

**SUBJECT:** Modifying Medicaid certification of nursing home beds

**COMMITTEE:** Human Services — favorable, without amendments

**VOTE:** 7 ayes — Hilderbran, Naishtat, Christian, Davila, Maxey, McReynolds, Wohlgemuth

0 nays

2 absent — Chavez, Krusee

**WITNESSES:** For — Alan Hardy, American Association of Retired Persons; David Latimer, Texas Association of Homes and Services for the Aging

Against — Tim Graves, Texas Health Care Association

On — Tony Venza, Texas Department of Human Services

**BACKGROUND**  
:

The Texas Department of Human Services administers nursing home licensing and Medicaid certification. Medicaid is the state/federal health insurance program for the poor and covers about 66,000 elderly Texans in nursing homes. Nursing homes must meet specified Medicaid and licensing standards in order to be certified as providers in the Medicaid program.

Since 1985 the department has been authorized through the general appropriation act to enforce a moratorium on the certification of new Medicaid nursing home beds. Riders to the fiscal 1996-97 budget prohibit the department from contracting for additional beds in counties where the occupancy rate of available beds for each of the previous six months has been less than 85 percent.

The restriction does not apply to hospital beds that could be converted to long-term care beds under the federal “swing bed” program in counties with populations less than 100,000. The rider also specifies that the commissioner may grant waivers only to meet a need to serve individuals under the supervision of the Texas Department of Criminal Justice, to meet documented demand in underserved minority communities, or to serve medical school-affiliated facilities that treat persons with Alzheimer’s

disease.

**DIGEST:** HB 2321 would require the Texas Department of Human Services to establish rules that would allow for the decertification of unoccupied nursing home beds. It also would require nursing home facilities requesting certification of additional beds to have maintained at least an 80 percent occupancy rate for the three years preceding the request.

The department could waive the occupancy rate requirement for a newly certified Medicaid nursing home facility.

The act would take effect September 1, 1997.

**SUPPORTERS SAY:** HB 2321 would give DHS statutory authority to limit increases in nursing home Medicaid bed certification, would gradually phase out the use of the current moratorium, and would allow for unused beds to be “redistributed” to other areas in need.

The current moratorium impedes new competition by qualified providers, thereby sustaining the operation of substandard nursing homes, and inhibits the redistribution of beds to meet population needs. Texas’ overall nursing home occupancy of 78 percent is very low compared to the occupancy experience in other states’ nursing homes which is around 95 percent. Texas occupancy rates indicate that the state as a whole has more nursing home beds than needed; however, some areas do not have enough beds.

Nursing homes whose certified beds are not fully occupied “tie up” the supply of beds that could be certified in another facility. Some facilities allegedly keep occupancy rates purposefully below 85 percent to prevent the introduction of competition in their county. The moratorium also prevents nursing homes that have served only private-paying residents in the past to certify some or all of their beds as Medicaid beds to meet the changing financial needs of their communities or long-term nursing home residents.

Rural residents are the most inconvenienced by the moratorium and the current distribution of beds; they are often placed in nursing homes great distances from their family because the operation of substandard or low occupancy facilities prevents the construction of new, better quality,

facilities in closer proximity.

Nursing homes would not be unfairly jeopardized by the changes in this bill. If beds are not being used, then they are not generating revenue, so loss of certification of unused beds would have a minimal impact on future revenue streams. Also, losing certification of a nursing home bed would only mean that the nursing home could not use that bed for a Medicaid recipient. The facility still could use the bed to care for clients who pay for services through private means, such as by using savings or long-term care insurance.

Eliminating the moratorium completely would increase state Medicaid costs as new nursing homes or new beds are built without restriction. The state already has too many beds, and is paying for some of the over bedding through overhead costs reported for Medicaid reimbursement. HB 2321 reflects a rational, middle-of-the-road approach between a virtual moratorium on new or redistributed beds and a completely unregulated system that would increase state costs.

**OPPONENTS  
SAY:**

CSHB 2321 could significantly shift the distribution of Medicaid beds in Texas at financial cost to many nursing homes. It also would fail to put in place any oversight mechanism to ensure that additional Medicaid beds would be approved only in areas that demonstrate need.

Nursing homes have borrowed money for facility construction, improvements and other operations based on anticipated revenue streams. Losing certification for a number of nursing home beds would jeopardize a nursing home's projection of revenues and could prompt lenders to call in loans or call off agreements. A nursing home that has been the traditional provider for an area could experience low occupancy due to population shifts, yet be penalized by the state and by the lenders for circumstances over which it had no control.

The moratorium and bed planning authority of DHS should be eliminated entirely and a "free market" approach adopted by the state in the construction of nursing home beds and facilities. State costs would not significantly increase because nursing home owners and operators know better than to build or compete in areas in which there is insufficient

demand, so overbuilding would not happen.

OTHER  
OPPONENTS  
SAY:

HB 2321 also should require DHS to develop a statewide long-term care bed and services plan. The use of current, and need for additional, nursing home beds should be viewed in light of overall changes in long-term care services, in which new technologies and medical advancements or related social changes may reduce or increase the need for nursing home care. It would also help curb the proliferation of any other unnecessary long-term care-related services.

NOTES:

SB 190 by Zaffirini, revising nursing home regulations, was amended on the House floor to include provisions similar to HB 2321. SB 190 passed the House on April 22 and is pending in conference committee.

A related bill, HB 606 by Zbranek, which would allow certain commissioner's courts to request additional Medicaid-certified beds in their counties, has passed both houses.