

BILL ANALYSIS

Senate Research Center
85R19933 JG-D

C.S.S.B. 932
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Health & Human Services
4/6/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2014, the Sunset Advisory Commission (Sunset) comprehensively reviewed the state's long-term care system. Sunset found that the Department of Aging and Disability Services (DADS) takes few enforcement actions on violations of long-term care facilities such as nursing homes, even on serious and repeat offenses. In response to these findings, Sunset unanimously adopted a variety of recommendations to strengthen regulatory oversight, including higher administrative penalties and progressive sanctions for serious or repeated violations. However, the DADS Sunset bill (S.B. 204, 84R) passed the full senate, but failed to pass out of the legislature.

S.B. 932 includes many of the same provisions as S.B. 204 and also includes recommendations made by the Senate Health and Human Services Committee in their Interim Report to the 85th Legislature based on an extensive interim study on long-term care regulation and oversight.

Specifically, S.B. 932 clarifies that the third party informal dispute resolution process established for nursing facilities in S.B. 304 (Schwertner, 84R) also applies to assisted living facilities. The bill also requires the Health and Human Services (HHSC) executive commissioner to review and streamline the processes for how HHSC issues informational letters and policy updates to certain long-term care providers and requires HHSC to utilize a system to record and track the scope and severity of violations for certain providers.

In addition, S.B. 932 prohibits certain long-term care providers from utilizing "right to correct" for a violation if it represents a pattern of violations that results in actual harm, is widespread in scope and results in actual harm, is widespread in scope and constitutes the potential for actual harm, or constitutes an immediate threat to the health and safety of a client.

This legislation extends the licensure period of certain long-term care providers an additional year, and finally, S.B. 932 increases the penalty cap for assisted living facilities in instances that result in actual harm and are included in the no "right to correct" language of this legislation or constitutes an immediate threat to the health or safety of a resident. Finally, S.B. 932 removes the penalty cap for intermediate care facilities (ICFs) for the total amount of a penalty assessed for a violation for both small and large ICFs.

C.S.S.B. 932 amends current law relating to the licensing of, the executive commissioner of the Health and Human Services Commission's duties with respect to, and the administrative penalties for certain long-term care facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 10 (Section 248A.053, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of HHSC is modified in SECTION 5 (Section 247.023, Health and Safety Code), SECTION 6 (Section 247.024, Health and Safety Code), SECTION 12 (Section 252.033, Health and Safety Code), SECTION 13 (Section 252.034, Health and Safety Code), and SECTION 17 (Section 103.006, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 531.058(a) and (a-1), Government Code, as follows:

(a) Requires that the process provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the Health and Human Services Commission (HHSC) under Section 32.021(d) (relating to provisions for monetary penalties in contracts for delivery of medical assistance by nursing facilities), Human Resources Code, or the Department of Aging and Disability Services (DADS) or its successor agency under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions), 247 (Assisted Living Facilities), or 252 (Intermediate Care Facilities for Individuals with an Intellectual Disability), Health and Safety Code. Requires that the informal dispute resolution process require certain actions.

(a-1) Requires HHSC, as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person rather than an appropriate disinterested person who is a nonprofit organization, to adjudicate disputes between an institution or facility licensed under Chapter 242 or 247, Health and Safety Code, and DADS or its successor agency concerning a statement of violations prepared by DADS in connection with a survey conducted by DADS of the institution or facility.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0585, as follows:

Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM CARE FACILITIES. Requires the executive commissioner of HHSC (executive commissioner) to review HHSC's methods for issuing informational letters, policy updates, policy clarifications, and other related materials to an entity licensed under Chapter 103 (Day Activity and Health Services), Human Resources Code, or Chapter 242, 247, 248A (Prescribed Pediatric Extended Care Centers), or 252, Health and Safety Code, and develop and implement more efficient methods to issue those materials as appropriate.

SECTION 3. Amends Section 242.066, Health and Safety Code, by amending Subsections (a) and (e) and adding Subsection (i), as follows:

(a) to (e) Changes references to DADS to HHSC in these subsections.

(i) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. Provides that the system:

(1) is required to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violation for nursing homes; and

(2) is authorized to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

SECTION 4. Amends Section 242.0665, Health and Safety Code, as follows:

Sec. 242.0665. RIGHT TO CORRECT. (a) Prohibits HHSC, rather than DADS, from collecting an administrative penalty against an institution under this subchapter (General Enforcement) if, not later than the 45th day after the date the institution receives notice under Section 242.067(c) (relating to written notice of the report to the person charged with the violation), the institution corrects the violation.

