

BILL ANALYSIS

Senate Research Center

S.B. 1491
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many nursing home residents' funds are managed by third parties or "responsible payors"—usually their children—because the residents lack the cognitive ability to manage their own financial affairs. This arrangement exposes residents to abuse and exploitation, as some responsible third parties improperly divert or steal residents' funds that are needed to pay for their long-term care.

Under federal law, nursing homes cannot require third parties to commit their own personal funds to pay for the resident's care, but they may request that the third party sign a contract to provide facility payment from the resident's income or resources.

Unfortunately, certain Texas laws concerning legal standing and contractual privity undermine these agreements and render them unenforceable. The resulting loophole allows perpetrators of elder abuse to escape legal responsibility for their unlawful actions.

S.B. 1491 prevents financial abuse of nursing home residents by allowing facilities to pursue debts against responsible payors who have improperly diverted a resident's funds and left them unable to pay for their long-term care and susceptible to discharge and lawsuits.

S.B. 1491 applies only to instances where:

- (1) a resident has the financial resources to pay for care;
- (2) a responsible payor contractually commits those funds to the resident's care; and
- (3) the responsible payor misappropriates the resident's funds and breaches his or her contract with the nursing home.

Closing this loophole will protect aging Texans against financial abuse and exploitation.

As proposed, S.B. 1491 amends current law relating to civil liability of a nursing facility resident's responsible payor for misappropriation of the resident's funds.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 242, Health and Safety Code, by adding Section 242.020, as follows:

Sec. 242.020. CIVIL LIABILITY RELATED TO MISAPPROPRIATION OF RESIDENT'S FUNDS. (a) Defines "misappropriate" and "responsible payor."

(b) Authorizes a nursing facility to file an action against a resident's responsible payor for an amount owed by the resident to the facility if:

(1) before admission of the resident, the facility obtains financial information from the resident or responsible payor demonstrating the amount of financial resources that the resident has available to pay for nursing facility care; and

(2) after the resident begins to reside at the facility, the responsible payor misappropriates the resident's resources to a degree that the resident is unable to afford to pay for the resident's care.

(c) Provides that, subject to Subsection (d), the prevailing party in an action filed under this section is authorized to recover attorney's fees.

(d) Prohibits a nursing facility, in an action filed under this section, from recovering a total amount, including damages and attorney's fees, that exceeds the amount the responsible payor has misappropriated from the resident.

SECTION 2. Makes application of Section 242.020, Health and Safety Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2019.