

BILL ANALYSIS

Senate Research Center

S.B. 190
By: Zaffirini
Health & Human Services
2-3-97
As Filed

DIGEST

Currently, there are approximately 90,000 residents in nursing homes in Texas; roughly 23 percent of the state's annual \$5.57 billion Medicaid budget is spent on nursing facility care; and the number of aging Texans who will need nursing facility care is steadily increasing as babyboomers reach retirement age. These facts, along with testimony and newspaper articles concerning alarming conditions in some nursing homes and the cumbersome regulatory processes that exist today, raise the need for nursing home reform.

S.B. 190 protects nursing home residents and makes homes accountable to the public by ensuring that nursing homes are regulated in four basic ways: 1) provide the highest possible quality of care; 2) strictly monitor all factors relating to the health, safety, welfare, and dignity of each resident; 3) impose prompt and effective penalties for noncompliance with licensing standards; and 4) provide the public with information concerning the operation of institutions in this state.

PURPOSE

As proposed, S.B. 190 establishes regulation for nursing homes and other facilities while providing penalties for violations of those regulations.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Health in SECTION 1.08 (Section 242.037(a), Health and Safety Code), SECTION 1.26 (Sections 242.403(a), 242.404(a) and (f), and 242.501(a), Health and Safety Code), and SECTION 1.27 (Section 222.0255(c), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends Section 242.001, Health and Safety Code, as follows:

Sec. 242.001. New heading: SCOPE, PURPOSE, AND IMPLEMENTATION. Provides that it is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. Sets forth the terms by which each institution licensed under this chapter is required to provide quality care in accordance with this chapter and the rules and standards. Establishes the stringency and application of the rules and standards adopted under this chapter. Provides that the legislature finds that the construction, maintenance, and operation of institutions are required to be regulated in a manner that protects the residents by providing certain standards of care. Provides that it is the legislature's intent that this chapter accomplish these goals, and requires this chapter to be construed broadly to accomplish the purposes set forth in this section. Deletes existing section.

SECTION 1.02. Amends Section 242.002, Health and Safety Code, by adding Subdivision (10), to define "restraints."

SECTION 1.03. Amends Chapter 242A, Health and Safety Code, by adding Section 242.0021, as follows:

Sec. 242.0021. CONTROL. Sets forth the conditions under which a person controls an

institution and under which it is presumed that a person controls an institution or other entity.

SECTION 1.04. Amends Chapter 242A, Health and Safety Code, by adding Sections 242.015 and 242.016, as follows:

Sec. 242.015. DOCUMENTS PUBLIC. Provides that subject to Sections 242.126, 242.127, 242.552, and 242.553, a document received or used by the Texas Department of Health (department) in connection with this chapter is public information for purposes of Chapter 552, Government Code.

Sec. 242.016. LICENSED ADMINISTRATOR. Requires each institution to have a licensed nursing facility administrator. Requires the administrator to manage the institution; be responsible for delivery of quality care and implementation of the institutional policies; and work at least 40 hours per week on administrative duties.

SECTION 1.05. Amends Section 242.032, Health and Safety Code, as follows:

Sec. 242.032. New heading: LICENSE OR RENEWAL APPLICATION. Provides that an application for a license renewal is made to the department on a form provided by the department and must be accompanied by the license fee. Requires the applicant or license holder to furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with minimum standards of medical care, nursing care, and financial condition, and any other applicable state or federal standard. Sets forth the terms by which the department is required to consider the background and qualifications of certain applicants and require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history. Makes conforming changes.

SECTION 1.06. Amends Section 242.033(a), Health and Safety Code, to authorize, rather than require, the department to issue a license if, after inspection and investigation, it finds that the applicant or license holder, and any other relevant person, meet the established requirements. Makes conforming changes.

SECTION 1.07. Amends Section 242.034, Health and Safety Code, to prohibit a license fee from exceeding a set amount. Authorizes the Texas Board of Health (board) to establish a background examination fee in an amount necessary to defray the department's expenses in administering background and qualification checks of applicants and license holders. Makes conforming changes.

