

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 933  
By: Schwertner  
Health & Human Services  
4/6/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Home and Community Support Service Agencies (HCSSAs) provide individualized services and supports for persons with intellectual disabilities who are living with their family, in their own home, or in community settings, such as group homes. Currently, the regulatory authority for HCSSAs lies with the Texas Department of Disability and Aging Services (DADS). Last session, the Sunset Advisory Commission reviewed DADS, but the resulting Sunset Bill failed to pass. During the Sunset review, the Health and Human Services Commission (HHSC) found numerous deficiencies in how DADS was handling violations committed by HCSSAs, leaving many vulnerable Texans at risk for serious harm or death.

HHSC, under which DADS will be consolidated in 2017, licenses these agencies; however, there are some existing statutes that prohibit HHSC from effectively protecting clients, leaving the industry with little consequence for committing repeat violations—specifically, statutes that provide numerous opportunities to correct violations before the HCSSAs faces any penalties. Finally, HSSC cannot assess adequate administrative penalties as a deterrence mechanism because the statutory penalty caps fall below the standard amounts for health-related violations. For example, penalty caps limit the maximum penalty to \$1,000 per violation, even for violations that result in the death of a client.

S.B. 933 seeks to implement the much-needed changes to HCSSAs that failed to pass last session. S.B. 933 authorizes HSSC to assess higher penalties for noncompliance and to assess a penalty without allowing an opportunity to correct for certain violations. S.B. 933 also reduces administrative burden by extending licenses from two years to three years. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 933 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 home and community support services agencies.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 1 (Section 142.006, Health and Safety Code), SECTION 2 (Section 142.010, Health and Safety Code), and SECTION 3 (Section 142.017, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 142.006(a), (b), and (c), Health and Safety Code, as follows:

- (a) Changes reference to the Department of Aging and Disability Services (DADS) to the Health and Human Services Commission (HHSC).
- (b) Provides that a license issued under this chapter expires three years, rather than two years, after the date of issuance. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt a system by which licenses expire on staggered dates during each three-year period, rather than certain 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 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, requiring a license holder to pay the total license renewal fee at the time of renewal, authorizing DADS to issue an initial license for a shorter term to conform expiration dates for a locality or applicant, and authorizing DADS to issue a temporary license to an applicant for an initial license.

(c) Makes conforming changes.

SECTION 2. Amends Sections 142.010(a) and (b), Health and Safety Code, as follows:

(a) Requires the executive commissioner by rule to set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees are prohibited from being less than \$600 or more than \$3,000, rather than less than \$600 or more than \$2,000, for a license to provide home health, hospice, habilitation, or personal assistance services.

(b) Changes a reference to DADS to HHSC.

SECTION 3. Amends Section 142.017, Health and Safety Code, by amending Subsections (a), (b), (c), (e), (i), and (j) and adding Subsections (k) and (l), as follows:

(a) Changes a reference to DADS to HHSC.

(b) Prohibits the penalty from being less than \$100 or more than \$1,000 for each violation, except that the penalty is prohibited from being less than \$100 or more than \$5,000 for each violation that results in actual harm or that constitutes an immediate threat to the health or safety of a client. Makes conforming changes.

(c) Makes conforming changes.

(e) Makes a conforming change.

(i) Makes a conforming change.

(j) Authorizes HHSC to assess an administrative penalty without providing a reasonable period of time to a home and community support services agency (agency) to correct the violation if the violation represents a pattern of violation that results in actual harm, rather than serious harm or death; is widespread in scope and results in actual harm; is widespread in scope and constitutes a potential for actual harm; or constitutes an immediate, rather than serious, threat to the health or safety of a client. Redesignates Subdivisions (2), (3), (4), (5), and (6) as Subdivisions (4), (5), (6), (7), and (8). Makes conforming and nonsubstantive changes.

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

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

SECTION 4. Requires the executive commissioner to, as soon as practicable after the effective date of this Act and after consulting with appropriate stakeholders, develop and adopt rules necessary to implement the changes in law made by this Act.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2017.