Amends Section 531.058, Government Code, by adding Subsection (a-1), as follows:

(a-1) Requires the Health and Human Services Commission (HHSC) to contract with an appropriate disinterested person who is a nonprofit organization to adjudicate disputes between an institution or facility licensed under Chapter 242, Health and Safety Code, and DADS concerning a statement of violations prepared by DADS in connection with a survey conducted by DADS of the institution or facility. Provides that Section 2009.053 (Impartial Third Parties) does not apply to the selection of an appropriate disinterested person under this subsection. Requires the person with whom HHSC contracts to adjudicate all disputes described by this subsection.

SECTION 6. (a) Requires DADS or HHSC, as appropriate, to apply for any waiver or other authorization from a federal agency that is necessary to implement this Act as soon as possible after the effective date of this Act. Authorizes DADS and HHSC to delay implementing this Act until the waiver or authorization is granted.

(b) Provides that, as soon as practicable after the effective date of this Act:

(1) the executive commissioner of HHSC is required to adopt the rules necessary to implement Section 531.058(a-1), Government Code, as added by this Act; and

(2) DADS and HHSC, as appropriate, are required to revise or enter into a memorandum of understanding as required by a federal agency that is necessary to implement Section 531.058(a-1), Government Code, as added by this Act.

SECTION 7. Makes application of Sections 242.061(a-2) and (a-3), Health and Safety Code, as added by this Act, prospective to September 1, 2016.

SECTION 8. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2015.

(b) Effective date: Sections 242.061(a-2) and (a-3), Health and Safety Code, as added by this Act: September 1, 2016.