SECTION 1.08. Amends Section 242.037, Health and Safety Code, as follows:

Sec. 242.037. New heading: RULES; MINIMUM STANDARDS. Requires the department to make and enforce rules and minimum standards to implement this chapter. Sets forth the stringency of the rules and standards adopted under this chapter. Establishes the provisions by which the board is required, rather than authorized, to adopt, publish, and enforce certain minimum institutional standards. Sets forth the conditions by which the department is required, in order to administer the Provider Certification Survey, to identify each area of care that is subject to both state licensing and federal certification requirements. Makes conforming changes.

SECTION 1.09. Amends Section 242.042, Health and Safety Code, to require each institution to conspicuously post for display in a public and visible area of the institution notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution; notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator; and any notice or written statement required to be posted under Section 242.071(b) or 242.504.

SECTION 1.10. Amends Section 242.061(a), Health and Safety Code, to set forth the terms by which the department is authorized to deny, suspend, or revoke a license.

SECTION 1.11. Amends Section 242.065(a), Health and Safety Code, to provide that a person who

violates this chapter or a rule or standard adopted under this chapter is liable for a civil penalty of not more than \$25,000, rather than not less than \$100 or more than \$10,000, for each violation which threatens the health and safety of a resident.

SECTION 1.12. Amends Section 242.066, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsections (f), (g), and (h), to authorize the department to assess an administrative, rather than a civil penalty, against a person who takes certain actions. Sets forth the penalties for violations under this section, Section 242.071(b), Section 242.1225, or a right of a resident adopted under Subchapter L. Sets forth the persons against whom an administrative penalty may be assessed. Establishes that a penalty assessed for late payment of a previous penalty is in addition to the previous penalty. Makes conforming changes.

SECTION 1.13. Amends Chapter 242C, Health and Safety Code, by adding Section 242.0665, as follows:

Sec. 242.0665. **RIGHT TO CORRECT.** Prohibits the department from assessing an administrative penalty against an institution if, not later than the 60th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation. Provides exceptions in cases involving certain violations. Requires an institution that corrects a violation to maintain the correction. Sets forth the terms by which the department is authorized to assess a penalty for a subsequent violation, but establishes that the department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

SECTION 1.14. Amends Section 242.068(d), Health and Safety Code, to make a conforming change.

SECTION 1.15. Amends Sections 242.067, 242.069, and 242.070, Health and Safety Code, as follows:

Sec. 242.067. **REPORT RECOMMENDING ADMINISTRATIVE PENALTY.** Requires written notice of a preliminary report to include a statement of whether the violation is subject to correction and if so, the steps necessary to correct the violation and the deadline for corrective measures. Authorizes the person charged, not later than the 60th, rather than the 20th day after the date on which the notice is sent, to report to the department that the violation has been corrected and request an inspection if the violation is subject to correction under Section 242.0665. Sets forth the terms under which the department is required to inspect a correction and notify the appropriate person of the results. Sets forth the recourse available for a person notified of unsatisfactory correction. Makes conforming changes.

Sec. 242.069. New heading: **NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND.** Sets forth the terms by which the commissioner of human services (commissioner) is required to give written notice of the payment and interest rate due for administrative penalties, and authorized to permit certain methods of payment. Sets forth the conditions under which the person charged with the penalty is required to file a petition for judicial review and is authorized to stay enforcement of the penalty. Establishes the method by which the department is authorized to file a contest to the affidavit, and by which the court is required to hold a hearing and stay the enforcement of the penalty. Establishes the burden of proof for the person who files an affidavit, and sets forth the repercussions for a person who does not pay the penalty in time and for whom the enforcement of the penalty is not stayed. Deletes the provisions regarding judicial review. Makes conforming changes.

Sec. 242.070. New heading: **AMELIORATION OF VIOLATION.** Sets forth the terms by which the commissioner is authorized to require a person to use any portion of a penalty to ameliorate the violation or to improve services in the institution affected by the violation. Deletes the provision prohibiting the department from assessing a penalty under both this subchapter and Section 32.021, Human Resources Code, for a violation arising out of the same act or failure to act.

