

SUBJECT: Regulating nursing facility administrators

COMMITTEE: Human Services— favorable, with amendments

VOTE: 9 ayes — Hilderbran, Naishtat, Chavez, Christian, Davila, Krusee, Maxey, McReynolds, Wohlgemuth
0 nays

SENATE VOTE: On final passage, April 23 — 30-1 (Nelson)

WITNESSES: For — Beth Ferris, Texas Advocates for Nursing Home Residents; Alan Hardy, American Association of Retired Persons; Jo Ann O. Dubois, Katherine Hinson, Texas Health Care Association; Melody Chatelle, Living Centers of America/Texas Health Care Association
Against — None
On — Tom Hunter, Texas Association of Licensed Facility Administrators; Jim Zukowski, Texas Department of Health; John F. Willis, Texas Department on Aging

BACKGROUND : The Texas Board of Nursing Facility Administrators (BNFA) is a nine-member board responsible for overseeing the actions of about 2,300 licensed administrators in Texas. It was established in 1969 in response to federal Medicaid requirements and was a freestanding agency until 1993, when it was moved by the 73rd Legislature to the Texas Department of Health under its professional licensing division and reorganized in sunset legislation.

DIGEST: SB 84 would abolish the current Texas Board of Nursing Facility Administrators on September 1, 1997, and would repeal the Nursing Facility Administrators Licensing Act (art. 4512q VTCS).
SB 84 would either transfer BNFA functions to the board governing the Texas Department of Human Services (DHS) and create an advisory committee to the DHS board, or establish a new Board of Nursing Facility Administrators within DHS, if the federal government decides that DHS board regulation of nursing home administrators would not meet federal

requirements.

SB 84 would specify similar responsibilities for either DHS or BNFA regarding nursing home administrator regulation, including licensing and applicant qualification standards, complaint processing procedures and monetary and other sanctions and penalties, and authority to set fees to cover administration costs.

The bill also would specifically prohibit a person from acting as a nursing facility administrator without a license and would subject DHS licensing authorities to sec. 232 of the Family Code, which provides for the suspension of professional licenses for failure to pay child support. The bill also would provide protections for administrators who refuse to engage in activities that would violate their licensure standards.

Article 1 of the bill, which would abolish the BFNA and transfer its functions to DHS, would take effect September 1, 1997. Article 2 of the bill, which would establish BFNA under TDH, would take effect on the date article 1 expired due to lack of federal authority.

Licensing. A person who met licensing requirements would be entitled to receive a license. An applicant would have to have completed a board-prescribed course of instruction and pass a board-approved licensing examination. Required instruction and examination procedures would be specified. A license would be valid for two years and could be renewed. The board also would have to establish a minimum number of hours of continuing education required to renew a license and would have to identify key factors for the competent performance by a license holder.

The board could provide for the issuance of a temporary license and would have to provide a provisional license to qualified applicants who are licensed in good standing in another state and are sponsored by another licensed nursing home administrator in this state. The bill would specify temporary and provisional license processing and other procedures.

Complaint processing. A information file would have to be kept concerning each complaint received that contained a record of all persons contacted concerning the complaint, a summary of findings made during

each step of the investigation, and an explanation of the legal reason for why each case was dismissed. Cases would have to be disposed of in a timely manner; investigations would have to commence not later than the 30th day after the complaint was received.

Rules would have to be adopted concerning the investigation of complaints, which would have to include provisions to distinguish between categories of complaints, ensure that complaints are not dismissed without consideration, and apprise the board of complaints on a quarterly basis.

Licensing. A license could be revoked, suspended, or refused renewal, and written reprimands, required continuing education and probation could also be imposed against licensees for specified infractions, including wilful or repeated violations of laws or rules; wilful or repeated actions or alcohol or drug use that would be inconsistent with the health and safety of facility residents; a conviction of an offense involving moral turpitude; and negligent or incompetent enactment of nursing facility administrator duties.

Rules would have to be established to determine whether deficiencies from a facility's survey warrant action against an administrator. License holders would be entitled to hearings before sanctions were imposed.

A system for monitoring license holders would have to be established that would include procedures to ascertain whether a license holder performed certain tasks and to identify license holders who represent a risk to the public.

Administrative penalties. An administrative penalty could be imposed of up to \$1,000 for each violation or each day a violation occurred or continued. Standard provisions would be enacted regarding considerations to be used when imposing a penalty and relating to licensee notification, request for a hearing, penalty payment and judicial review.

Civil penalties. A person who violated the law pertaining to nursing facility administrator regulation would be liable for civil penalties of \$1,000 for each day of violation. The attorney general would have to bring an action to recover a civil penalty at the request of DHS or the BFNA.

Criminal penalties. A person who knowingly or intentionally acted as a nursing facility administrator who was not licensed as a nursing facility administrator would commit a Class B misdemeanor, punishable by a maximum penalty of 180 days in jail and a \$2,000 fine.