(b) Provides that Subsection (a) does not apply:

(1) to a violation that HHSC, rather than DADS, determines:

(A) represents a pattern of violation that results in actual harm, rather than serious harm to or death of a resident;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to resident's rights, treatment of residents, resident behavior and institution practices, quality of care, medication errors, standard menus and nutritional adequacy, physician visits, infection control, life safety from fire, or emergency preparedness and response;

(D) redesignates existing Paragraph (B) as Paragraph (D); constitutes an immediate, rather than a serious, threat to the health or safety of a resident; or

(E) redesignates existing Paragraph (C) as Paragraph (E) and makes no further changes to this paragraph;

(2) to (4) makes no changes to these subdivisions.

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to health or safety of a resident," "pattern of violation," and "widespread in scope."

SECTION 5. Amends Section 247.023, Health and Safety Code, as follows:

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) Requires HHSC, rather than DADS, to issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements and the standards adopted under this chapter. Provides that the license expires on the third, rather than second, anniversary of the date of its issuance. Requires, rather than authorizes, the executive commissioner by rule to adopt a system under which licenses expire on staggered, rather than various, dates during each three-year period, rather than two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of the license changes as a result of this subsection. Deletes existing text requiring DADS for the year in which a license expiration date is changed, to prorate the license fee on a monthly basis, requiring each license holder to pay only that portion of the license fee allocable to the number of months during which the license is valid, requiring a license holder to pay the total license renewal fee at the time of renewal.

(b) Requires the license holder, to renew a license, to submit to HHSC, rather than DADS, the license renewal fee.

(c) Makes a conforming change.

SECTION 6. Amends Sections 247.024(a), (d), and (e), Health and Safety Code, as follows:

(a) Requires the executive commissioner by rule to set license fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$2,250, rather than \$1,500.

(d) and (e) Changes references to DADS to HHSC.

SECTION 7. Amends Section 247.027, Health and Safety Code, as follows:

Sec. 247.027. INSPECTIONS. (a) Provides that in addition to the inspection required under Section 247.023(a), HHSC:

(1) is required to inspect each assisted living facility at least every two years following the initial inspection required under Section 247.023(a), rather than DADS is authorized to inspect an assisted living facility annually; and

(2) creates this subdivision from existing text and makes no further changes.

(b) Makes conforming changes.

SECTION 8. Amends Section 247.0451, Health and Safety Code, by amending Subsections (a), (b), (d), and (f) and adding Subsections (g) and (h), as follows:

(a) Changes references to DADS to HHSC.

(b) Prohibits the penalty, except as provided by Section 247.0452(c), from exceeding:

(1) \$5,000 for each violation that represents a pattern of violation that results in actual harm or is widespread in scope and results in actual harm or constitutes an immediate threat to the health or safety of a resident; or

(2) creates this subdivision from existing text;

(d) and (f) Makes conforming changes.

(g) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate assisted living facility to deter future violations. Provides that the system is required to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and is authorized to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(h) Defines "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope."

SECTION 9. Amends Section 247.0452, Health and Safety Code, as follows:

Sec. 247.052. RIGHT TO CORRECT. (a) Makes conforming changes.

(b) Provides that Subsection (a) does not apply:

(1) to a violation that HHSC, rather than DADS, determines represents a pattern of violation that results in actual harm, rather than serious harm to or death of a resident;

(2) to a violation that HHSC determines is widespread in scope and results in actual harm;

(3) to a violation that HHSC determines is widespread in scope, constitutes a potential for actual harm, and relates to resident assessment; staffing, including staff training; infection control; restraints; or emergency preparedness and response;

(4) to a violation that HHSC determines constitutes an immediate threat to the health or safety of a resident.

(5) to (7) redesignates existing Subdivisions (2), (3), and (4) as Subdivisions (5), (6), and (7).

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope."

SECTION 10. Amends Section 248A.053, Health and Safety Code, as follows:

Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) Provides that an initial or renewal license issued under this chapter expires on the third, rather than second, anniversary of the date of issuance. Requires the executive commissioner by rule to adopt a system under which licenses expire on staggered dates during each three-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) Requires a person applying to renew a center license to:

(1) submit a renewal application to HHSC, rather than DADS, on a prescribed form, rather than the form prescribed by DADS, at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by agency, rather than DADS, rule; and

(3) makes a conforming change.

(c) and (d) Makes conforming changes to these subsections.

SECTION 11. Amends Subchapter F, Chapter 248A, Health and Safety Code, by adding Section 248A.2515, as follows:

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule or standard adopted or order issued under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate center to deter future violations. Requires the system to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

SECTION 12. Amends Sections 252.033(a), (b), (d), (f), and (h), Health and Safety Code, as follows:

(a) Changes reference to DADS to HHSC.

(b) Makes a conforming change.

(d) Provides that a license is renewable on the third, rather than second, anniversary of issuance or renewal of the license after certain actions.

(f) Makes a conforming change.

