

SUBJECT: Revisions to the Personal Care Facility Licensing Act

COMMITTEE: Human Services: favorable with amendments

VOTE: 5 ayes — Barton, Linebarger, Sadler, Schechter, Van de Putte

0 nays

4 absent — Larry, Vowell, Hilderbran, Naishtat

SENATE VOTE: On final passage, April 17: voice vote

WITNESSES: (On House companion bill, HB 1975 by Barton):

For — William McCaffrey, Texas Silver-Haired Legislature; Aaryce Hayes, Advocacy Inc.; Marcia Baum, National Association of Social Workers; John Willis, Texas Department of Aging; Omar Pitman, TORCH; Melvin Eckhoff, Texas State Legislative Committee. (Registered in support but not testifying — Ruby Hawk, Silver-Haired Legislature; Christine Devall, Texas Mental Health Association; Marc Rodriguez, City of San Antonio; Sara Speights, Texas Health Care Association)

Against — None

On — Richard Butler and Juanita Carrell, Texas Department of Health (TDH); Clyde Farrell, Attorney General's Office

BACKGROUND: The 71st Legislature enacted SB 487 by Brooks, which established the Personal Care Facility Licensing Act to regulate personal care facilities, which serve mainly the elderly and disabled. The board of the Texas Department of Health establishes minimum standards, sets fees and can deny, suspend, or revoke a license. A person violating the act is subject to a civil penalty of not less than \$100 or more than \$10,000 for each violation.

DIGEST: SB 865, as amended, would amend the Personal Care Licensing Act and the Health and Safety Code to add clarifying definitions and requirements of personal care facilities, revise licensure and regulation of the facilities,

establish a pilot program, require a study surveying personal care facilities and client needs and set penalties for violators.

SB 865 would expand the current definition of a "personal care facility" to include a board and care home that furnishes food, shelter and personal care services to more than four people, in one or more facilities, who are unrelated to the establishment's proprietor.

SB 865 would require facilities meeting the personal care definition to be licensed by the Texas Department of Health (TDH) but would exempt boarding facilities that provide room and community meals but *do not* provide assistance. SB 865 would allow TDH to inspect facilities during reasonable times after an initial licensing inspection. License fees would be deposited in the Treasury, to be appropriated only to TDH for administration of the Personal Care Facility Act.

TDH's governing board, the Texas Board of Health, could develop different levels of minimum standards for facilities based on the number and type of residents and the level of personal care provided.

SB 865 would direct the Texas Department on Aging to operate a pilot program through that department's long-term-care ombudsman's office that would recruit volunteers and train them in resident needs and requirements for personal care facilities. The agency would report to the Legislature on the program's effectiveness by February 1, 1993.

SB 865 would also require TDH to develop a consumer's guide and directory of facilities, provide and prominently post a residents' and providers' bill of rights containing specific rights, and require the Texas Department of Mental Health and Mental Retardation (TDMHMR) report to TDH on TDMHMR outpatients residing in facilities that should be licensed.

SB 865 would direct the University of Texas Health Science Center to conduct a survey of facilities and client needs and report findings to the Legislature and the governor by February 1, 1993.

SB 865 would permit TDH to impose penalties, including revoking a facility's license, if an investigation revealed abuse, exploitation or neglect.

TDH would pay for the relocation of the residents of any facility the department closed. TDH could require a facility to participate in continuing education classes as a condition of license renewal.

SB 865 would require TDH, the Texas Department of Human Services and the attorney general to adopt a memorandum of understanding that defines each agency's responsibilities concerning personal care facilities, coordinates procedures, and plan to correct facility violations.

The bill would take effect September 1, 1991.

**SUPPORTERS
SAY:**

Thousands of elderly, mentally ill or physically disabled Texans are living in unlicensed facilities known variously as boarding care homes, lodging homes, domiciliary homes or board and care homes. The public is unaware of the poor condition of many residents in these unlicensed personal care homes, the magnitude of the problem or even how difficult it is to locate personal care facilities. When TDH does attempt to investigate complaints of abuse in those facilities it has authority to investigate, these facilities will often pack up and move the residents.

SB 865, by defining a personal care facility as a facility that provides more than room, board and laundry, would require the licensure of most of the estimated 2,000 to 4,000 unlicensed homes. Many personal care facilities escaped licensure requirements by having several buildings with less than four people in each, but SB 865 includes in its definition establishments that serve people in different facilities. With the power of administering licenses comes the power to investigate the homes, and that would be a comprehensive first step in fixing the problem.

It is imperative that these facilities stay open, after complying with the regulation provided by SB 865. They house many people who otherwise would be homeless.

SB 865 would not promote mass closings of board and care homes; the intent of this legislation is to allow TDH to find, license and then work with facilities to comply with regulation standards. TDH would not have enough staff to investigate and shut down non-conforming facilities even if that were the intent of the legislation.

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SB 865 would remedy the problem of overlapping jurisdictions and confusing definitions and labels for personal care facilities by requiring one agency to perform all inspection and licensing.

OPPONENTS
SAY:

Because TDH could set license fees and charge violators with civil penalties, many of the thousands of personal care facilities would be in danger of shutting down because they cannot meet standards or pay fees. These facilities should be licensed, but high fees could force them to close their doors and put their residents on the street.

NOTES:

Committee amendments to SB 865 would specify that TDH is the licensing authority for unlicensed facilities and require fees collected for licensure to be appropriated only to TDH for administration and enforcement of licensure requirements.

Rep. Barton may offer a floor amendment to SB 865 that would not require the University of Texas Health Science Center to conduct a study of personal care facilities but would permit a study.