Refusal to act provisions. A licensed nursing home administrator who refused to engage in an act or omission that would constitute a violation of the laws or rules relating to nursing facility administrator regulation could not be disciplined, terminated or otherwise discriminated against if the administrator notified the employer, organization, agency or other individual of the reason for refusing to act.

A civil action could be brought against a person for violation of this provision, and persons refusing to act would be subject to relief available to complainants under current employment discrimination provisions in chpt. 21 of the Labor Code.

DHS advisory committee. Under article 1, the governor would have to appoint a nine-member Nursing Facility Advisory Committee to advise DHS on licensing procedures, and review and recommend rules and minimum standards of conduct. The committee would also review all complaints against administrators and make recommendations to the department regarding disciplinary actions.

The committee would be composed of three licensed nursing facility administrators; one physician, one registered nurse, and one social worker with experience in geriatrics who are not employed by nursing facilities; and three public members with experience working with the chronically ill.

New board. Under article 2, the governor would have to appoint a nine-member Board of Nursing Facility Administrators, composed of three licensed nursing facility administrators; one physician, one registered nurse and one social worker with experience in geriatrics who were not employed by nursing facilities; and three public members with experience working with the chronically ill.

Administrator members would have to be Texas and U.S. residents, licensed by the state, hold a four-year college degree and currently serve as a nursing

home administrator. Administrator members also would have to include at least one representative of a not-for-profit nursing facility,

Members of the board would serve staggered six-year terms. Standard provisions also would be enacted regarding open meetings, conflict of interest restrictions, grounds for removal and administrative functions.

**SUPPORTERS
SAY:**

SB 84 would help rectify problems with the current BFNA and improve regulation of nursing home administrators. Ensuring the quality of nursing home administrators through better licensing would go far in preventing or quickly correcting occurrences of resident neglect and poor nursing home care.

A recent state auditor's report found the BFNA to have the worst record of any state board in disciplining its licensed professionals, having failed to discipline any of its 2,300 licensees since 1993. According to the audit report, board members said they approved disciplinary actions, but the department staff failed to carry them out, while department staff said that the board rules failed to give them the legal teeth they needed to impose fines or other sanctions. The Texas Department of Health, which is responsible for the board's administrative services, also has been criticized for failure to adequately provide investigative and other staff.

Abolishing the board is necessary to put in place hard-working, appropriately representative board members who are committed to protecting the public through effective licensing actions. SB 84 also would address concerns that the current board, now composed of six nursing home administrators and three public members, is in violation of federal prohibitions against nursing home administrator domination of its licensing board. Having a two-thirds membership of nursing home administrators has also been blamed for board leniency against substandard nursing home administrators.

Transferring the duties of the BFNA to the board of DHS would be a logical first step because DHS has an existing, active board that could quickly assume new responsibilities. Because it regulates nursing homes, it is very familiar with nursing home problems and issues, including those surrounding nursing home administrators. Also, placing nursing home

administrator licensing functions under DHS would help cross-train investigators to determine whether nursing home problems are the result of poor administrative practices and to impose appropriate penalties.

The DHS board would be assisted in its decisions by an expert advisory group so that any delay caused by the abolishment of the BFNA would be minimized. In the unlikely event that the federal government should rule against the use of the advisory committee to DHS, the advisory committee could easily be appointed as the new board, and therefore prevent any further regulating delays. The new board, however, would remain under the administrative arm of DHS because the BNFA has had a poor history of regulation, whether as a free-standing board or as a board administratively attached to TDH.

OPPONENTS
SAY:

Abolishing the nursing home administrators board entirely is unnecessary and would just delay the implementation of much needed changes. What is needed is clearer definition of board authority and stricter, more enforceable rules, which would be granted by provisions included in this bill. Transferring duties to the DHS would require familiarizing the board members with nursing home administrator issues and licensing processes and take time away from developing and implementing strong rules and enacting swift penalties.

SB 84 would relegate the regulation of the nursing home administrators to an advisory committee to the DHS board, instead of a free-standing board or administratively attached board such as those that regulate all other health care professions. A free-standing board is an effective and efficient way to regulate professionals, yet SB 84 would change the structure of regulation when the problem has been with the composition and selection of board members and the adequacy of administrative staff.

OTHER
OPPONENTS
SAY:

SB 84 would contradict the need for swift and effective measures by requiring an implausible interim step. This bill should simply abolish the current board and enact a new board under DHS, not complicate matters by first transferring board duties to DHS and requiring appointment of an advisory committee. Federal requirements in this area are vague but allow nursing administrator regulation by a "healing arts" licensing board, and it is highly unlikely the DHS board would be so deemed.

NOTES:

Committee amendment one would direct the governor to appoint the members of the article 1 advisory committee by October 1, 1997, for terms expiring on February 1 in the years 1999, 2001 and 2003. Committee amendment two would require the governor to appoint the article 2 Board of Nursing Facility Administrators no later than one month after the effective date of the article, for terms to expire on February 1 of each odd-numbered year.