SECTION 1.16. Amends Chapter 242C, Health and Safety Code, by adding Section 242.071, as follows:

Sec. 242.071. OTHER REMEDIES. Sets forth the terms by which the commissioner is authorized to suspend admissions. Requires an institution that is ordered to suspend admissions to post notice in the form required by the department on all doors providing ingress to and egress from the institution. Establishes that a person commits a Class C misdemeanor if the person knowingly fails to post notice in the manner required or removes a posted notice prematurely.

SECTION 1.17. Amends Chapter 242E, Health and Safety Code, by adding Section 242.1225, as follows:

Sec. 242.1225. REPORTING UNLAWFUL OR UNSATISFACTORY CONDITIONS. Requires an institution, an employee of an institution, or a physician, professional nurse, nursing facility administrator, nurse's aide, or pharmacist to report if the person suspects that an institution is violating state law or maintaining unsatisfactory sanitary conditions.

SECTION 1.18. Amends Section 242.123(a), Health and Safety Code, to establish that a report under Section 242.122 or 242.1225 is nonaccusatory and reflects the reporting person's belief that a fact described by Section 242.1225 exists. Makes a conforming change.

SECTION 1.19. Amends Section 242.124(a), Health and Safety Code, to make conforming changes.

SECTION 1.20. Amends Sections 242.125 and 242.126, Health and Safety Code, as follows:

Sec. 242.125. PROCESSING OF REPORTS. Sets forth the conditions under which reports are required to be made. Authorizes a local or state law enforcement agency that receives a report of abuse or neglect to investigate the report, and requires the agency to investigate if the report alleges that a resident's health or safety is in imminent danger.

Sec. 242.126. New heading: INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED AGENCY. Establishes the conditions under which the department or designated agency is required to make a thorough investigation after receiving a report of abuse or neglect. Sets forth the terms by which the investigating agency is required to complete an initial status report and provide a copy of the report to certain persons. Sets forth the contents of an initial status report and requires the agency to permit public inspection of the report provided the names of certain individuals are deleted from the public copy. Sets forth the terms by which the investigator for the agency is required to conduct the investigation, interview each relevant witness, and prepare the written investigation report. Requires the department to make the investigation report available to the public provided the names of certain persons are deleted from the public copy. Makes conforming changes.

SECTION 1.21. Amends Section 242.127, Health and Safety Code, to make conforming changes.

SECTION 1.22. Amends Section 242.133(a), Health and Safety Code, to establish that a person has a cause of action against an institution, or the owner or employee of the institution, that retaliates against the person for making a report under this subchapter or for reporting the abuse or neglect. Makes conforming changes.

SECTION 1.23. Amends Section 242.1335(a), Health and Safety Code, to make a conforming change.

SECTION 1.24. Redesignates Chapter 242H, Health and Safety Code, as Chapter 242J, and amends the subchapter heading as follows:

SUBCHAPTER J. ARBITRATION OF CERTAIN DISPUTES

SECTION 1.25. Amends Sections 242.267 and 242. 268, Health and Safety Code, as follows:

Sec. 242.267. COURT VACATING ORDER. Sets forth the terms by which a court is required to vacate an arbitrator's order with respect to an arbitration conducted at the election of the department or institution. Makes conforming changes.

Sec. 242.268. New heading: NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. Provides that this subchapter does not apply to an order issued under Section 242.062, and establishes that neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for suspension of an institution's license or issuance of a closing order under Section 242.062.

SECTION 1.26. Amends Chapter 242, Health and Safety Code, by redesignating Subchapter F as Subchapter N and adding new Subchapters F, K, L, and M, as follows:

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION

Sec. 242.151. ATTENDING PHYSICIAN. Requires an institution to have at least one attending physician who is licensed in this state; who is responsible for a resident's assessment and comprehensive plan of care; and who is required to review, revise, and sign orders relating to any medication or treatment in the plan of care. Establishes that each resident has the right to choose a personal attending physician.

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. Sets forth the conditions by which an institution is required to use appropriate pediatric consultative services for a resident younger than 18 years of age, and requires a pediatrician or other suitable physician to participate in all aspects of a resident's medical care.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. Requires an institution to have a director of nursing services who is a registered nurse or an advanced registered nurse practitioner, and sets forth the director's responsibilities.