(h) Requires the executive commissioner by rule to define specific, appropriate, and objective criteria on which HHSC, rather than DADS, may deny an initial license application or license renewal or revoke a license and adopt a system under which licenses expire on staggered dates during each three-year period and HHSC prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted.

SECTION 13. Amends Sections 252.034(a), (e), and (f), Health and Safety Code, as follows:

(a) Authorizes the executive commissioner by rule to adopt a fee for a license issued under this chapter. Prohibits the fee from exceeding \$225 plus \$7.50, rather than \$150 plus \$5, for each unit of capacity or bed space for which license is sought.

(e) and (f) Make conforming changes.

SECTION 14. Amends Section 252.041, Health and Safety Code, as follows:

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Requires HHSC, rather than DADS, each licensing period, to conduct at least three, rather than two, unannounced inspections of each facility.

(b) to (d) Makes conforming changes.

SECTION 15. Amends Section 252.065, Health and Safety Code, by amending Subsections (a), (b), (e), (f), (i), and (j) and adding Subsections (l) and (m), as follows:

(a) Makes conforming changes.

(b) Deletes existing text prohibiting the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more.

(e) Provides that this subsection does not apply to a violation that HHSC determines:

(1) represents a pattern of violation that results in actual harm, rather than has resulted in serious harm to or the death of a resident;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope, constitutes the potential for actual harm, and relates to staff treatment of a resident, active treatment, client behavior and facility practices, health care services, drug administration, infection control, food and nutrition services, or emergency preparedness and response;

(4) redesignates existing Subdivision (2) as Subdivision (4); constitutes an immediate, rather than a serious, threat to the health and safety of a resident; or

(5) redesignates existing Subdivision (3) as Subdivision (5); substantially limits the facility's, rather than institution's, capacity to provide care.

(f), (i), and (j) Makes conforming changes to these subsections.

(l) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. Requires the system to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and authorizes the system to be modified, as appropriate, to reflect changes in industry

practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(m) Defines "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope."

SECTION 16. Amends Section 103.003, Human Resources Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (4-b), as follows:

(1) Defines "commission."

(1-a) Creates Subdivision (1-a) from existing text defining "day activity and health services facility."

(4-b) Defines "facility."

SECTION 17. Amends Sections 103.006(a) and (b), Human Resources Code, as follows:

(a) Changes reference to DADS to HHSC.

(b) Provides that the license expires three, rather than two, years from the date of its issuance. Requires, rather than authorizes, the executive commissioner by rule to adopt a system under which licenses expire on staggered dates during the three-year period, rather than on various dates during the two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection. Deletes existing text requiring DADS, for the year in which a license expiration date is changed, to prorate the license fee on a monthly basis, requiring each license holder to pay only that portion of the license fee allocable to the number of months for which the license is valid, and requiring a license holder to pay the total license renewal fee at the time of renewal.

SECTION 18. Amends Section 103.007, Human Resources Code, as follows:

Sec. 103.007. LICENSE APPLICATION. (a) Makes conforming changes and changes reference to \$50 to \$75.

(b) to (d) Makes conforming changes.

SECTION 19. Amends Section 103.008, Human Resources Code, as follows:

Sec. 103.008. INSPECTIONS. (a) Provides that in addition to the inspection required under Section 103.006(a), HHSC:

(1) is required to inspect each facility every two years following the initial inspection required under Section 103.006(a); and

(2) is authorized to inspect a facility at other reasonable times as necessary to ensure compliance with this chapter. Deletes existing text authorizing DADS to enter the premises of a facility at reasonable times and make an inspection necessary to issue a license or renew a license.

(b) Makes conforming changes.

SECTION 20. Amends Section 103.012, Human Resources Code, by amending Subsections (a) and (e) and adding Subsection (g), as follows:

(a) and (e) Makes conforming changes.

(g) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this

chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. Requires the system to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

SECTION 21. Amends Section 103.013, Human Resources Code, as follows:

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Makes conforming changes.

(b) Provides that Subsection (a) does not apply to:

(1) a violation that HHSC, rather than DADS, determines:

(A) represents a pattern of violation that results in actual harm, rather than serious harm to or death of a person attending the facility;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to staffing, including staff training, ratio, and health; administration of medication; or emergency preparedness and response;

(D) redesignates existing Paragraph (B) as Paragraph (D); constitutes an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility, rather than constitutes a serious threat to the health and safety of a person attending the facility; or

(E) redesignates existing Paragraph (C) as Paragraph (E);

(2) to (3) makes no changes to these subdivisions.

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to the health or safety of an elderly person or a person with a disability," "pattern of violation," and "widespread in scope."

SECTION 22. Repealer: Section 247.0025 (Immediate Threat of Harm), Health and Safety Code.

SECTION 23. Makes application of this Act prospective.

SECTION 24. Effective date: September 1, 2017.