

BILL ANALYSIS

C.S.H.B. 2116
By: Klick
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the consolidation of the Department of Aging and Disability Services into the Health and Human Services Commission has resulted in a need to update and revise the law concerning the informal dispute resolution process for certain disputes involving an assisted living facility. C.S.H.B. 2116 seeks to provide those updates and revisions and to ensure that an appropriate disinterested person adjudicates such disputes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2116 amends the Health and Safety Code to specify that the disputes to which statutory provisions apply relating to the informal dispute resolution process concerning a statement of violations under the Assisted Living Facility Licensing Act formerly applicable to a dispute between an assisted living facility and the Department of Aging and Disability Services are disputes between an assisted living facility and the Health and Human Services Commission (HHSC). The bill changes the deadline by which HHSC must forward to an assisted living facility subject to such a dispute a copy of all information referenced in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit from the 10th business day after the date the assisted living facility requests an informal dispute resolution to the 20th business day after that date. The bill requires the name of or any information that would reasonably lead to the identification of any complainant, witness, or informant to be redacted from information provided to an assisted living facility during the informal dispute resolution process. The bill authorizes HHSC to charge and requires the assisted living facility to pay the reasonable costs associated with making such required redactions. The bill removes provisions conditioning the factual arguments raised in the informal dispute resolution process as the basis on which HHSC must give consideration. The bill conditions the requirement that the informal dispute resolution process require that the assisted living facility and HHSC be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or HHSC and to respond to arguments and information presented against the entities on the assisted living facility submitting its arguments and supporting information not later than the 10th business day after the date of receipt of certain materials provided by HHSC during the informal dispute resolution process. The bill requires the informal dispute resolution process to require that HHSC bear the burden of proving the violation of a standard or standards.

C.S.H.B. 2116 amends the Government Code to remove the condition that an appropriate disinterested person with whom HHSC is required to contract as part of an informal dispute resolution process for certain long-term care facilities be a nonprofit organization and to specify that the requirement for HHSC to contract with an appropriate disinterested person as part of such a process to adjudicate disputes between a facility and HHSC concerning a statement of violations includes a facility licensed under the Assisted Living Facility Licensing Act. The bill requires the rules adopted by the executive commissioner of HHSC that relate to such a dispute to incorporate the requirements prescribed under the Health and Safety Code applicable to those disputes.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2116 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 247.051(a), (c), and (d), Health and Safety Code, are amended to read as follows:

- (a) The executive commissioner by rule shall establish an informal dispute resolution process to address disputes between an assisted living [a] facility and the commission [department] concerning a statement of violations prepared by the commission [department] in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:
- (1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the commission [department] of the violation of a standard or standards;
 - (2) that the [~~commission to complete the~~] process be completed not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;
 - (3) that, not later than the 10th business day after the date an assisted living facility requests an informal dispute resolution, the commission [department] forward to the assisted living facility a copy of all information that is referred to in the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 247.051, Health and Safety Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (e) to read as follows:

- (a) The executive commissioner by rule shall establish an informal dispute resolution process to address disputes between an assisted living [a] facility and the commission [department] concerning a statement of violations prepared by the commission [department] in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:
- (1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the commission [department] of the violation of a standard or standards;
 - (2) that the [~~commission to complete the~~] process be completed not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;
 - (3) that, not later than the 20th [10th] business day after the date an assisted living facility requests an informal dispute resolution, the commission [department] forward to the assisted living facility a copy of all information referenced [~~that is~~]

disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, including any notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit and excluding the following information:

(A) the name of any complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available;

or

(E) information that is confidential by law;

(4) ~~that [the commission to give]~~ full consideration is given to all legal and factual arguments raised during the informal dispute resolution process ~~[that:~~

~~[(A) are supported by references to specific information that the facility or department relies on to dispute or support findings in the statement of violations; and~~

~~[(B) are provided by the proponent of the argument to the commission and the opposing party];~~

(5) that full consideration is given during the informal dispute resolution process ~~[staff give full consideration]~~ to the information provided by the assisted living facility and the commission ~~[department];~~

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the commission ~~[department]; [and]~~

(7) that the assisted living facility and the commission ~~[department]~~ be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the commission ~~[department]~~ and to respond to arguments and information presented against them;

~~referred to]~~ in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, including any notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit and excluding the following information:

(A) the name of any complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available;

or

(E) information that is confidential by law;

(4) ~~that [the commission to give]~~ full consideration is given to all factual arguments raised during the informal dispute resolution process ~~[that:~~

~~[(A) are supported by references to specific information that the facility or department relies on to dispute or support findings in the statement of violations; and~~

~~[(B) are provided by the proponent of the argument to the commission and the opposing party];~~

(5) that full consideration is given during the informal dispute resolution process ~~[staff give full consideration]~~ to the information provided by the assisted living facility and the commission ~~[department];~~

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the commission ~~[department]; [and]~~

(7) that the assisted living facility and the commission ~~[department]~~ be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the commission ~~[department]~~ and to respond to arguments and information presented against them, provided the assisted living facility submits

(8) that the commission bears the burden of proving the violation of a standard or standards; and

(9) that a witness statement provided by an assisted living facility be given the same presumption of truth as a witness statement provided by the commission, including a witness statement contained in a statement of deficiencies, provided that the assisted living facility and the commission may challenge the reliability of any witness statement based on the records presented during the course of the informal dispute resolution process.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the commission [~~department~~] for any costs associated with the commission's [~~department's~~] preparation, copying, and delivery of information requested by the facility.

(d) A statement of violations prepared by the commission [~~department~~] following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the commission [~~department~~] while the dispute is pending if the posting clearly notes each finding that is in dispute.

SECTION 2. Section 531.058, Government Code, is amended.

SECTION 3. This Act takes effect September 1, 2017.

its arguments and supporting information not later than the 10th business day after the date of receipt of the materials provided under Subdivision (3); and

(8) that the commission bears the burden of proving the violation of a standard or standards.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the commission [~~department~~] for any costs associated with the commission's [~~department's~~] preparation, copying, and delivery of information requested by the facility.

(d) A statement of violations prepared by the commission [~~department~~] following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the commission [~~department~~] while the dispute is pending if the posting clearly notes each finding that is in dispute.

(e) The commission may charge and the assisted living facility shall pay the reasonable costs associated with making the redactions required by Subsections (a)(3)(A) and (B).

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.