Sec. 242.154. NURSING SERVICES. Requires an institution to provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible. Requires the institution to maintain a minimum ratio of one licensed nursing staff person for each 20 residents. Requires a registered nurse to be on duty at least eight hours a day, seven days a week. Authorizes the director of nursing services to serve as the required registered nurse in an institution with 60 or fewer residents.

Sec. 242.155. PEDIATRIC NURSING SERVICES. Requires an institution to ensure that nursing services for a resident younger than 18 years of age are provided by staff who have been instructed and have demonstrated competence in the care of children, and consultative pediatric nursing services are available to staff if the institution has a resident younger than 18 years of age.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. Requires the department to require that each resident be given at least one medical examination each year subject to departmental specification.

Sec. 242.157. DENTAL EXAMINATION. Sets forth the conditions by which the department is required to ensure that each nursing or custodial care home supervises the dental care needs of its residents.

SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. Requires an institution to care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's

quality of life. Requires an institution that admits a resident who is younger than 18 years of age to meet the resident's unique needs.

Sec. 242.402. QUALITY OF CARE. Requires an institution to provide any care or service needed to enable a resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with each resident's individual assessment and comprehensive plan of care.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. Requires the department to adopt standards to implement Sections 242.401 and 242.402 which address resident quality of life and care. Authorizes the department to adopt additional standards to implement Sections 242.401 and 242.402.

Sec. 242.404. RESTRAINTS; INTERDISCIPLINARY COMMITTEE. Sets forth the conditions by which the department is required to adopt standards for the use of restraints by an institution. Prohibits an institution from using certain restraints, except in specific circumstances. Requires an institution to have an interdisciplinary committee to develop and implement written policies for the use of restraints. Requires the department to adopt rules governing the manner in which the policies and procedures may be adopted and amended and the subjects that the policies and procedures must address.

Sec. 242.405. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. Requires each institution to comply with the standards adopted under this subchapter and develop written operating policies to implement those standards. Requires the department to adopt standards governing the subject matter to be addressed by the policies and procedures and their implementation. Requires these policies to be available to each physician, staff member, resident, resident's next of kin or guardian, and the public.

SUBCHAPTER L. RIGHTS OF RESIDENTS

Sec. 242.501. RESIDENT'S RIGHTS. Requires the department, by rule, to adopt a statement of the rights of a resident consistent with Chapter 102, Human Resources Code. Sets forth the terms by which the statement of a resident's rights is required to address, at minimum, the resident's constitutional, civil, and legal rights, and is authorized to indicate the circumstances in which a right of a resident may be restricted. Authorizes the department to adopt additional resident rights.

Sec. 242.502. RIGHTS CUMULATIVE. Provides that the rights established under this subchapter are cumulative of the rights established under Chapter 102, Human Resources Code, and any other law.

Sec. 242.503. DUTIES OF INSTITUTION. Requires an institution to develop and implement policies to protect resident rights. Prohibits an institution and the staff from violating a right adopted under this subchapter.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. Requires an institution to inform and explain to each resident and the resident's next of kin or guardian of the rights adopted under this subchapter. Sets forth the terms by which an institution is required to provide, maintain, and post a written statement of the resident's rights to certain persons. Sets forth the terms by which an institution that has been cited by the department for a violation of any right adopted under this subchapter is required to post notice.

SUBCHAPTER M. REQUEST FOR INSPECTION

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. Sets forth the terms by which a person is authorized to request an inspection of an institution, and requires the department to encourage a person who makes an oral complaint to submit a written, signed complaint.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. Prohibits the department from providing information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection.

Sec. 242.553. CONFIDENTIALITY. Provides that the name of the person making the complaint is confidential and may not be released unless the person making the complaint requests release.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION. Sets forth the terms by which the department is required to make a preliminary review of a complaint, conduct an on-site inspection, and notify the person making the complaint of the department's course of action and the reasons for that action.

Sec. 242.555. PERSONS WHO MAY ACCOMPANY INSPECTOR. Sets forth the terms by which the department is authorized to permit the person making the complaint or the person's representative, or both, to accompany the inspector during an on-site inspection.

SUBCHAPTER N. New heading: ADMINISTRATION OF MEDICATION

Sec. 242.601. MEDICATION ADMINISTRATION. Sets forth the terms by which an institution is required to establish proper medication administration procedures, and requires these procedures to comply with this subchapter and the rules adopted by the board under Section 242.608.

