

**SUBJECT:** Creating an assisted living facility trust fund

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

**VOTE:** 6 ayes — Naishtat, Chavez, J. Davis, Ehrhardt, Noriega, Raymond  
0 nays  
3 absent — Telford, Villarreal, Wohlgemuth

**SENATE VOTE:** On final passage, March 22 — 30-0, on Local and Uncontested Calendar

**WITNESSES:** For — *Registered but did not testify:* Candice Carter, American Association of Retired Persons; Carl E. Mathews, Texas Organization of Residential Care Homes and Texas Assisted Living Association  
  
Against — None  
  
On — Marc Gold, Texas Department of Human Services

**BACKGROUND:** Health and Safety, sec. 242.096 establishes a nursing and convalescent home trust fund for emergency assistance to these facilities. Its purpose is to pay for placing state-appointed trustees in nursing homes and assisted living facilities (convalescent homes) where there is an immediate threat to residents' health and safety. Money in the fund comes from per-bed fees paid by nursing homes and assisted living facilities. The fund was capped at \$500,000 until 1999, when the 76th Legislature enacted HB 2909 by Naishtat, raising the cap to \$10 million. Any unencumbered funds in excess of that amount at the end of a fiscal year must be transferred to general revenue.

**DIGEST:** SB 691 would create an assisted living facility trust fund with the comptroller to make emergency assistance funds available to these facilities through the Texas Department of Human Services (DHS).  
  
A trustee of an assisted living facility could use emergency assistance funds only to alleviate an immediate threat to the residents' health and safety. This

could include payments for food, medication, sanitation services, minor repairs, personal hygiene supplies, or services necessary for the personal care, health, and safety of residents.

A court could order DHS to disburse emergency assistance funds if the court found that an assisted living facility had inadequate operating funds, that an emergency presented an immediate threat to the residents' health and safety, and that the best interests of the residents' health and safety required making the funds available immediately.

Unencumbered amounts in the trust fund in excess of \$500,000 at the end of each fiscal year would be transferred to the credit of the general revenue fund and could be appropriated only to DHS for its use in administering and enforcing statutory provisions relating to personal care facilities.

In addition to the license fees it assesses for assisted living facilities, DHS would have to adopt an annual fee to be charged and collected if the amount of the trust fund fell below \$500,000. The fee would have to be deposited to the credit of the trust fund. DHS could charge and collect such a fee more than once a year only if necessary to ensure that the trust fund balance was sufficient to make emergency disbursements. If DHS did make a second or subsequent assessment, the department would have to notify the governor and the Legislative Budget Board. DHS would have to set the fee on the basis of the number of beds in assisted living facilities required to pay the fee so as to provide not more than \$500,000 for the fund.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

SB 691 would create a separate trust fund for assisted living facilities that would promote equity between these facilities and nursing homes and would better protect the residents of assisted living facilities.

Assisted living facilities should not have to subsidize the nursing-home industry. Separate statutes govern these two types of facilities, but assisted living facilities still must contribute to the nursing-home trust fund. This was not a big problem when the trust fund was capped at \$500,000. However, in

1999, after the state had to take over 13 nursing homes, the Legislature raised the cap to \$10 million, placing a huge burden on assisted living facilities. This industry has different concerns, structures, and funding from those of the nursing-home industry. Most assisted living facilities are small private businesses funded with private money. They do not receive state money or reimbursement rates. On the other hand, nursing homes are larger businesses that do receive state and federal assistance.

Assisted living trusteeships usually involve unlicensed facilities. Residents of these facilities can be relocated to different, safer facilities. Nursing home trusteeships, on the other hand, involve licensed nursing homes from which the residents cannot be moved, requiring the state to serve as trustee until a new operator is found.

The money that assisted living facilities pay into the current fund is not proportional to the benefits they receive. Especially in the past few years, with many nursing homes going bankrupt, the nursing-home industry has used the trust fund more and more. State takeovers of the nursing homes have increased the fees that assisted living facilities must pay. Together, the two industries contribute about \$2 million a year. Last year, assisted living facilities contributed about \$800,000. However, the assisted living facility industry has used \$250,000 of emergency funds in the past five years, while the nursing-home industry has used about \$2 million.

By establishing a separate trust fund for assisted living facilities, SB 691 would promote better self-policing within the industry. The possibility of being charged multiple assessments in one year to pay for additional trusteeships is meant to encourage self-policing.

The new trust fund would not be a burden for DHS to administer because it would be much smaller than the nursing home fund. With about 40,000 assisted living beds in Texas, the fund could be built by a single assessment of \$14 per bed, or with smaller assessments charged over the next few years.

Creating a separate trust fund for assisted living facilities would not harm the nursing-home industry. Money for the nursing home fund could be raised by increasing reimbursement rates or by requiring the nursing homes to carry mandatory insurance.

OPPONENTS  
SAY:

SB 691 probably would cause an increase in the fees charged to nursing homes. If assisted living facilities no longer contribute to the nursing home trust fund, multiple fees or higher fees would have to be charged to nursing homes to make up the difference.

A separate trust fund would require more administrative work for DHS. It would be more cumbersome for the department to administer two separate funds rather than a single fund.