Sec. 242.602. PHARMACIST SERVICES. Requires an institution to employ a licensed pharmacist and to contract, in writing, with a licensed pharmacist to advise the institution on certain matters. Requires the institution to allow residents to choose their pharmacy provider from any qualified pharmacy.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. Requires an institution to store medications in certain places and under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Requires an institution to properly dispose of certain medications. Requires a discontinued medication that has not been destroyed to be reinstated if reordered. Sets forth the terms by which an institution is required to release the medications of a resident who is transferred or discharged.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. Requires an institution's nursing staff to report medication and adverse reactions to the resident's physician in a timely manner and record the errors and reactions in the resident's clinical record.

Sec. 242.605. MEDICATION REFERENCE SOURCES. Sets forth the terms by which an institution is required to maintain updated medication reference texts or sources.

Sec. 242.606. PERMITS TO ADMINISTER MEDICATION. Redesignated from existing Section 242.151. Makes a conforming change.

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. Redesignated from existing Section 242.1511. Makes a conforming change.

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. Redesignated from existing Section 242.152.

Sec. 242.609. TRAINING PROGRAMS TO ADMINISTER MEDICATION. Redesignated from existing Section 242.153. Makes a conforming change.

Sec. 242.610. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. Redesignated from existing Section 242.154. Makes a conforming change.

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. Redesignated from existing Section 242.155.

Sec. 242.612. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. Redesignated from existing Section 242.156. Makes a conforming change.

Sec. 242.613. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. Redesignated from existing Section 242.157.

Sec. 242.614. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. Redesignated from existing Section 242.158. Deletes existing Sections 242.159 and 242.160.

Sec. 242.615. EMERGENCY MEDICATION KIT. Redesignated from existing Section 242.161.

SECTION 1.27. Amends Section 222.0255, Health and Safety Code, to require the Texas Department of Human Services to adopt separate, rather than one set of, standards for nursing home licensing under Chapter 242 and for medical assistance program certification. Requires the certification standards, at a minimum, to comply with federal regulations, and deletes the existing provision. Requires the department, by rule, to adopt the standards for licensing an institution under Chapter 242. Requires the standards for licensing an institution to include enforcement measures. Provides that Chapter 242 establishes the minimum licensing standards for an institution. Requires the licensing standards adopted by the department under this chapter to be adopted subject to Section 242.037(b), and to comply with Section 242.037(c) and the other provisions of Chapter 242.

SECTION 1.28. Repealer: Section 242.012, Health and Safety Code (Rights of Residents).

SECTION 1.29. Requires the Texas Board of Human Services to adopt rules as necessary to implement the change in law made by this article not later than January 1, 1998.

SECTION 1.30. Makes application of this Act prospective to January 1, 1998.

ARTICLE 2. GOVERNMENT FUNDING OF NURSING SERVICES

SECTION 2.01. Amends Section 32.021, Human Resources Code, by amending Subsections (d) and (h)-(k), and adding Subsections (l)-(n) to set forth the terms by which the department is required, rather than authorized, to include penalties for contract violations in its contracts for the delivery of medical assistance by nursing facilities. Deletes the provision requiring the department to establish a penalties and sanctions advisory committee. Requires the rules adopted by the department for certification of nursing facilities to comply with the more stringent of state or federal law, rather than to comply with the standards imposed by federal law. Requires the department to use civil, administrative, or criminal remedies with respect to a facility that is in violation of a certification or licensing requirement. Sets forth the terms by which the department is required to institute a reimbursement system, and prohibited from including certain penalties as a reimbursable item. Deletes the provision requiring rules adopted to adjudicate claims in contested cases. Establishes the provisions regarding the admissibility of certain surveys, investigations, and surveyor or investigator testimony as evidence in a civil action to prove an institutional violation. Sets forth the terms by which the department is required to terminate a nursing facility's provider agreement. Deletes the provision subjecting an assessment of monetary penalties under this section to arbitration under Chapter 242H, Health and Safety Code.

ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. Effective date: September 1, 1997.

SECTION 3.02. Emergency clause.